

# **Town of New Lebanon**

## **Zoning Law**

**Draft June 15, 2010**

### **STATE FIRE AND BUILDING CODE**

In addition to the regulations contained in this Zoning Law, all construction must conform to the New York State Fire and Building Code. Building Permits must be obtained from the local Building Inspector.

### **FRESH WATER WETLANDS**

All construction in the designated Fresh Water Wetlands requires a permit from the New York State Department of Environmental Conservation (DEC). The map of Town-Wetlands is posted in the office of the Town Clerk.

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# 1. TITLE

- 1.1. A local law regulating and restricting the uses of land, and the locations, construction and use of buildings and structures; establishing boundaries of districts for said purposes; establishing a Zoning Board of Appeals with power to determine and vary the application of the regulations hereby established in harmony with their general purpose and intent; and providing for the enforcement of the provisions herein; all for the purpose of promoting the health, safety, economy, esthetics, morals and general welfare of the inhabitants of the Town of New Lebanon. This local law shall be known and may be cited by the short form title of the “Zoning Law of the Town of New Lebanon, New York”.

## **2. ENACTING CLAUSE**

- 2.1. This local law is enacted by the Town Board of the Town of New Lebanon, in the County of Columbia, under the authority and power granted by the Municipal Home Rule Law and the Town Law of the State of New York, in conformance with the Town of New Lebanon Comprehensive Plan duly adopted by the Town Board.

### **3. PURPOSES**

This local law is enacted to meet the goals expressed in the Town of New Lebanon Comprehensive Plan and for the following purposes:

- 3.1. To protect and enhance scenic vistas and the towns' natural beauty and rural and small town character;
- 3.2. To preserve and protect the environment;
- 3.3. To promote an environment that supports appropriate business growth and retention;
- 3.4. To promote housing opportunities;
- 3.5. To preserve farms and farmland;
- 3.6. To lessen congestion in the streets;
- 3.7. To secure safety from fire, flood, panic and other dangers;
- 3.8. To promote health and the general welfare;
- 3.9. To provide adequate light and air;
- 3.10. To prevent the overcrowding of land;
- 3.11. To facilitate the adequate provision of transportation, schools, parks and other public requirements;
- 3.12. To enhance the value of land and buildings; and
- 3.13. To encourage the most appropriate use of land throughout the town.

## 4. DISTRICTS, PURPOSES AND BOUNDARIES

4.1. The Town of New Lebanon is hereby divided into the following Districts:

RA – 5	Residential Agricultural/Conservation
RA – 2	Residential-Agricultural
RA-1	Residential-Agricultural
C	General Commercial
C – Rec	Commercial-Recreational
C – Res	Commercial-Residential
C-I	Commercial-Industrial
FZ-O	Flood Zone Overlay

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

- 4.2.1. Agricultural/Conservation (RA-5) District: The purpose of the Agricultural/Conservation District is to encourage agricultural operations and open space preservation and allow very low density residential development that is consistent with those land uses; to maintain and protect the rural and small town character of New Lebanon; to provide for and encourage open spaces and the protection of the Town's natural resources; and to foster safe pedestrian and traffic circulation consistent with the rural character
- 4.2.2. Residential-Agriculture (RA-2, and RA-1) Districts. The purpose of the Residential-Agriculture (RA) Districts is to provide for low density residential development consistent with goals to maintain and protect residential and neighborhood qualities and rural character, to protect the Town's natural resources; and to foster safe pedestrian and traffic circulation consistent with the rural character.
- 4.2.3. Commercial Districts (C and C-Rec). The purposes of the Commercial Districts are: to provide areas in the Town for retail and non-residential development in a variety of scales and with a variety of retail uses and services to meet the needs of the community; to add to the economic base of the community; and to ensure that commercial development is consistent with the character of New Lebanon.
- 4.2.4. Commercial-Industrial (C-I). The purpose of the Commercial-Industrial District is to provide a location for manufