

TOWN OF LEXINGTON ZONING LAW

ARTICLE I - TITLE AND PURPOSE

§ 1.01. Title

This local law shall be known and may be cited as the "Zoning Law of the Town of Lexington."

§ 1.02. Enacting Clause and Purposes

This local law is enacted pursuant to the authority and power granted by Municipal Home Rule Law of the State of New York, Article 2, § 10, et seq. and Chapter 62, Article 16, of the Consolidated Laws, in conformance with the Town of Lexington Comprehensive Plan, to protect and promote public health, safety, comfort, convenience, economy, natural, agricultural, and cultural resources, aesthetics, and the general welfare, and for the following additional specific purposes:

- A. To conserve the natural resources and rural character of the Town by encouraging development in appropriate locations and by limiting building in areas where it would conflict with the Town's predominantly rural pattern and scale of settlement;
- B. To minimize negative environmental impacts of development, especially in visually and environmentally sensitive areas;
- C. To encourage a range of business activities in appropriate locations which are compatible with the Town's rural character and scale, concentrating retail businesses in and near hamlets;
- D. In recognition of the economic value of Lexington's natural beauty and environmental amenities, to protect the integrity of scenic views, ridgelines, agricultural land, existing and potential recreation areas, waterways, and ground and surface water supplies;
- E. To preserve and protect lands and buildings that are historically significant and enhance the aesthetic and architectural quality of the entire community;
- F. To encourage economic activities that require large areas of contiguous open space, such as forestry, tree farming, and recreation, as well as the support services and industries that add value to these uses, such as wood products and tourist facilities;

- G. To regulate building density in order to concentrate population in appropriate locations where a municipal infrastructure can be made available, and to ensure access to light and air, conserve open space, facilitate the prevention and fighting of fires, minimize the cost of municipal services, and accomplish the other purposes enumerated in § 263 of the Town Law of New York State;
- H. To integrate harmoniously different types of housing and varied land uses in hamlet centers to encourage pedestrian activity and reduce automobile traffic;
- I. To provide a range of housing opportunities for all segments of the local population with due consideration for regional housing needs;
- J. To protect residences from non-agricultural nuisances, odors, noise, pollution, and unsightly, obtrusive, and offensive land uses and activities;
- K. To provide a flexible system of land use regulation that enables the Town's economy and population to grow, while preserving the most important natural, historic, scenic, architectural, and cultural features;
- L. To protect the character and the social and economic stability of all parts of the Town, and to guide the orderly and beneficial development of all parts of the Town;
- M. To provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the Town; and
- N. Prevent the pollution of air, streams and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; and to encourage the wise use and sound management of the natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.

§ 1.03. Application of Regulations

- A. No building shall hereafter be used or occupied and no building or part thereof shall be erected, moved, or altered unless in conformity with the regulations herein specified for the district in which it is located.
- B. No building shall hereafter be erected or altered to accommodate or house a greater number of families or have narrower or smaller rear yards, front yards, or side yards than is herein required for the district in which such a building is located.

- C. No part of a yard or other open space about any building required for the purpose of complying with the provisions of this ordinance shall be included as part of a yard or other open space similarly required for another building.
- D. No land shall hereafter be used or occupied unless in conformity with the regulations herein specified for the district in which it is located.
- E. All provisions of this local law shall be construed to fulfill the purposes stated in Subsection B above.

ARTICLE II - DEFINITIONS

§ 2.01. Use of Words

- A. Words not specifically defined shall have their ordinary dictionary meaning. Construction and building terms shall have the meaning set forth in the State Building Code, as amended from time to time, except as may be otherwise modified herein.
- B. The terms 'building' and 'structure' include any part thereof. The word 'land' includes all ground within the Town of Lexington, including surface water bodies overlying such ground. Unless otherwise specified, all distances shall be measured horizontally.
- C. The word 'shall' is used in its mandatory sense. The word 'should' is used in its recommending sense and is used in connection with guidelines, which are not mandatory but recommended. The word 'may' is permissive.
- D. The word 'Town' means the Town of Lexington. The term 'Town Board' means the Town Board of the Town of Lexington; the term 'Zoning Board of Appeals' means the Zoning Board of Appeals of the Town of Lexington; and the term 'Planning Board' means the Planning Board of the Town of Lexington.

§ 2.02. Definition of Terms

ACCESSORY USE OR STRUCTURE. A use or building on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure.

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

ADULT ENTERTAINMENT USE. An establishment consisting of, including or having the characteristics of any or all of the following:

1. **ADULT BOOKSTORE OR VIDEO STORE.** An establishment having as a substantial or significant portion of its stock-in-trade books, pamphlets, magazines, and other periodicals, sculptures, photographs, pictures, slides, videotapes, sound recordings or films that are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or genital areas, and excludes any minor by reason of age.
2. **ADULT ENTERTAINMENT CABARET.** A public or private nightclub, bar, cabaret, restaurant or similar establishment, either with or without a liquor license, devoted to presenting material distinguished or characterized by its emphasis on matter depicting, describing or relating to sexual activities or genital areas, or that features topless dancers, go-go dancers, strippers, burlesque or similar entertainers for observation by patrons, and excludes any minor by reason of age.
3. **ADULT MODEL STUDIO.** Any establishment, where, for any form of consideration or gratuity, figure models are provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by a person other than the proprietor paying such consideration or gratuity and which excludes any minor by reason of age. This provision shall not apply to any school of art which meets the requirements established in the New York State Education Law for the issuance or conferring of, and is in fact authorized to issue and confer, a diploma.
4. **ADULT MOTEL.** A motel which excludes any minor by reason of age and which makes available to its patrons in their rooms films, slide shows or videotapes depicting or relating to sexual activities or genital areas and which if presented in a public movie theater would exclude any minor by reason of age.
5. **ADULT THEATER.** An establishment used for presenting motion pictures, films, videos, or live entertainment distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual activities or genital areas, and excludes any minor by reason of age.
6. **BODY PAINTING BUSINESS.** An establishment or business which provides the service of applying paint or other substance, whether transparent or not transparent, to or on the human body and which excludes any minor by reason of age.
7. **MASSAGE ESTABLISHMENT.** Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths, and which excludes any minor 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 duly licensed 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.

8. PEEP SHOW. A theater which presents material in the form of live shows, films or videotapes viewed from an enclosure for which a fee is charged and which excludes any minor by reason of age.

AGRICULTURE. The commercial use of land or structures for the raising, production, preservation, processing, storage, and sale of agricultural commodities such as crops, plants, flowers, vines, trees, sod, shrubs, livestock, poultry, fish, shellfish, honey, or dairy products, but not including industry or use of land primarily for the disposal of sewage or garbage.

AMSL. Above Mean Sea Level.

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

AUTOMOBILE, DERELICT. Any motor vehicle rendered inoperable by age, accident or major parts removal and which is not registered and inspected.

AUTOMOBILE SERVICE STATION. A building or place of business where gasoline, oil and grease, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade, at retail, and where minor repair service is rendered.

AVAILABLE SPACE. The space on a tower or structure to which antennas of a personal wireless service provider which are both structurally able and electromagnetically able to be attached.

BASEMENT. That space of a building which is partly below grade and has more than one-half of its average height, measured from floor to ceiling, above the finished grade of the ground adjoining the building (see Cellar). A basement is not a story for determining height limitations in the Bulk Regulations Table.

BED & BREAKFAST. An owner-occupied one-family dwelling offering from one to five bedrooms without kitchens for transient guests for which compensation is paid. A Bed & Breakfast is not deemed a home occupation.

BUILDING. Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or other real property.

BUILDING HEIGHT. The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof. When a lot fronts on two or more streets of different levels, the lower average elevation shall be taken as the base for measuring the height of the building.

CAMP. A facility providing access, water, sanitary and electrical services, where persons are lodged for a seasonal or temporary period of time less than six months for recreational or instructional purposes.

CAMPING. Living in a tent without electric, heating, or sanitary facilities or in a camping trailer with or without electric, heating, or sanitary facilities capable of temporary connection to site utilities, other than in a camp. There shall be no camping by any person for a period in excess of 14 consecutive nights in the same location in the same calendar year.

CELLAR. That space of a building which is partly or entirely below grade, which has more than one-half its height, measured from floor to ceiling, below the average finished grade of the ground adjoining the building (see Basement).

CERTIFICATE OF OCCUPANCY. A certificate issued by the Building Inspector for a building or structure which states that the building or structure conforms to the requirements of the Building Code and this local law.

CHARITABLE INSTITUTION. An institution which is incorporated as a Type B public benefit not-for-profit corporation as defined in Article 2, § 201, of the Not-For-Profit Corporation Law of the State of New York, and which qualifies for exemption under Internal Revenue Code ' 501)(3), excluding those institutions which are penal or correctional institutions, residential care facilities, day care facilities, or institutions owned or operated by governmental agencies.

CIVIC FACILITY. Buildings, structures, and uses owned and operated by the Town or Fire District and regularly used for community meetings, recreation and other forms of public assembly.

CODE ENFORCEMENT OFFICER. The duly designated Code Enforcement Officer of the Town.

COMMERCIAL USE. An occupation, employment, or enterprise that is carried on for profit by the owner, lessee or licensee.

COMMERCIAL RECREATION. Any occupation, employment or enterprise of an outdoor or indoor recreational nature not addressed elsewhere in this Article II that is carried on for profit by the owner, lessee or licensee, excluding the use of gasoline powered motor vehicles, provided that all such activities are no hazard as defined by the State Building Code and are compatible with other uses in the district.

COMMON DRIVEWAY. A driveway serving no more than four lots, owned in common or created by reciprocal easements.

COMMUNICATION TOWER. A freestanding or building-mounted structure, including appurtenances and antennas, intended for airway communication purposes, such as a television antenna, satellite dish or receiving and transmitting facility for which no FCC license is required.

COMMUNITY USE. A not-for-profit activity that is carried on for the benefit of the community, such as educational, scientific, religious, municipal, and charitable institutions and activities.

COMPLETE APPLICATION. An application which includes the following:

1. All information concerning the proposed project in the format required by the applicable provisions of this local law;
2. All application fees required by this local law and the professional review fee escrow deposit, if any, required by the reviewing agency;
3. An EAF or DEIS assessing the potential environmental impacts of the proposed project;
4. A determination by the reviewing agency, or by the lead agency in the event of coordinated review, that the proposed project is not likely to have a significant impact on the environment (negative declaration), or the filing of a notice of completion of a DEIS in accordance with the provisions of SEQRA.

COMPREHENSIVE PLAN. The Comprehensive Plan of the Town of Lexington adopted by the Town Board on December 3, 2003.

COVERAGE. The percentage of the area of any lot physically covered or occupied by the combined area of all structures and impervious surfaces.

CUL-DE-SAC. A dead end road with a circular turn-around at its terminus having a minimum right-of-way radius of sixty feet and a pavement radius of fifty feet.

CULTURAL FACILITY. Public libraries, museums, art galleries and other similar Town institutions.

DEC. The New York State Department of Environmental Conservation.

DEIS. A draft environmental impact statement prepared in accordance with the requirements of SEQRA.

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

DWELLING, ONE FAMILY. A building designed for or occupied exclusively by one family.

DWELLING, TWO FAMILY. A building designed for or occupied exclusively by two families living independently of each other.

DWELLING, MULTI-FAMILY. A dwelling or group of dwellings on one lot containing separate living units for three or more families living independently of each other.

EASEMENT. The authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property.

EAF. An environmental assessment form prepared pursuant to the requirements of SEQRA.

EDUCATIONAL INSTITUTION. Any school or other organization or institution conducting a regularly scheduled curriculum of study similar to that of the public schools and operated by not-for-profit corporations under the Education Law of the State of New York.

EIS. An environmental impact statement prepared in accordance with the requirements of SEQRA.

ENGINEER OR LICENSED PROFESSIONAL ENGINEER. A person licensed as a Professional Engineer by the State of New York.

FAMILY. A "family" consists of (a) one person, or two or more persons related by blood, marriage or adoption, or (b) no more than five persons not necessarily related by blood, marriage or adoption, and in addition any domestic servants or gratuitous guests, who live together in a single dwelling and maintain a common household.

FINAL SUBDIVISION PLAT OR SUBDIVISION PLAT. The final drawings on which the subdivider's plan of subdivision is presented to the Planning Board for approval and which, if approved, may be filed or recorded with the County Clerk.

FINISH GRADE. The natural surface of the ground or the surface of the ground after completion of any change in contour.

FLAG (REAR) LOT. Lots where most of the land is set back from the road and access is gained through a narrow access strip.

FLOODPLAIN/ONE-HUNDRED YEAR FLOODPLAIN. Land subject to a one-percent or greater chance of flooding in any given year.

FRONTAGE. That portion of any lot which bounds a street, as measured along the property line which is coincidental with such street right-of-way or centerline, or on a corner lot in which case frontage is along both streets.

GUIDELINE. As used in this local law, the term “Guideline” shall mean a statement of principle or policy which is to be considered by the reviewing agency in making its discretionary decisions in order to achieve the purposes of this local law.

HEIGHT. The vertical extent or distance from the average finish grade along the foundation of the structure being measured to the highest point of such structure.

HOME OCCUPATION. Any commercial use customarily conducted entirely within a dwelling or accessory structure which is clearly incidental and secondary to the use of the lot; does not change the character of the dwelling; has no external evidence of such use or exterior storage of materials or equipment; and is carried on by residents of the dwelling, or dwellings, except that no more than two persons, not residents of the dwelling, may be employed.

HOTEL. A building, or any part thereof, which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and which may contain one or more dining rooms.

IMPERVIOUS SURFACE. Any material covering the ground through which water does not readily penetrate, including but not limited to roofed structures, compacted soil, and pavement consisting of concrete, macadam, oil and stone, tar, or asphalt.

INDUSTRIAL USE, LIGHT. The use of land or structures to manufacture or process products of all kinds, including operations such as making, altering, assembling, bottling, canning, finishing, handling, mixing, packaging, repairing, cleaning, laundering, and similar operations, provided that all such activities are low hazard or no hazard as defined by the State Building Code and are compatible with other uses in the district.

KENNEL. Facility for the keeping of five or more dogs over ages of five months.

LODGING FACILITY. Any hotel, motel, inn, or other establishment providing sleeping accommodations for transient guests for which compensation is paid, with or without a dining room or restaurant, excluding bed and breakfast establishments.

LOT. Parcel of land occupied, or designed to be occupied, by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are arranged and designed to be used in connection with such buildings. A lot may or may not be the land shown on a duly recorded plat. If more than one lot of record is held in common ownership and said lots are contiguous and substandard in size to the minimum lot size in the zoning district, they shall, for purpose of this local law, be held as one lot or as many lots as shall leave no lot substandard.

LOT WIDTH. The average distance between side lot lines taken at the front yard or building line and measured at right angles to the side lot lines along a line parallel to the street.

MANUFACTURED/MOBILE HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit with a permanent foundation when connected to the required utilities, and includes plumbing, heating, ventilating and electrical systems contained therein. The term 'manufactured home' does not include a modular home.

MINING. Use of land for the purpose of extracting and selling stone, sand, gravel, or other minerals, as defined in § 23-2705 of the Environmental Conservation Law, not including the process of preparing land for construction of a structure for which a zoning approval and building permit have been issued.

MODULAR HOME. Also known as a "Factory manufactured home" and means a structure designed primarily for residential occupancy constructed by a method or system of construction whereby the structure or its components are wholly or a substantial part manufactured in manufacturing facilities, intended or designed for permanent installation, or assembly and permanent installation, on a building site.

MOTEL. A building or group of buildings having individual sleeping units for hire which are designed primarily for transient automobile travelers. The term "motel" includes, but is not limited to, hotel, motor hotel, motor court, motor inn, motor lodge and tourist court.

NON-CONFORMING LOT. A lot of record which does not comply with the area, shape, frontage, or location provisions of this local law for the district in which it is located, but which was conforming at the time it was created.

NON-CONFORMING STRUCTURE. A structure which does not satisfy the dimensional requirements of this local law for the district in which it is located, but which was not in violation of applicable requirements when constructed.

NON-CONFORMING USE. The prior lawful use of land or of a building or structure which subsequently is prohibited by zoning regulations pertaining to the district in which the building or land is situated.

NURSING OR CONVALESCENT HOME. A building where persons are housed or lodged and furnished with meals and nursing care for hire.

OFFICIAL NEWSPAPER. The newspaper or newspapers designated by the Town Board for the publication of official notices of meetings and public hearings.

OPEN SPACE. Land left in its natural state for conservation purposes or land landscaped for scenic purposes, or devoted to the preservation of distinctive architectural, historic, geologic or botanic sites. The term shall not include land that is paved, used for the storage, parking or circulation of automobiles, or occupied by any structure.

OVERLAY DISTRICT. A zoning district covering specific geographic areas of concern that is applied to portions of one or more zoning districts, indicating regulations in addition to those of the underlying zoning district.

PARCEL. A circumscribed area of land identified by a unique tax map identification number consisting of a section, map and lot number.

PRELIMINARY SUBDIVISION OR PRELIMINARY PLAT. A drawing or drawings clearly marked "preliminary plat" showing the layout of a proposed subdivision, submitted to the Planning Board for approval prior to submission of the plat in final form and of sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

PROFESSIONAL OFFICE. One used by a duly licensed architect, attorney, dentist, optometrist, engineer, insurance broker or salesman, physician or surgeon, real estate broker or salesman, or surveyor.

PUBLIC UTILITY FACILITY. An installation used by a public agency or franchised public utility to supply or transmit electric, gas, water, cable television, telephone, or other utility service. Included are such facilities as electric substations, high voltage transmission lines, pump stations, water supply wells, water towers, and telephone substations. Utility distribution facilities serving customers directly are considered customary accessory uses, not public utility facilities.

RELIGIOUS INSTITUTIONS. All uses dedicated to religious objectives, including churches, synagogues, retreat houses, resorts and the like.

RESIDENTIAL CARE FACILITY. A residence for infirm children, adolescents or adults who require personal care, supervision and services, where compensation and/or reimbursement of costs is paid to an operator pursuant to state and/or federal standards, licensing requirements, or programs funding such services.

RESORT. A building or group of buildings having individual sleeping units for hire that includes a restaurant on the premises, offers the inclusion of the cost of meals in the room rates, has outdoor recreation facilities and entertainment. The lot shall be of sufficient size as to provide at least .5 acre per individual sleeping unit.

RESUBDIVISION. Any change in the recorded subdivision plat if such change affects any street layout shown on such plat, or area reserved thereon for public use or creates any new lot or any such change if it affects any map or plan legally recorded.

ROAD. Streets, roads, avenues, lanes or other traffic ways, between right-of-way lines. The term "road" does not include driveways.

SCRAP YARD or JUNK YARD. The use of more than 100 square feet of land or structures for more than 30 days for the dismantling or accumulation of used and discarded materials outside of a completely enclosed building, with such storage, dismantling, processing, and salvage occurring solely for the purpose of commercial sale of such used and discarded materials. The term does not include a dump or other area used for disposal.

SENIOR CITIZEN HOUSING. A multiple dwelling use for senior citizens, intended primarily for persons who are in good physical condition and do not require physical assistance.

SEQRA. The State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law, as amended from time to time.

SHED. A temporary or permanent structure for accessory storage, playhouse or animal husbandry, not to exceed 150 square feet of floor space and fifteen feet in height, and not to be used as a residence. The term Shed does not include a shipping container or truck body.

SHOPPING CENTER. A grouping of three or more commercial establishments on a single site, planned, constructed and managed as a total entity with customer and employee parking provided on site.

SIGN. A use of land, structure or material for the purpose of conveying information, as a name, direction, warning, or advertisement, that is prominently displayed for public view and that consists of letters or symbols formed, inscribed or mounted on wood, metal, masonry or any other material. The term "sign" shall be limited to those signs that are visible from a street or walkway displayed in-doors or out-doors.

SIGN AREA. The entire area within a single continuous perimeter enclosing the extreme limits of lettering, representations, emblems or other figures, together with any material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed. Structural members bearing no sign copy shall not be included.

SITE PLAN. One or more drawings, made to scale, describing the location, extent and construction of proposed physical improvements to land and the location and extent of any existing physical improvements, prepared to specifications and containing necessary elements as set forth in this local law showing the arrangement, layout and design of the proposed uses of a single lot as shown therein.

STORY. That portion of a building between one floor and the next higher floor, or, in the case of the top story, between the floor and the roof. The maximum height considered as one story shall be 15 feet. Building height shall include 2 stories for each five feet or portion thereof that the roof extends above the roof bearing level. Basements, cellars, attics, roof construction and mezzanines shall not be deemed to be stories as long as they comply with the conditions established in the State Building Code.

SUBDIVISION, MAJOR. Any subdivision containing more than four (4) lots, or any subdivision requiring any new public road extension, or the extension of municipal facilities.

TRAILER, CAMPING. A trailer used for camping, extended excursions or recreational purposes only, with or without electric, heating, or sanitary facilities capable of temporary connection to site utilities.

USED CAR. Any motor vehicle, other than a new car, that is intact, with battery in an operating condition and capable of passing state inspection for road use.

USED CAR DEALER. Any person or persons engaged in the business of selling and/or buying and storing used cars, whether or not licensed as a dealer by the New York State Department of Motor Vehicles.

USED CAR LOT. One or more unregistered used motor vehicles or registered used motor vehicles on consignment offered for sale on a continuing basis.

VARIANCE, AREA. An authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this local law, provided that the term does not include a Special Exception Permit.

VARIANCE, USE. An authorization by the Zoning Board of Appeals for the use of land for a use which is otherwise not allowed or is prohibited by this local law. An increase in density or intensity of use shall be deemed to require a use variance if such increase is not allowed by right or by special permit.

VEHICLE, MOTOR. A self-propelled, land operated vehicle, including, without limitation, an automobile, car, truck, motorcycle, ATV, off-road vehicle, recreational vehicle, or other vehicle.

VEHICLE, RECREATIONAL. A motor vehicle, registered by the State of New York for operation on streets, containing electric, heating, sanitary, and/or cooking facilities, intended for use with site provided utility connections, used for camping, extended excursions or recreational purposes only, commonly referred to as an "RV" or motor home.

WETLAND. An area of land characterized by hydrophytic vegetation, saturated soils, or periodic inundation which is classified as a wetland by either the New York State Department of Environmental Conservation or the U.S. Army Corps of Engineers.

YARD. An area on the same lot with a building or group of buildings, which lies between the building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward, except as may be specifically authorized by this local law. In measuring a yard, the depth of a yard shall consist of the horizontal distance between the lot line and the nearest point of the foundation wall of the main building measured at right angles to the lot line.

YARD, FRONT. A yard extending across the full width of the lot and lying between the center line of the road on which the lot fronts and the nearest line of the building. If the lot abuts a state highway, the front yard will be on the side abutting the state highway.

YARD, REAR. A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the building.

YARD, SIDE. A yard between the side line of the lot and the nearest line of a building and extending from the front yard to the rear yard, or, in the absence of either of such yards, extending from the front lot line to the rear lot line, as the case may be.

ARTICLE III - ESTABLISHMENT OF DISTRICTS

§ 3.01. Land Use Districts

For the purposes of this local law, the Town of Lexington is hereby divided into the following land use districts:

A. Hamlet District (H)

The purpose of this district is to maintain the traditional scale, density, and character of hamlet residential neighborhoods, and to allow expansion into surrounding land areas that are within walking distance from the hamlet centers. This district will allow for higher density development and include a combination of residential and commercial uses.

B. Rural Residential District (RR)

The purpose of this district is to provide for low density residential development and to promote agriculture and compatible open space and rural uses by discouraging large-scale residential development. This district will help preserve the rural residential character of the Town while maintaining open space and agricultural land. The RR District shall encompass all lands which are below 2,400 feet AMSL and are not in the Hamlet District.

C. Conservation District (C)

The purpose of this district is to encourage forestry, recreation, land conservation, and very low-density residential uses where intensive residential development is undesirable. Most of this land is owned and managed either by the New York State Department of Environmental

Conservation (“DEC”) as part of Catskill Park, or by the New York City Department of Environmental Protection (“DEP”) as part of the watershed for the New York City Water Supply System. The C District shall encompass all lands which are above 2,400 AMSL.

§ 3.02. Overlay Districts

In addition to these land use districts, the following overlay districts are hereby created. Overlay districts do not change the use and dimensional requirements of the underlying land use districts unless specifically so stated in this local law. On any given parcel of land, more than one overlay district may apply.

A. Floodplain Overlay District (FP)

The purpose of this Overlay District is to control development within the 100-year floodplain in order to minimize flood damage and protect water resources.

B. Stream Corridor Overlay District (SC)

The purpose of this Overlay District is to protect the scenic character and water resource values of Schoharie Creek, West Kill Creek, Broadstreet Hollow Creek, Timberlake Creek, and Peck Hollow Creek and the tributaries thereto.

§ 3.03. Zoning Map

The areas and boundaries of such districts are hereby established to scale as shown on the maps entitled "Zoning Maps of the Town of Lexington, New York Land Use Districts," and "Zoning Maps of the Town of Lexington, New York’s Overlay Districts," adopted and certified by the Town Clerk and herein referred to as the "Zoning Maps." Said Zoning Maps, together with everything shown thereon, is hereby adopted and declared to be a part of this local law. Unofficial photo-reductions of the Zoning Maps may be appended to copies of this local law for reference purposes only. Changes may be made in district boundaries or other matter portrayed on the Zoning Maps only by a zoning amendment adopted by the Town Board.

§ 3.04. Interpretation of District Boundaries

Zoning district boundaries shall be determined as follows:

- A. Boundaries indicated as approximately following the center line of streets, highways, alleys, streams, lakes, or other bodies of water shall be construed to follow such center lines.
- B. Boundaries as indicated as approximately following Town limits shall be construed as following such town limits.

- C. Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.
- D. Distances not specifically indicated on the Zoning Maps shall be determined by the scale of the map.
- E. In other circumstances not covered by the rules above, the Zoning Board of Appeals shall interpret the district boundaries.

ARTICLE IV - DISTRICT REGULATIONS

§ 4.01. Purposes

The use regulations in this Article are intended to allow flexibility of land use to encourage business development consistent with the character and scale of Lexington’s hamlets and rural areas. In reviewing applications for Special Permits and Site Plan approval, the Planning Board shall impose any conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings. The Planning Board shall deny any proposed use which does not satisfy the criteria in this local law. Any uses not specifically allowed in the following District Regulations are prohibited in the town of Lexington.

§ 4.02. Use Table

No structure or land shall be used except as provided in the Use Table below. See Article II for Definitions of the use categories. The meaning of the symbols on the Table is as follows:

- P Designates a use permitted by right.
- P* Designates a use permitted by right, subject to Site Plan review by the Planning Board.
- S Designates a use permitted by Special Permit issued by the Planning Board.
- X Designates a prohibited use.
- S* Designates a use permitted by Special Permit issued by the Town Board

<u>Use Category</u>	<u>USE TABLE</u>		
	<u>District</u>	RR	C
Residential Uses	H		
Single Family Dwelling	P	P	P
Two Family Dwelling (in one building)	P	P	P
Multifamily Dwelling (up to 6 units)	S	X	X
Accessory Apartment	S	S	X
Apartment in Mixed Use Building	S	S	X
Senior Citizen Housing	S	S	X
Residential Care Facility	S	S	X
Manufactured/Mobile Home	P	P	P

Commercial/Recreational Uses

Adult Entertainment Use	X	S*	X
Agriculture/Dairying	S	P	P
Automobile Service Station	S	S	X
Bed & Breakfast	P*	S	X
Camp	X	S	S
Camping	X	P	P
Commercial. Other	P*	S	X
Communication Tower	S	S	S
Home Occupation	P	P	S
Scrap Yard	X	S	X
Kennel	S	S	X
Lodging Facility	S	S	X
Mining	X	S	S
Private School	S	S	X
Professional Office	P*	S	X
Public Utility	S	S	S
Recreation Business	P*	S	S
Retail Business (up to 3 stores on lot)	S	S	X
Restaurant	P*	S	X
Service Business, Other	P*	S	X
Shopping Center	S	S	X
Stable and Riding Academy	X	S	X
Shed (Not for Residence)	P	P	P
Tavern	P*	S	X
Theater/Playhouse	P*	S	X
Used Car Sales	P*	S	X

Community Uses

Cemetery	S	S	X
Charitable	S	S	X
Church and Parsonage	S	S	X
Civic Association	P*	S	X
Educational	S	S	X
Civic	P	P	P

§ 4.03. Prohibited Uses

The following uses are prohibited: heavy industry, facilities for disposal of hazardous or radioactive material, gambling halls, casinos, use of a storage shed, tent, or camping trailer for permanent living quarters, and camping in one location for more than 14 consecutive days in the same location in the same calendar year.

§ 4.04. Accessory Uses

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

§ 4.05. Mixed Use

Mixing of uses is encouraged in the Hamlet District where such mixing does not create land use conflicts. Accordingly, all Special Permit and/or Site Plan reviews for the same project shall be consolidated into one proceeding before the Planning Board.

§ 4.06. Bulk Regulations

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

<u>Dimension</u>	BULK REGULATIONS		
	<u>District</u>		
	H	RR	C
Minimum Lot Size	30,000 sq. ft.	3 acres	10 acres
Minimum Road Frontage ^H	35 ft.	35 ft.	35 ft.
Minimum Lot Width	100 ft.	300 ft.	500 ft.
Minimum Front Yard Setback*	45 ft.	75 ft.	75 ft.
Minimum Rear Yard Setback	25 ft.	30 ft.	100 ft.
Minimum Side Yard Setback	25 ft.	30 ft.	45 ft.
Maximum Coverage	20%	10%	5%
Maximum Height**	35 ft./22 stories	35 ft./22 stories	35ft./22 stories
Maximum Footprint (nonresidential)	4,000 sq. ft.	4,000 sq. ft.	3,000 sq. ft.

*All Front Yard Setbacks are measured from the center line of the road.

** Applicable height restriction is whichever is shorter. Basements are not considered a story. Height shall be measured from sill of the 1st floor.

^H Any Flag (rear) lot must have 25 ft as the Minimum Road Frontage.

§ 4.07. Floodplain Overlay District (FP)

- A. The boundaries of the Floodplain Overlay District shall be the one-hundred-year floodplain in the Town, as defined in Article II. The boundaries shown on the Overlay District Map are approximate. Within the Floodplain Overlay District, all of the underlying land use district rules remain in effect, except as they are specifically modified by this Subsection.

- B. District boundaries are based on the flood hazard maps for the Town of Lexington produced by the Federal Emergency Management Agency. Such boundaries may be amended from time to time to reflect changes in the actual floodplain. The Code Enforcement Officer is authorized to make interpretations when there appears to be a conflict between the limits of the federally identified floodplain and actual field conditions. The Code Enforcement Officer shall use flood information from any other authoritative source, including historical data, to establish the limits of the floodplain when base flood elevations are not available.
- C. The Town Board finds that the potential damages from flooding and erosion may include destruction or loss of private and public housing, damage to public facilities, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this subsection has been adopted.
- D. New construction and substantial improvements of any residential structure shall have the lowest floor, including basement or cellar, elevated to or above the base flood elevation, and have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters.
- E. New construction and substantial improvements of any nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including basement or cellar, elevated to or above the base flood elevation or be flood proofed so that the structure is watertight below the base flood level with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

§ 4.08. Stream Corridor Overlay District (SC)

- A. The Town finds that special protection of the Town's stream corridors is necessary to preserve their scenic character and water quality. The purpose of this Section is to regulate land uses within stream corridors to protect water quality, scenic resources, and the overall appearance of the community, as well as to reduce the risk of damage from flooding.
- B. The Stream Corridor Overlay District includes all land lying within 150 feet of the mean high-water line of the Schoharie Creek, the West Kill, and all other streams classified by the NY State Department of Environmental Conservation, as shown on the Overlay District Map. Within the Stream Corridor Overlay District, all of the underlying land use district rules remain in effect, except as they are specifically modified by this Subsection.

- C. In the Rural Residential and Conservation Districts, no principal structure shall be located within 100 feet of a watercourse and no accessory structure 200 square feet or larger shall be located within 50 feet of a watercourse. In the Hamlet Districts, no principal structure shall be located within 50 feet of a watercourse and no accessory structure 200 square feet or larger shall be located within 25 feet of a watercourse.
- D. Site Plan approval shall be required for construction of any structure greater than 500 square feet in footprint area, or within any one-year period filling or excavation of an area in excess of 5,000 square feet or grading or other alteration of more than 10,000 square feet of the natural landscape.
- E. Within the Stream Corridor Overlay District, the Planning Board may grant Site Plan approval only if it finds that, with appropriate conditions attached, the proposed activity:
 - 1. Will not result in degradation of scenic character and will be aesthetically compatible with its surroundings.
 - 2. Will not result in erosion or stream pollution from surface or subsurface runoff. In making such determination, the Planning Board shall consider slopes, drainage patterns, water entry points, soil erosivity, depth to bedrock and high water table, and other relevant factors.
 - 3. Will comply with other applicable provisions of this local law.
- F. If a Special Permit, Site Plan, variance, or subdivision approval is required in connection with a project subject to this Subsection, the requirements of this Subsection shall be considered in such proceeding and no separate Site Plan approval shall be required.
- G. For any Special Permit, Site Plan, or subdivision application in which the area to be disturbed lies partially within the SC District, an erosion and sediment control plan shall be required if the total disturbed area (including portions outside the SC District) exceeds 10,000 square feet.

ARTICLE V - SUPPLEMENTAL REGULATIONS

§ 5.01. Special Permits

A. General Procedures and Provisions

- 1. All uses of land listed in the Use Table in § 3.02 of this local law as requiring special permit shall be allowed upon issuance of a Special Permit by the Planning Board, except for Adult Entertainment Uses which Special Permits shall be issued by the Town Board.

2. Applications for Special Permits shall be filed with the Code Enforcement Officer, who shall forward the application to the Planning Board (or Town Board for Adult Entertainment Uses) for decision.
3. A plot plan shall be submitted with each Special Permit application. The plot plan shall show the location of all buildings, parking areas, traffic access and circular drives, open spaces, landscaping, topography, special features, and any other information, including such information about neighboring properties as may be necessary to determine and provide for the enforcement of this local law.
4. To cover the cost of processing Special Permits and applications therefore, a non-refundable fee as indicated on the fee schedule in Appendix B, shall accompany any application for a Special Permit, and shall be in addition to the Zoning Permit fee as described in this local law.
5. A Special Permit shall be deemed to authorize only one particular Special Use, and such permit shall be considered null and void if, within one year from the date of issue, all improvements required for this Special Use are not completed, and if the Special Use shall cease for more than one year for any reason, unless otherwise provided by the Planning Board [or the Town Board in the case of Adult Entertainment Uses].
6. The Planning Board (or Town Board in the case of Adult Entertainment Uses) shall attach conditions, limitations and safeguards to the Special Permit as are necessary to assure continual conformance to all applicable standards and requirements.
7. A use authorized by Special Permit may be revoked by the Planning Board [or Town Board in the case of Adult Entertainment Uses] if it is found and determined that there has been a failure of compliance with any one of the terms, conditions, limitations, and requirements imposed by said permit.
8. The Planning Board or Town Board in the case of Adult Entertainment Uses] shall hold a public hearing on the Special Use within 62 days of the filing of a complete and proper Special Permit application.
9. The Planning Board [or Town Board in the case of Adult Entertainment Uses] shall render its decision within 62 days after the close of the public hearing. The time within which the Board must render its decision may be extended by mutual consent of the applicant and the Board. Decisions of the Board shall be in writing and shall specify the particular conditions for such approval or the grounds for denial. The decision shall immediately be filed in the office of the Town Clerk and a copy thereof shall be mailed to the application.

B. Standards for all Special Permits

1. Adequate access for fire and police protection.
2. The location, size and character of the Special Use must be in harmony with the orderly development of the Zoning District and must not be detrimental to the orderly development of adjacent properties.
3. Safe, convenient and adequate vehicular and pedestrian access to and from the use through adequate, but not excessive, points of ingress and egress having sufficient width, proper grading and alignment, visibility and are not located too near street corners or places of public assembly.
4. Adequate off-street parking and loading areas which are properly located on the lot so as to provide safe and convenient circulation.
5. Locations and heights of buildings shall be such that the Special Use will not hinder or discourage the appropriate development and use of adjacent land and buildings.
6. Landscaping and screening of parking, loading and service areas so that such areas are screened all seasons of the year from the view from adjacent lots and streets.

§ 5.02. Site Plan Approval

- A. Applicability. Site Plan approval by the Planning Board shall be required for all permitted uses listed on the Use Table as requiring Site Plan approval only. Site Plan review shall be included as part of the Special Permit approval process and no separate Site Plan approval shall be required for uses requiring a Special Permit.
- B. Required Information. An application for Site Plan approval shall be accompanied by plans and descriptive information sufficient to clearly portray the intentions of the applicant, including the following unless waived by the Planning Board.
 1. A vicinity map drawn at the scale of 2,000 feet to the inch or larger that shows the relationship of the proposal to existing community facilities and all properties, subdivisions, streets, and easements within 500 feet of the property.
 2. An existing conditions map, showing existing buildings, roads, utilities, and other man-made features, as well as topography and all existing natural land features that may influence the design of the proposed use.
 3. A Site Plan, drawn at a scale and on a sheet size appropriate to the project. The information listed below shall be shown on the Site Plan.

4. Name of the project, boundaries, date, north arrow, and scale of the plan. Name and address of the owner of record, developer, and seal of the engineer, architect, or landscape architect. If the applicant is not the record owner, a letter of authorization shall be required from the owner.
 5. The location and use of all existing and proposed structures within the property, including all dimensions of height and floor area, all exterior entrances, and all anticipated future additions and alterations.
 6. The location of all present and proposed public and private ways, off-street parking areas, driveways, outdoor storage areas, sidewalks, ramps, curbs, paths, landscaping, walls, and fences. Location, type, and screening details for all waste disposal containers shall also be shown.
 7. The location, height, intensity, and bulb type of all external lighting fixtures.
 8. The location, height, size, materials, and design of all proposed signs.
 9. The location of all present and proposed utility systems including sewage or septic system, water supply system, telephone, cable, and electrical systems, and storm drainage system.
 10. Erosion and sedimentation control plan.
 11. Existing and proposed topography at two-foot contour intervals, or such other contour interval as the Board shall specify.
 12. A landscape, planting, and grading plan showing proposed changes to existing features.
 13. Traffic flow patterns within the site, entrances and exits, and loading and unloading areas, as well as curb cuts on the site and within 100 feet of the site.
 14. Elevations at a scale of one-quarter inch equals one foot for all exterior facades of the proposed structure(s) and/or alterations to or expansions of existing facades.
 15. Where appropriate, the Planning Board may request soil logs, percolation test results, and storm run-off calculations.
 16. Other information that may be deemed necessary by the Planning Board.
- C. Waivers. The Planning Board may waive or allow deferred submission of some of the information required in Subsection B above, as it deems appropriate.

D. Standards

1. Hamlet District.

- a. All structures in a Hamlet District should be laid out in the pattern of a traditional hamlet.
- b. Architectural design in the Hamlet Districts should be in keeping with the small-town architectural character of Lexington.
- c. In the Hamlet Districts, the Planning Board should encourage the creation of landscaped parks or squares easily accessible by pedestrians.
- d. In the Hamlet Districts, vehicular and pedestrian connections between adjacent sites should be provided to encourage pedestrian use and to minimize traffic entering existing roads.

2. General Guidelines.

- a. Structures that are visible from public roads should be compatible with each other and with traditional structures in the surrounding area in architecture, design, massing, materials, and placement, and should harmonize with traditional elements in the architecture of the area.
- b. In general, the design of new buildings should avoid flat roofs, large expanses of undifferentiated facades, and long plain wall sections.
- c. Impacts on historic and cultural resources should be minimized.
- d. Landscape buffers should be provided between uses that may be incompatible, such as large-scale commercial uses and residences.
- e. Insofar as practical, existing trees and other vegetation should be conserved and integrated into the landscape design plan.
- f. Buildings and other facilities shall be designed, located, and operated to avoid causing excessive noise on a frequent or continuous basis.
- g. Exterior lighting fixtures should be shielded to prevent light from shining directly onto neighboring properties or public ways.

- E. Procedure. The Planning Board shall hold a public hearing on the Site Plan and shall follow the provisions on notice, agricultural data statements, county review, and time limits for Special Permits. A copy of the decision shall be immediately filed in the Town Clerk's office and mailed to the applicant. A resolution of either approval or approval with modifications and/or conditions shall include authorization to the Planning Board Chairman to stamp and sign the Site Plan upon the applicant's compliance with applicable conditions.
- F. Enforcement and Expiration
1. Within 6 months after receiving approval of a Site Plan, with or without modifications, the applicant shall submit multiple copies of the Site Plan to the Planning Board for stamping and signing. Upon stamping and signing the Site Plan, the Planning Board shall forward a copy of the approved Site Plan to the Code Enforcement Officer, and the applicant. The Code Enforcement Officer may then issue a Building Permit or Certificate of Occupancy if the project conforms to all other applicable requirements.
 2. No Certificate of Occupancy shall be issued until all improvements shown on the Site Plan are installed, or a sufficient performance guarantee has been posted for improvements not yet completed. The performance guarantee shall be posted in accordance with the procedures specified in Section 277 of the Town Law relating to subdivisions. The amount and sufficiency of such performance guarantee shall be determined by the Town Board after consultation with the Planning Board, Town Attorney, Code Enforcement Officer, other local officials, and its consultants.
 3. No Certificate of Occupancy shall be granted until the applicant has filed a set of as-built plans with the Code Enforcement Officer, indicating any deviations from the approved Site Plan.
 4. An approved Site Plan may be amended by filing an application with the Planning Board for a Site Plan amendment. If the Planning Board finds that such proposed amendment is consistent with the terms of any applicable Special Permit and does not represent a substantial change from the approved Site Plan, it shall grant the amendment without a hearing. If the Planning Board determines that the proposed amendment is consistent with the terms of the applicable Special Permit approval, but is a substantial change from the approved Site Plan, it shall follow the procedures for Site Plan approval.
 5. A Site Plan approval shall expire if the applicant fails to obtain the necessary Building Permits or fails to comply with the conditions of the Site Plan approval within 18 months of its issuance, or if the Special Permit with which it is associated expires. The Planning Board may grant a one-time six-month extension.

6. A Site Plan approval may be revoked by the Planning Board that approved it if the permittee violates the conditions of the Site Plan approval or engages in any construction or alteration not authorized by the Site Plan approval.
7. Any violation of the conditions of a Site Plan approval shall be deemed a violation of this local law, and shall be subject to enforcement action as provided herein.

§ 5.03. Commercial Uses

Commercial uses are subject to the following additional regulations:

- A. When desirable, a suitably curbed landscaped buffer strip of at least 20 feet in depth shall be maintained along road frontage not used as a driveway.
- B. When desirable, where any land abuts land in any residential district, a strip of land at least 25 feet in width shall be maintained as a landscaped buffer area in the front yard, side yards, and rear yard which adjoin these other districts.
- C. Landscaping required according to 1.a and 1.b. above is to be continually maintained and shall take the form of or a combination of shade trees, deciduous shrubs, evergreens, well-kept grassed areas or ground cover. All such landscaping shall be maintained in a healthy growing condition.

§ 5.04. Parking Regulations

- A. Number of Parking Spaces Required

Off-street parking spaces shall be provided in any district in accordance with the specifications in this section whenever any new use is established or existing use is enlarged, provided that in the Hamlet District the parking requirements are waived where it is demonstrated by the applicant that adequate public on-street parking is available.

<u>Use</u>	<u>Minimum Parking Spaces Required</u>
Residential	2 per dwelling unit
Lodging Facility	1 per lodging unit
Church or School	1 per 2 seats in principal assembly room
Professional Offices, Business Services, Home Occupations	1 for every 200 sq. ft. of floor space
Retail Business and Personal Service Establishments	1 for every 150 sq. ft. of floor space
Restaurants and Eating Establishments	1 for every 2 seats

Outdoor Recreation	1 for each 5 persons as designed, but Not less than 4 spaces per acre
Cemeteries	Parking area for 20 automobiles
Rented Sleeping Room	1 for each sleeping unit
Theaters and Playhouses	1 per 5 seat capacity

The Planning Board shall have the authority to determine the number of parking spaces required for any use not covered above.

B. Buffers and Screening

A strip of land at least five feet in width shall be provided along the entire perimeter (exclusive of vehicular access ways) of any off-street parking facility constructed for more than 5 vehicles. Whenever any such strip abuts or is across a street from a residential use or residential district, a solid evergreen hedge at least 5 feet high shall be provided in the buffer strip. Such height shall be reduced to 3 feet on any side of the facility that adjoins an arterial highway and is within 30 feet of the curb line or edge of pavement of the highway.

C. Loading Berth

For any non-residential use, building or structure exceeding 10,000 sq. ft., one loading berth is required. One additional berth is required for each additional 10,000 sq. ft.

D. Parking and Loading Dimensions

Parking Space Size	10' x 20'
Loading Berth Size	12' x 44'

§ 5.05. Sign Regulations

A. Sign Permit and Fee

After the effective date of this law and except as otherwise herein provided, no person shall erect any sign without first obtaining a sign permit therefore from the Code Enforcement Officer. A fee shall be paid upon filing an application for a permit to erect a sign. (See Article 1X – Expenses, Escrow Deposits and Fees --- Section 9. 04 Administration Fees

B. Issuance of Permit

Upon the filing of an application for a permit to erect a sign, including a representative sketch and proposed colors, it shall be the duty of the Code Enforcement Officer to examine such plans, specifications and other data submitted to him with the application, and, if necessary, the building or premises upon which it is proposed to erect the sign. If the proposed sign is in compliance with the following requirements, he shall then issue a permit for the erection of the proposed sign.

C. Illumination

No internally lit signs are allowed unless the total wattage of the sign does not exceed 160 watts. Any illuminated sign or lighting device shall employ only lights of a constant intensity, and no sign shall be illuminated by or contain flashing intermittent or moving light or lights or any mechanical fluttering, moving or revolving device. No illuminated sign or lighting device directed on signs shall be so placed that light emanating there from would cause glare or reflection that would constitute a nuisance or traffic hazard. Exempt from this requirement are signs exhibiting time and temperature information.

D. Interference with Governmental Signs

No permanent or temporary sign shall be erected or placed at or near the intersection of any street in such a manner as to cause a traffic hazard at the intersection or at any location where, by reason of the position, shape, color, or illumination of the sign may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device. No sign shall make use of the words "STOP", "LOOK", "DANGER", "CAUTION", or any other word, phrase, symbol or character which may tend to confuse, mislead or resemble any governmental or duly authorized sign.

E. Condition and Maintenance

Should any sign be or become unsafe, unsightly, damaged, in danger of falling, or is a menace to the public, the owner thereof or the person maintaining same, shall upon receipt of written notice from the Code Enforcement Officer, proceed at once to put such sign in a safe and secure condition, renovate or remove the sign; provided, however, that if such a situation is not corrected within ninety (90) days from the date of receipt of written notice, the Zoning Enforcement Office shall correct the situation or have it corrected, with the costs assessed to the property's town tax bill. All renovations to any non-conforming sign shall be undertaken in such a manner so as to cause the sign to conform to this law.

F. Exemptions

The following are exempt from the requirements of this section:

1. Providing consent of the property owner is obtained and the placement does not exceed 60 days, and providing all such signs are removed by the sponsor within two weeks of the conclusion of the event.:
 - a. Christmas and holiday decorations, banners, etc.
 - b. Political posters, banners, and similar signs.
 - c. Signs or other promotional devices relating to a special event, festival, or similar activity sponsored by public or non-profit agencies.

2. Safety, directional, historical markers or other types of signs erected and maintained by a public agency.
3. Signs advertising the sale, lease or rental of the premises upon which the sign is located, which sign shall not exceed 6 sq. ft. in area.
4. Professional name plates that shall not exceed 8 sq. ft. in area.
5. Signs denoting the name and address of the occupants of the premises, which signs shall not exceed 2 sq. ft. in area.
6. Temporary signs denoting the architect, engineer, or contractor placed on premises where construction, repair, or renovation is in progress, which signs shall not exceed 9 sq. ft. in area.
7. Signs placed in windows as long as they conform to the illumination requirements above.
8. Signs used to post lands in accordance with the NYS Environmental Conservation Law.

G. General Requirements

1. Signs shall not use utility poles or trees, rocks or other natural features as a medium of communication or means of support.
2. No projecting sign shall be erected or maintained from the face of a building, or project over a public right-of-way a distance of more than four (4) feet.
3. Except as provided in section 7.b. above, no sign shall be located in a public right-of-way.
4. No sign shall be so located as to detract from or obstruct the public view of historic buildings, scenic views, or any other recognized natural features such as a waterfall, glen, etc.
5. Any advertisement which uses a series of two or more signs placed along street or highway, carrying a single advertising message, part of which is contained on each sign, shall be prohibited.
6. In the event the erector of the sign is not the owner thereof, written consent of the owner of the building, structure or land to which or on which the sign is to be erected, is required.

7. In general, no sign shall exceed 21 sq. ft. in area. No freestanding signs shall exceed 8 feet in height. Signs on buildings may not extend more than 6 feet from the facade of the building.
8. No sign shall, in its construction, employ any mirror or mirror-like surface, nor any day glowing or other fluorescent paint or pigment.
9. No sign or part thereof shall contain or consist of any banner, pennant, ribbon, streamer, spinner, or other similar moving, fluttering or revolving mechanical device. The said devices, as well as strings of lights, shall not be used for advertising or related functions whether or not they are part of any sign. No sign or part thereof may rotate or move back and forth.
10. No vehicle (motorized or not) on which is placed or painted any sign shall be parked or stationed in a manner primarily intended to display the sign.
11. No sign shall be erected or maintained upon the roof of a building or structure.
12. Signs shall consist of no more than four (4) colors which shall be painted or sandblasted or may consist of vinyl lettering on painted board.
13. All signs shall conform to applicable state and county regulations.
14. No new internal or external neon lighting shall be permitted.
15. Any obsolete sign which no longer identifies a bona fide use shall be removed within 90 days after written notice by the Code Enforcement Officer, with costs assessed to the town tax bill on the property in the event such sign is not voluntarily removed.
16. At the discretion of the Planning Board, compliance with the sign regulations may be modified to meet unusual conditions.

§ 5.06. Derelict and Unregistered Automobiles

- A. With the exception of licensed automobile repair shops and scrap yards, the storage of two or more derelict automobiles on any lot is prohibited. All derelict automobiles shall be shielded from view from all public highways. Licensed automobile repair shops may store up to six derelict automobiles except that such automobiles must be screened from view from all streets.

- B. The storage on any lot of up to two unregistered automobiles that are not derelict automobiles is permitted. With the exception of licensed automobile repair shops and car dealers, the storage on any lot of more than two such automobiles is prohibited.

§ 5.07. Nonconforming Manufactured/Mobile Homes

- A. No person shall construct or locate any manufactured/mobile home within the Town of Lexington unless the same shall be securely affixed to a continuous enclosed masonry foundation with footings or anchored and blocked and shimmed on a six (6) inch thick, poured, and reinforced concrete slab running its entire length and width or on solid piers extending at least four (4) feet below ground level to bedrock and unless the same shall be fully skirted and enclosed with brick, concrete blocks, painted metal, or painted or stained wood and unless the same shall have an adequate septic tank and fields or other sanitary sewage disposal system, a good potable water supply complying with the requirements of the New York State Department of Health regulations and a minimum floor living area of not less than four hundred-seventy (470) sq. ft. A building permit is required.
- B. Nonconforming manufactured/mobile homes must come into compliance with these regulations within three years of the effective date of this amendment. The applicable amortization period may be extended by a temporary variance granted by the ZBA, provided that the applicant demonstrates that the applicable amortization period is confiscatory as applied to the specific manufactured/mobile home. The period of the variance shall be the minimum reasonably necessary to avoid confiscation.

§ 5.08. Adult Entertainment

- A. Purpose
 - 1. It is recognized that adult entertainment, as defined in this local law, has objectionable operational characteristics particularly when such occupations are located in close proximity to residential developments and certain other sensitive uses. These objectionable characteristics are further heightened by their concentration in any one area thereby having a deleterious secondary effect on adjacent areas.
 - 2. It has been acknowledged by communities across the nation that state and local governments have a special concern in regulating the operation of such occupations under their jurisdiction to ensure that these adverse secondary effects will not contribute to the blighting or downgrading of adjacent neighborhoods nor endanger the well-being of the youth in their communities. The special regulations deemed necessary to control the undesirable secondary effects arising from these occupations are set forth below.

3. The primary purpose of these regulations and restrictions is to preserve the integrity and character of residential neighborhoods and important natural and human resources of the Town, to deter the spread of blight and to protect minors from the objectionable characteristics of these adult entertainment uses by restricting their proximity to churches, schools, nursery schools, day-care centers, educational institutions, parks, historic and scenic resources, civic and cultural facilities and residential areas.

B. Procedure

1. Applications for a Certificate of Occupancy authorizing an adult entertainment use shall be made to the Code Enforcement Officer. All adult entertainment use applicants shall obtain a Special Permit, a Certificate of Occupancy and pay a license fee.
2. The Code Enforcement Officer shall inspect the premises and shall forward the completed application together with his report to the Planning Board for a recommendation. The Planning Board shall then forward its recommendations to the Town Board for disposition under the Special Permit requirements of this local law.

C. Conditions and Standards

1. Distance Separation:
 - a. No adult entertainment use shall be located within a 500-foot radius of any residential development.
 - b. No adult entertainment use shall be located within a 500-foot radius of any of the following uses:
 - I. Business use for civic or cultural purposes;
 - ii. Assembly use for park, playground, scenic, historic, civic or cultural purposes;
 - iii. Assembly, worship use for all facilities;
 - iv. Assembly, education use, for all facilities;
 - v. Community Use for day-care purposes;
 - vi. Miscellaneous use for any identified scenic resource.
 - c. No adult entertainment use shall be located within 1,500 feet of any other adult entertainment use.

2. In order to ensure the removal of signs and similar improvements directly related to adult entertainment use, a performance bond or other security in the sum of \$25,000 shall be furnished to the Town by the owner.
3. Any adult entertainment use shall comply with the following standards:
 - a. Any sign utilized by an adult entertainment use shall be affixed to the building occupied by such occupation. No adult entertainment use shall employ a freestanding structure for any sign use purposes.
 - b. No more than one wall sign shall be affixed to the building occupied by such adult entertainment use, and said sign shall be permitted only on the front facade.
 - c. No adult entertainment use shall employ any loudspeakers or sound equipment that can be discerned by a person in any other public or semipublic area.
 - d. No adult entertainment use shall produce any odor, noise, vibration, smoke, dust, heat, or glare that exceeds the average level in the immediate vicinity, and is detectable beyond the property line of such lot.

§ 5.09. Public Utility Facilities

A. Purpose

1. While it is recognized that public utility facilities, as defined in this local law, may have objectionable visual and use characteristics particularly when located in close proximity to residential developments and certain other sensitive uses, the Town recognizes that public utility facilities are essential to the health, welfare and continued vitality of the Town's residents and visitors. The special regulations deemed necessary to control the undesirable secondary effects arising from public utility facilities are set forth below.
2. The primary purpose of these regulations and restrictions is to preserve the integrity and character of the Town's communities and important natural and human resources of the Town, including significant vistas and open space, while providing safe and efficient utility services to the residents and visitors in the Town.

B. Standards

1. The proposed installation in the specific location requested is necessary and convenient of the efficiency of the public utility system or the satisfactory and convenient provision of service by the utility to the community or the area in which the particular use is to be located.
2. The design of any building in connection with such facility conforms to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property in the area in which the particular use is to be located.
3. Adequate and visually attractive fencing, barriers or other safety devices will be provided to minimize any risk to pedestrians, including children.

§ 5.10. Residential Care Facilities

- A. Every residential care facility shall provide qualified supervisory personnel on the premises 24 hours a day, seven days a week. Such personnel shall have sufficient education and experience and shall be present in sufficient numbers to meet all standards of any agency responsible for the licensing or regulation of the residential care facility.
- B. An applicant for a residential care facility shall demonstrate compliance with all applicable regulations, standards, and licensing requirements of public or private agencies.
- C. An application for a Special Permit for a residential care facility shall include the following:
 1. A list of all agencies which must license or otherwise approve the establishment of operation of the facility.
 2. A list of regulations established by the public or private agencies listed in the preceding subsection.
 3. Copies of applications submitted to the agencies, with a written statement explaining the status of such applications stating any facts known to the applicant which might result in the denial or delay of any required approval.
 4. A written statement addressing the requirements of this local law and demonstrating that the facility will comply with applicable regulations of licensing agencies and State law relating to minimum required floor area, bathroom facilities, and open space.

- D. In making its determination upon a Special Permit for a residential care facility, the Planning Board shall, in addition to making the findings required for all Special Permits, make the following specific findings.
1. That the proposed facility, given its unique nature, will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, parking, utility facilities, and other matters affecting public health, safety, and general welfare.
 2. That the proposed facility will be provided with or have ready access to facilities and services necessary and appropriate to the needs of its residents for active and passive recreation, medical care, education, cultural and religious activities, and public transportation.
 3. That the proposed facility will not generate a level of traffic which would be burdensome to the neighborhood, considering the number of visitors its residents may expect, truck delivery and loading requirements, and the availability and nature of public or private transportation.
 4. That the proposed facility will not result in an undue concentration of residential care facilities in the Town or in the neighborhood of the proposed facility.

§ 5.11. Accessory Apartments

Every accessory apartment must comply with the following provisions:

1. The apartment shall be clearly subordinate to the one-family dwelling unit;
2. The number of bedrooms in the apartment shall be not more than two;
3. The floor area of the apartment shall be greater than 400 square feet;
4. The floor area devoted to the apartment shall be less than 35% of the entire floor area of the one-family dwelling or 600 square feet, whichever is less;
5. The apartment and one-family dwelling must have a safe and proper means of entrance, clearly marked for the purpose of fire safety and mail service;
6. If the water supply is from a private source, the applicant shall certify that the water supply is potable and of adequate flow. This certification is in addition to, and not in lieu of, the testing by and approval of the Greene County

Department of Health required prior to issuance of a building permit. Such County testing shall be done at least once each year thereafter. Failure to conduct these tests or failure to correct promptly any water quality problems shall result in the revocation of the Special Permit;

7. The applicant shall certify that the sewage disposal system is adequate for the two units. Failure to correct promptly any sewage system problem shall result in revocation of the Special Permit;
8. No Special Permit shall be granted in any case where the County Department of Health has determined that the water or sewage system serving the dwelling or dwellings in question is for any reason not capable of handling the additional demand that would be imposed upon it in the event the Special Permit were issued hereunder;
9. The requirement for Site Plan Approval for all Special Permits shall not apply to Special Permits under this subsection "T" unless the Planning Board directs that a particular application for a Special Permit hereunder, because of its complexity or other unusual or special circumstances, must have Site Plan Approval;
10. Stairways leading to any floor or story above the first floor shall be located within the walls of the building wherever practicable. Stairways and fire escapes shall be located on the rear wall in preference to either side wall. In no instance shall a stairway or fire escape be located on any wall fronting on a street;
11. The owner(s) of the one-family lot upon which the accessory apartment is located shall occupy at least one of the dwelling units on the premises; and
12. Any apartment within a one-family dwelling that is in existence at the time of the adoption of this subsection shall be subject to the provisions outlined above.

§ 5.12. Used Car Sales

- A. All used car dealers are required to obtain Site Plan Approval for the operation of a used car lot, regardless of whether the dealer is licensed by the State of New York.
- B. The Planning Board shall review the site plan pursuant to this local law. The Planning Board shall serve as lead agency for purposes of SEQRA review and shall conduct a coordinated review with other involved agencies for purposes of SEQRA compliance. The Planning Board may approve, approve with conditions, or deny the site plan.

- C. Upon approval of the Planning Board of the site plan, the dealer may apply to the Town for a used car dealer license. No used car lot shall be operated in the Town without a used car dealer license. All license applications are made to and processed by the Code Enforcement Officer. Following approval by the Code Enforcement Officer, all license fees and renewals shall be paid to the Town Clerk who shall issue the license or renewal. The only determination to be made by the Code Enforcement Officer in reviewing the license application is whether the dealer is in compliance with the provisions of the Site Plan Approval.
- D. Upon approval of the Code Enforcement Officer, the Town Clerk shall issue the license, which shall expire on December 31 of the issuing year and shall be renewable annually if the premises have been operated in accordance with the Site Plan Approval and the regulations contained in this Chapter. The Code Enforcement Officer shall approve the renewal of the license each year as long as the premises remains in compliance with the Site Plan Approval. The license from the previous year will remain in force and effect until a decision on renewal is made by the Code Enforcement Officer. If the Code Enforcement Officer determines that the used car lot is not being operated or maintained in compliance with the Site Plan Approval, the Code Enforcement Officer shall deny the renewal of the license.
- E. If at any time during the year in which a license is in effect the Code Enforcement Officer shall determine that the used car lot is not being operated or maintained in compliance with the Site Plan Approval, the Code Enforcement Officer shall serve the licensee with a notice of violation and order to remedy. If the violation is not remedied within the time period allowed in the order to remedy, the Code Enforcement Officer may revoke the license and order the removal of the used cars from the premises.
- F. The Planning Board shall apply the following standards, in addition to other requirements for Site Plan approval in this local law.
 - 1. There shall be a sales office located on each used car lot, which shall be an enclosed structure. No storage of used parts shall be allowed unless the same are stored in an enclosed structure. All repairs shall be performed in an enclosed structure. The approved site plan shall show the size and location of these structures.
 - 2. There shall be a customer parking area located on each used car lot sufficient to accommodate a minimum of five customer cars.
 - 3. Each used car lot shall accommodate no more than one used car per 400 square feet of property, and there shall be no less than two feet between each car.

4. No car unable to pass state inspection shall be stored on a used car lot for more than 30 days.
5. Each used car for sale is permitted one sign, with an area of one square foot. Such cars shall have no other advertising or devices to attract attention.

§ 5.13. Driveways

- A. Driveways on lots with more than 100 feet or more of road frontage shall be set back at least 20 feet from side lot lines, except that common driveways may occupy any part of a side yard adjoining the lot of another user of the common driveway. On lots with less than 100 feet of frontage, no side yard setback shall be required. Driveways shall be a minimum of 16 feet wide to accommodate emergency vehicles.

§ 5.14. Flag (rear) lots

- A. Purpose
It is the policy of the Town of Lexington to encourage flexibility for development which is screened from public view. It is desirable to locate development on rear lots without requiring compliance with otherwise applicable road frontage requirements. All land use districts are an open development area under § 280-a, Subdivision 4, of the Town Law. Building permits may be issued for structures on lots that have no public or private road frontage and gain access by right-of-way easement over other lands, under the conditions contained in this section. Rear lots with or without access strips running to public or private roads may be created where they will not endanger public health and safety and will help preserve natural, historic, and scenic resources. The following requirements shall apply to flag lots.
- B. Each flag lot must have either a minimum frontage of 25 feet on an improved public or private road and an access strip as defined in this chapter, or a deeded right-of-way easement over other lands, providing legally adequate and physically practical access to a public or private road.
- C. Minimum lot sizes for flag lots, excluding the access strip, shall be the same minimum lot size for a conventional subdivision in the district. The area of the access strip shall not be counted in the calculation of minimum lot size.
- D. Except as indicated in Subsections B and C above, flag lots must meet all other requirements for a lot in the applicable land use district. Minimum lot width shall be the same dimensions as the minimum road frontage otherwise required in the land use district. For purposes of determining front yard setbacks, the front yard shall be the yard area lying between the principal building and the public or private road from which access is obtained.

- E. There shall be no more than four adjoining access strips, which must share one common driveway. No more than four lots may be served by a common driveway.
- F. All flag lots must not result in the degradation of important natural resource and landscape features, including but not limited to ponds, streams, steep slopes, ridgelines, and wetlands.
- G. When necessary to satisfy the criteria in Subsection F above, the Planning Board may require the applicant to grant a conservation easement or restrictive covenant enforceable by the Town that limits the area within which the house and driveway may be constructed on the flag lot.
- H. All flag lots must have safe access for fire, police, and emergency vehicles and have a driveway at least 16 feet wide.

ARTICLE VI - CLUSTER DEVELOPMENT

§ 6.01. Purpose

The purpose of this Article is to permit variations in lot size and housing types in suitable areas in order to encourage flexibility of design, to enable land to be developed in such a manner as to promote its most appropriate use, to facilitate the adequate and economical provision of streets and utilities, and to preserve the natural and scenic qualities of open space. This purpose is achieved by permitting lot sizes to be reduced in a subdivision plat if the overall density does not exceed that which is otherwise permitted in the applicable zoning district, and the land thus maintained is preserved as permanent open space for the use and enjoyment of the residents.

§ 6.02. Requirements

- A. The Planning Board is hereby empowered to implement these provisions in its discretion if in the Board's judgment its application at the particular location is desirable and would contribute to the general well-being of the neighborhood and community and would benefit the Town.
- B. The Planning Board must determine that the Cluster Development will not be detrimental to the health, safety or general welfare of persons residing in the vicinity, or injurious to property or improvements within its proximity, and that the Cluster Development conforms with the objectives of the Comprehensive Plan before issuing its approval.
- C. As part of the application for a Cluster Development the subdivider shall submit a conventional subdivision plan for the entire area, showing the lots that could be realistically created in terms of topography, natural features and costs, under the non-

cluster provisions of this zoning law and in compliance with the Town subdivision regulations. The total number of lots thereby derived shall be the maximum number of dwelling units allowed in a Cluster Development.

- D. Land reserved for open space shall be in character and location suitable for whatever open space purposes for which the land shall be reserved, such as a natural area, conservation area, wildlife preserve, outdoor recreation site, neighborhood park, nature center, wetland, memorial forest, natural watercourse, or other open space use. The Planning Board may require that the open space be located at a suitable place on the edge of the subdivision so that additional land be added at such time as the adjacent land is subdivided. Reserved open space shall not be narrower than 100 feet except where necessary to provide a pathway or other access. An easement for a natural watercourse dedicated to the Town may be considered as open space for the purpose of this regulation if such easement is at least 20 feet wide. The subdivider shall allocate for open space purposes the same percentage of the entire tract as that by which the lot area has on the average been reduced.

ARTICLE VII - ADMINISTRATION AND ENFORCEMENT

§ 7.01. Enforcement

- A. This local law shall be enforced by the Code Enforcement Officer, who shall be appointed by the Town Board, in the same manner and with the same powers as now or hereafter practiced or provided under the building code.
- B. No building permit or certificate of occupancy shall be issued by the Code Enforcement Officer, and no permit or license for any purpose shall be issued by any official of the Town of Lexington, if the same would be in conflict with the provisions of this local law. In addition, the Code Enforcement Officer shall issue Certificates of Existing Non-conforming Uses and shall maintain a list of non-conforming uses by location and type of activity in accordance with this local law.
- C. No board, agency, officer, or employee of the Town shall issue, grant, or approve any permit, license, certificate or other authorization for any construction, reconstruction, alteration, enlargement or moving of any building or for any use of land or structures that is not in full compliance with the provisions of this Chapter. Any such permit, license, certificate or other authorization issued, granted or approved in violation of the provisions of this Chapter shall be null and void and of no effect. Without necessity of any proceedings or revocation or nullification thereof, any work undertaken or use established pursuant to any such permit, license, certificate or other authorization shall be unlawful, and no action shall be taken by any board, agency, officer or employee of the Town purporting to validate any such violation.

- D. Existing violations. No application shall be received nor shall any application, if received, be reviewed, be granted for any variance, zoning change, Special Use Permit, building permit, license, Certificate of Occupancy or any other change set forth in this Chapter if there are any existing violations of this Chapter by said applicant for the lot or lots contained in said application, unless said application is required by the Zoning Administrator, Town Attorney, or the reviewing agency in settlement of the outstanding violation.
- E. The Zoning Administrator is authorized to issue appearance tickets to persons or corporations who are the subject of zoning enforcement actions. Such appearance tickets shall be used only in connection with zoning enforcement actions brought in the Justice Court of the Town.
- F. The failure of a person or a corporation to appear in Town Justice Court in response to a duly issued appearance ticket may result in the issuance of a warrant for the arrest of such individual person or corporation at the discretion of the Town Justice.

§ 7.02. Building Permit

- A. No building or structure shall be erected, added to, or structurally altered until a permit therefore has been issued by the Code Enforcement Officer in accordance with the provisions of this local law.
- B. All applications for building permits shall be accompanied by two copies of a plot plan, drawn to scale and accurately dimensioned, showing the location of all existing the proposed buildings and structures on the lot, and such other information as may be required by the Code Enforcement Officer to determine compliance with this local law. One copy of such plans, when approved by the Code Enforcement Officer shall be returned to the applicant upon the payment of a fee as indicated on the fee schedule in Article IX.

§ 7.03. Certificate of Occupancy

- A. No land shall be used or occupied and no building or structure hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy shall have been issued by the Code Enforcement Officer in accordance with the provisions of this local law.
- B. All Certificates of Occupancy for new or altered buildings or structures shall be applied for coincident with the application for a zoning permit. Such Certificate of Occupancy shall be issued within ten days after the erection or alteration shall have been approved as complying with the provisions of this local law.

§ 7.04. Zoning Board of Appeals

- A. A Zoning Board of Appeals is hereby created in accordance with § 267 of the Town Law of the State of New York. Said board shall consist of five (5) members. The officers of the Board shall consist of chairman, Acting Chairman, Secretary. The Town Board shall designate the Chairman. The Zoning Board of Appeals shall prescribe rules for the conduct of its affairs.
- B. The Zoning Board of Appeals shall have all the power and duties prescribed by this local law which are more particularly specified in § 7.04, 7.05 and 7.06 of Article VII of this local law.

§ 7.05. Interpretation of the Zoning Law

Upon appeal from a decision by an administrative official the Zoning Board of Appeals shall decide any question involving the interpretation of a provision of this local law, including the determination of the exact location of any district boundary if there is uncertainty with respect thereto.

§ 7.06. Variances

- A Upon application, the Zoning Board of Appeals shall vary or modify the strict application of the requirements of this local law in cases where the following standards are satisfied. Two types of variances allowed and their respective requirements are as follows.
 - 1. A Use Variance is an authorization by the Zoning Board of Appeals that allows a specified use in a zoning district where such specified use is not allowed. No use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove unnecessary hardship, the applicant must demonstrate to the Zoning Board of Appeals that:
 - a. Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence;
 - b. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

- c. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d. The alleged hardship has not been self-created.

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

2. An Area Variance is an authorization by the Zoning Board of Appeals that allows variances from the area or dimensional requirements of this local law. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- c. Whether the requested area variance is substantial;
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

B. Imposition of Conditions

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

C. Application to the Zoning Board of Appeals

1. Appeals from decisions made by the Code Enforcement Officer shall be filed with the Code Enforcement Officer and the Secretary of the Zoning Board of Appeals in writing within 60 days of the date of the action specifying the grounds thereof.
2. All applications for interpretations and variances shall be filed with the Secretary of the Zoning Board of Appeals in writing, shall be made on a form required by the Board, and shall be accompanied by payment of a filing fee of \$100.00, and a plot plan, drawn to scale and accurately dimensioned, showing the location of all existing and proposed buildings and structures on the lot.
3. Decisions of the Zoning Board of Appeals shall be in writing and shall specify the particular conditions for such approval or the grounds for denial.
4. The Zoning Board of Appeals shall hold a public hearing on all interpretations and variances within a reasonable time of the filing of a complete and proper application. It shall render its final decision within 60 days of day of filing.
5. The Zoning Board of Appeals shall comply with § 239-m of the New York State General Municipal Law prior to taking action on any application by referring such application to the Greene County Planning Board if the subject of the application is located within the distance requirements as spelled out in § 239-m of the General Municipal Law (generally, within 500 feet of a New York State or County highway, or the boundary of a municipality).

ARTICLE VIII - NONCONFORMING BUILDINGS, USES AND LOTS

§ 8.01. Continuation

The lawful use of any building or land existing at the time of the enactment of this local law may be continued although such use does not conform with the provisions of this local law.

§ 8.02. Discontinuance

Whenever a building or land used for or occupied by a non-conforming use has been discontinued for a period of one year for residential dwellings or three years for other uses, such use shall not thereafter be used or occupied as a non-conforming use.

§ 8.03. Alterations, Extension

A nonconforming structure may be reconstructed or structurally altered by up to 50% of its footprint area as it existed at the time of the adoption of this chapter. Any expansion of a nonconforming structure may not reduce any nonconforming setbacks by more than 20%. A non-conforming use of land shall not be expanded by more than 50% of the area it occupied at the time of the adoption of this chapter.

§ 8.04. Existing Undersized Lots

Lots of record at the time of adoption of this local law whose depths are less than the specified minimum requirements set forth herein shall be deemed to meet the minimum use regulations of this local law. No new lot shall be created which does not meet the minimum lot size regulations of this local law.

§ 8.05. Registration of Non-Conforming Uses

Within one year of the effective date of this local law, the owner, tenant or occupant of a non-conforming use shall register the non-conforming use with the Code Enforcement Officer and the Code Enforcement Officer shall issue a Certificate of Existing Non-Conforming Use indicating that the use is legally existing at the time this local law was made effective, and certifying the extent and kind of use made of the structure or premises and the extent which such existing use fails to conform with the provisions of this local law. No fee is required to obtain a Certificate of Existing Non-Conforming Use.

ARTICLE IX - EXPENSES, ESCROW DEPOSITS AND FEES

§ 9.01. SEQRA Expenses

- A. SEQRA Expenses. When an action subject to SEQRA involves an application before the Town Board, the Planning Board or the Zoning Board of Appeals, the reviewing board may, if such reviewing board is the lead agency, charge a fee to the applicant to recover the actual cost to the Town of preparing and reviewing the EAF, EIS, the SEQRA findings, notices and all other requirements that are incidental to the SEQRA review process. Such fees may be imposed on the applicant by the lead agency and shall not exceed the amounts allowable under 6 NYCRR 617.17 (b) through (d). Such fees may be imposed on an applicant for costs incurred by the Town for professional review services. For the purpose of this section, professional review

services shall be defined as, but not limited to, those services provided by engineers, lawyers, architects, landscape designers, certified surveyors, property appraisers, planners and related professionals. Said monies shall be deposited in escrow and governed pursuant to the provisions of this local law.

- B. Negative Declaration. In all cases where the Town Board, the Planning Board or the Zoning Board of Appeals approves a negative declaration in connection with an action governed by SEQRA, the actual cost of professional review services provided to the reviewing board between the time of receipt of the application and the final determination on the requested action by the reviewing board may be imposed on the applicant in the same manner as prescribed in Subsection A herein. The costs to the applicant imposed under this subsection for preparation of the negative declaration shall not exceed the limit set forth in 6 NYCRR 617.17 (b) through (d).

§ 9.02. Inspection Expenses

- A. Prior to commencement of any work in a development with a road that has Site Plan Approval, the developer shall deposit into an escrow account a sum of money to be determined by the Town Board. Said sum shall be based on the estimated cost to the Town of professional review of the proposed road construction work. The Town Board may consider available surveys of professional review expenses in determining the initial sum of money to be deposited in an escrow account by the developer. Said sum of money shall be used to cover the reasonable and necessary costs of professional review of the road construction work. Costs may include consultant fees for engineering, legal and other professional technical services required for a proper and thorough inspection of the road construction. Said monies shall be deposited in escrow and governed pursuant to the provisions of this local law.

§ 9.03. Professional Review Expenses

- A. Escrow. In connection with any application for a Special Permit, Site Plan Approval, subdivision approval, zoning amendment, other local law change, use variance, area variance, interpretation, or other land use application or appeal, the reviewing board may, in addition to the foregoing requirements relating to SEQRA and inspections, require an applicant to deposit an initial sum of money into an escrow account in advance of the review of the application. Said sum shall be based on the estimated cost to the Town of professional review of the particular type of application before it. The reviewing board may consider the professional review expenses incurred by neighboring municipalities in reviewing similar applications. The reviewing board may also consider available surveys of professional review expenses in determining the initial sum of money to be deposited in an escrow account by the applicant. For the purpose of this section, professional review services shall be defined as, but not limited to, those services provided by engineers, lawyers, architects, landscape

designers, certified surveyors, property appraisers, planners and related professionals.

- B. Said escrow shall be used to pay the reasonable and necessary costs of a proper and thorough professional review of the application. The review expenses provided for herein are in addition to application or administrative fees required pursuant to other provisions of this local law. Money deposited by applicants pursuant to this section shall not be used to offset the Town's general expenses of professional services for the several boards of the Town or its general administrative expenses.
- C. The initial deposit by the applicant shall be in the amount set forth in the current schedule of fees adopted by the Town Board; The applicant shall be required to deliver said amount, or such other amount as is determined appropriate by the reviewing board, to the Town Supervisor for deposit in a Town of Lexington non-interest-bearing escrow account maintained by the Town for custody of funds collected pursuant to this section.
- D. In the event that the previously established escrow fees are insufficient to pay for the necessary charges, then the Board before whom the applicant is appearing shall require additional payments to be made to the escrow fund, and until such payment is made by the applicant, the Board shall neither place said application on the agenda or review said application.
- E. Upon receipt and approval by the Town Board of itemized vouchers from consultants for services rendered on behalf of the Town regarding a particular application, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall debit the separate record of such account accordingly. The consultant shall make copies of such vouchers available on request to the applicant at the same time the vouchers are submitted to the Town.
- F. The Town Board shall review and audit all such vouchers and shall approve payment of only such consultant charges as are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of applications. A charge or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by consultants to the Town for services performed in connection with the review of a similar application. In auditing the vouchers, the Town Board may take into consideration the size, type and number of buildings to be constructed, the topography of the site at issue, environmental conditions at such site, the infrastructure proposed in the application and any special conditions the Town Board may deem relevant. A charge or part thereof is necessarily incurred if it was charged by the consultant for a service which was rendered in order to protect or promote the health, safety, or other vital interests of the residents of the Town, and protect public or private property from damage. In no event shall any applicant make direct payment to any Town consultant.

- G. If at any time during the processing of an application there shall be insufficient monies on hand to the credit of an applicant to pay the approved vouchers in full, or if it shall reasonably appear to the reviewing board that such monies will be insufficient to meet vouchers yet to be submitted, the reviewing board shall cause the applicant to deposit additional sums as the board deems necessary or advisable in order to meet such expenses or anticipated expenses.
- H. In the event the applicant fails to deposit the requested review fees into an escrow account, any application review, approval, permit or certificates of occupancy shall be withheld or suspended by the reviewing board, officer or employee of the Town until such monies are deposited. There will be no conditional approvals given on the basis of future payments to be made. Payment in full must be made prior to the granting of preliminary and final approval. Any costs incurred by the Town for professional services in processing a Certificate of Occupancy shall be recovered as a fee before said certificate shall be issued. No application to the Town Board, Planning Board or Zoning Board of Appeals shall be accepted, nor shall any building permit or Certificate of Occupancy be issued, if said applicant has outstanding any fees due the Town from any previous applications.
- I. The Town Board, the Planning Board or the Zoning Board of Appeals, as applicable, shall not make any final determination in a matter pending before it until all applicable fees and reimbursable costs imposed by the reviewing board on the applicant under authority of this section have been paid to the Town Supervisor with reasonable written proof of such payment delivered to the Chairman or Secretary of the reviewing board.
- J. Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the Town have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded within 60 days after the applicant's request.
- K. This section shall not apply to area variance applications for one-family residential uses on property entirely in a residential zone.
- L. In the event of an applicant's failure to reimburse to the Town funds expended to consultants for professional review fees as provided herein, the following remedies may apply:
 - 1. The Town may seek recovery of billed and unreimbursed fees by bringing an action venued in a court of appropriate jurisdiction, and the applicant shall be responsible to pay the Town's reasonable attorney fees in prosecuting such action in addition to any judgment.
 - 2. Alternatively, and at the sole discretion of the Town Board, an applicant's failure to reimburse the Town for professional review fees expended by the

Town shall be collected by charging such sums against the real property that is subject to the permit application and by adding that charge to and making it a part of the next real property tax bill associated with the subject property. Such charges shall be levied and collected at the same time and in the same manner as general Town taxes and such fees shall be paid by the Receiver of Taxes to the Town Supervisor to be applied to the escrow fund from which the costs for consultant's fees are paid. Prior to incorporating such delinquent fees into the real property tax bill, the Town shall send written notice to the applicants address as contained in the permit application and to the property owner, if other than the applicant, at the owner's address of record as contained in the current assessment roll. Such written notice shall be sent by the Town Supervisor by certified mail, return receipt requested. Such notice shall inform the owner and applicant of the delinquent amount of fees owed to the Town and shall set a date for the owner-applicant's objections to be heard by the Town Supervisor. Such notice shall be mailed or delivered no later than ten calendar days prior to the hearing date set forth in the notice unless such time period is waived by the owner-applicant in writing. After the hearing, the Supervisor shall be empowered to correct any errors in the fees owed by the owner or applicant and to extend terms of payment and adequate security of the debt and enter into a written agreement with the owner or applicant to facilitate the payment in full of the fee.

M. Determination of payment

1. In the event of a rezoning of property or other local law by request of the owner, the Town Clerk shall determine from the Town Supervisor if all outstanding professional review fees have been paid by the applicant prior to submitting such rezoning or other local law to the New York State Secretary of State. Such local law shall not be filed with the Secretary of State until such outstanding fees have been reimbursed to the Town or the Town Supervisor has entered into a written agreement with the applicant extending the time of payment of such fees.
2. In the event of a site plan approved by the Planning Board pursuant to Section 274-a of the Town Law of New York State, the Planning Board Chairman shall determine from the Town Supervisor if all outstanding professional review fees have been paid by the applicant or the Town Supervisor has entered into a written agreement with the applicant extending the time of payment of such fees prior to affixing his signature to the site plan. All such outstanding consultant fees billed to the applicant during the application process shall be paid in full to the Town prior to the Planning Board Chairman affixing his signature to the site plan.

3. In the event of a subdivision plat approved by the Planning Board pursuant to Section 276 of the Town Law of New York State, the Planning Board Chairman shall determine from the Town Supervisor if all outstanding professional review fees have been paid by the applicant or the Town Supervisor has entered into a written agreement with the applicant extending the time of payment of such fees, prior to affixing his signature to the final plat.

N. Recreation fee

1. It is the express intention of the Town Board that this Local Law supercede Town Law § 274-a by establishing that the Planning Board shall require that recreation areas be provided to the Town in connection with the approval by the Planning Board of any site plan application for the construction or conversion of multifamily dwelling units, townhouses, and manufactured home parks. It is the further intention and purpose of the Town Board to supersede Town Law § 274-a by establishing that if, in the judgment of the Planning Board, satisfactory and adequate recreation areas cannot be provided, the applicant shall be required to pay a fee set forth in this Chapter in lieu of providing such recreation areas.
2. Before approval by the Planning Board of a site plan showing two or more buildings containing multiple dwelling units, townhouses or a manufactured home park as defined in this Chapter, such site plan shall also show, in proper cases or when required by the Planning Board, a park or parks suitably located for playground or other recreational purposes. If the Planning Board determines that a suitable park or parks of adequate size cannot be properly located on any such site plan or is otherwise not practical, the Board may require as a condition of approval of any such site plan a payment to the Town of a sum established in this Chapter, which sum shall be paid by the applicant to the Town Recreation Trust Fund prior to the Planning Board's approval of such site plan, which sum shall constitute a trust fund to be used by the Town exclusively for neighborhood park, playground or recreation purposes, including the acquisition of property.
3. Before approval by the Planning Board for major subdivision, the Planning Board shall required that the subdivision plat show sites of a character, extent and location suitable for the development of a park, playground, or other recreation purpose. The Planning Board may require the subdivider to satisfactorily grade and seed any such recreation area shown on the plat.
4. However, if the Planning Board finds that, due to size, topography or location recreational purpose cannot be properly located therein or if, in the opinion of the Board, it is not desirable, the Board shall require, prior to the signing of

the plat, payment to the Town Recreation Trust Fund of a fee to be established from time to time by resolution by the Town Board per new lot created in the major subdivision or section thereof being considered for approval at the time. Such amount shall be paid to the Town at the time of final plat approval, and no final plat shall be signed until such payment is made. The lot encompassing the residence of the subdivider shall be exempt from this fee.

- O. The Supervisor is empowered to delegate to the Planning Board Secretary, the Zoning Board of Appeals Secretary and the bookkeeper the functions of having custody of escrow account records.
- P. This section shall apply to all land use permit applications and requested local law changes pending before the Town Board, Planning Board or Zoning Board of Appeals when this section is filed with the Secretary of State. All professional review fees incurred by the Town thereafter shall be paid as provided herein.

§ 9.04. Administrative Fees

- A. Certificate Fees.
 - 1. Certificate of Occupancy, including final site inspection: \$50.
 - 2. Certificate of Occupancy for title abstract (records search): \$25.
 - 3. The fee for re-issuance of a currently valid Certificate of Occupancy shall be \$25.
- B. License Fees. Except as set forth below, the license shall be valid for one year, expiring on December 31, and shall be renewable annually. The full annual license fee shall be due with the renewal application each year, and will not be prorated if the license should cover less than a full year.
 - 1. Adult Entertainment Use. The license fee for any adult entertainment use shall be \$250 for each year or portion thereof.
- C. Permit Fees.
 - 1. Sign permit: permanent: \$25 per sign.
 - 2. Demolition permit: \$50.
 - 3. Building permit.
 - a. Residential construction: State Building Code Group R-1, R-2, R-3, R-4 Single Family Dwellings, Multiple Dwellings, Apartments, Boarding Houses, Hotels, Motels, Child Care Facilities (based upon construction space, all floors except crawl spaces, includes basements, cellars) – \$0.30 per square foot.

- b. Commercial construction: State Building Code Group A, assembly; B, business; E, educational; F, factory; I, institutional; M, mercantile; S, storage; U, utility (all floors, basements and cellars, includes additions) - \$0.35 per square foot.
 - c. State Building Code Group H, hazardous - \$0.70 per square foot.
 - d. Conversions/change of use, alterations, additions, replacement and repairs (based upon total number of square feet of space/area affected by work), includes decks, porches, equipment systems - \$0.25 per square foot.
 - e. Late filing fee (after work has commenced without valid Building Permit issued by the Building Inspector): \$100.
- D. Appeals Fee. The fee for processing and public notice of any appeal shall be \$100 and shall be non-refundable. All variance requests, except for an area variance in connection with a proposed subdivision, site plan or special use permit, are appeals.
- E. Other Application Fees.
 - 1. Special permit: \$100.
 - 2. Site Plan.
 - a. Residential: \$300 plus \$25 per lot or dwelling unit
 - b. Nonresidential: \$250 plus \$25 for each parking stall or loading space.
 - c. One-half of total fee to be paid with application; one-half of total fee to be paid prior to final approval.
 - d. Recreation fee for new multiple dwellings, townhouses and manufactured home parks, where recreation fee is not paid for subdivision of a new lot for each new dwelling unit: \$100 per new dwelling unit created, payable to the Town of Lexington Recreation Trust Fund.

3. Subdivision.
 - a. Application Fee: \$100.
 - b. All subdivisions: \$25 per lot.
 - c. Major subdivision; Final Plat: \$100.
 - d. Lot line Alteration, application fee only.
 - e. Recreation fee: \$100 per new lot created, payable to the Town of Lexington Recreation Trust Fund.
4. Area Variance. The fee for an area variance in connection with a proposed subdivision, site plan or special use permit shall be \$100 and shall be in addition to the fee(s) for such subdivision, site plan or special permit.
5. Application to Town Board for rezoning: \$300.

ARTICLE X - TELECOMMUNICATION TOWERS

The Planning Board is hereby authorized to review and approve, approve with modifications, or disapprove special use permits and site plans consistent with Town Law § 274-a & 274-b.

§ 10.01. Purposes

- A. The purposes of these supplemental regulations are to:
 1. Preserve the character and appearance of the Town while allowing adequate personal wireless services to be developed.
 2. Preserve property values as well as to protect the scenic, environmental and natural or man-made resources of the community.
 3. Provide standards and requirements for the regulation, placement, construction, monitoring, and design of telecommunication towers.
- B. These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services nor shall they be used to unreasonably discriminate among providers.

§ 10.02. Application of Special Use Regulations

- A. No transmission tower shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permit and in conformity with these regulations. No existing structure shall be modified to serve as a transmission tower unless in conformity with these regulations.
- B. These regulations shall apply to all property within the following zones: H, RR, and C. There shall be no communication towers permitted in the FP or the SC.
- C. Exceptions to these regulations are limited to:
 - 1. New uses which are accessory to residential uses; and
 - 2. Lawful or approved uses existing prior to the effective date of these regulations.
- D. When these regulations conflict with other laws and regulations of the Town, the more restrictive shall apply, except for tower height restrictions which are governed by these special use standards.

§ 10.03. Special Use Standards

- A. Site Plan - An applicant shall be required to submit a site plan as described in § 5.02. The site plan shall also show all existing and proposed structures and improvements including roads and shall include grading plans for new facilities and roads. The site plan shall also include documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antennae and justification for any land or vegetation clearing required.
- B. The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF) and a landscaping plan addressing other standards listed within this section with particular attention to visibility from key viewpoints within and outside of the municipality as identified in the Visual EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF.
- C. Shared Use.
 - 1. At all times, shared use of existing towers shall be preferred to the construction of new towers. Additionally, where such shared use is unavailable, location of antenna on pre-existing structures shall be considered. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site

and outlining opportunities for shared use of existing facilities and use of other pre-existing structures as an alternative to a new construction.

2. An applicant intending to share use of an existing tower shall be required to document intent from an existing tower owner to share use. The applicant shall pay all reasonable fees and costs of adapting an existing tower or structure to a new shared use. Those costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site screening, and other changes including real property acquisition or lease required to accommodate shared use.
3. In the case of new towers, the applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers as well as documenting capacity for future shared use of the proposed tower. Written requests and responses for shared use shall be required.

D. **Setbacks.** Towers and antennae shall comply with all existing setbacks within the affected zone. Additional setbacks may be required by the Planning Board to contain on-site substantially all ice-fall or debris from tower failure and/or to preserve privacy of adjoining residential and public property. Setbacks shall apply to all tower parts including guy wire anchors.

E. **Visibility.**

1. All towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment.
2. Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Towers shall be a galvanized finish or painted gray above the surrounding tree line and painted gray, green, black, or similar colors designed to blend into the natural surroundings below the surrounding tree line unless other standards are required by the FAA. In all cases, structures offering slender silhouettes (i.e. monopoles or guyed tower) shall be preferable to free-standing structures except where such free-standing structures offer capacity for future shared use. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting or painting requirements.
3. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

- F. Existing Vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet from the ground) shall take place prior to approval of the special permit use. Clearcutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
- G. Screening. Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Whether the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.
- H. Access and Parking. A road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure the minimal visual disturbance and reduce soil erosion potential.

§ 10.04. Removal Requirements

- A. Any personal wireless service facility which ceases to operate for a period of one year shall be dismantled and removed from the site within 60 days of receipt of a written notice from the Code Enforcement Officer. "Cease to operate" is defined as not performing the normal functions associated with the personal wireless service facility and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the facility site shall be remediated such that all personal wireless service facility improvements which have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower shall also be dismantled and removed from the site within 60 days of receipt of a written notice from the Code Enforcement Officer, and the site shall be revegetated. Existing trees shall only be removed if necessary to complete the required removal.
- B. Prior to the issuance of a building permit, the owner and operator of a communications tower shall provide the Town with a surety bond or other financial security acceptable to the Town Attorney to assure that the funds are available to dismantle such tower, remove any debris and to restore the site to a state acceptable to the Planning Board. The estimate shall be prepared by the applicant's licensed engineer, verified by the Town Engineer/Planner and approved, as to form, by the Town Attorney. The amount of such bond shall be approved by the Town Board.

§ 10.05. Insurance

Towers and personal wireless service facilities shall be insured by the owner(s) of towers and/or personal wireless service facilities against damage to persons or property. The owner(s) of towers and/or personal wireless service facilities shall provide a certificate of insurance to the Town Clerk on an annual basis in which the Town of Lexington shall be an additional insured.

§ 10.06. Authority to Impose Conditions

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunication tower special use or site plan.

ARTICLE XI - MISCELLANEOUS

§ 11.01. Non-Interference and Precedence

This local law shall not interfere with, abrogate, annul or, repeat any local law, ordinance, rule, regulation, or permit previously or hereafter enacted, adopted, or issued pursuant to law, provided that, unless specifically excepted, where this local law imposes greater restrictions its provisions shall control.

§ 11.02. Violation

A violation of this local law is an offense punishable as follows: for the first offense, fines are not to exceed \$250; for a second offense within three (3) years, fines are not to exceed \$500; for a third offense in three years, fines are not to exceed \$750 and/or imprisonment for not more than six (6) months.

§ 11.03. Separate Validity

If any article, sub article, paragraph, clause or other provision of this local law shall be held invalid, the invalidity of such article, sub article, paragraph, clause or other provision shall not affect any of the other provisions of this local law.

§ 11.04. Amendments

- A. The Town Board may amend, supplement or repeal the regulations and provisions of this local law after public notice and hearing in accordance with New York State Town Law.

- B. The Town Clerk shall forward one copy of the proposed amendment to each of the following as applicable:
1. Greene County Department of Planning & Development. A full statement of the proposed action, as defined in § 239 of the General Municipal Law.
 2. The Town Board of each of the adjacent towns.
 3. The NYS Department of Transportation; and Greene County Department of Public Works.
- C. Planning Board Report. Every such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board for its report thereon before the public hearing provided for by Town Law.
1. The date of the Town Board resolution to refer such proposed amendment or change to the Planning Board shall be deemed to be the initiation of proceedings. Failure on the part of the Planning Board to report its recommendation to the Town Board within 45 days after initiation of proceedings therefore shall be deemed approval thereof, unless such proceedings have been previously terminated by the Town Board or the petitioner.
 2. In recommending the adoption of any such proposed amendment, the Planning Board shall:
 - a. State its reasons for such recommendation; describing any condition that it believes makes the amendment advisable.
 - b. Specifically set forth the manner in which, in its opinion:
 - I. The amendment would be in harmony with the Comprehensive Plan; and
 - ii. The amendment would be in furtherance of the purposes set forth in Article 1 of this Chapter.
 3. In recommending the rejection or revision of any proposed amendment, the Planning Board shall similarly state its reasons.
- D. SEQRA. The Town Board shall be considered to be the lead agency in any action initiated under these procedures.
- E. No amendment of this Chapter, of whatever nature, that has not been approved by the Planning Board shall be adopted except by at least a two-thirds vote of the Town

Board, provided that failure on the part of the Planning Board to report to the Town Board its recommendation on any proposed amendment initiated by proposed resolution or amendment of the Town Board within 45 days after initiation of proceedings therefore shall be deemed to be approval thereof, unless such proceedings have heretofore been terminated.

§ 11.05. Compliance with SEQRA

Notwithstanding any provisions of this local law or any other laws or regulations to the contrary, the provisions and requirements of SEQRA shall be complied with. The reviewing agency shall make a significance determination pursuant to SEQRA upon receipt of an application. On every Type I application, the reviewing board shall be considered the lead agency and shall conduct a coordinated review with other involved agencies. At its first meeting, the reviewing board shall determine all other involved agencies, based on the material submitted by the applicant and resolve to circulate a lead agency letter to all other involved and interested agencies as required by SEQRA. On every Type I action, DEP and DEC shall be considered interested agencies and shall be provided a copy of the application and EAF for comment.

§ 11.06. Compliance with Flood Regulations

Notwithstanding any provisions of this local law or any other laws or regulations to the contrary, the provisions and requirements of Flood Damage Prevention Local Law #1 of the year 1998, or its successor, shall be complied with.

§ 11.07. Compliance with § 239-m of the General Municipal Law

The Town shall comply with § 239-m of the New York State General Municipal Law prior to taking action on any variance, special use, and amendment to this local law which are located within the distance requirements as spelled out in § 239-m of the General Municipal Law.

§ 11.08. Effective Date

This local law shall take effect on upon filing with the Secretary of State.

Filed: June 20, 2005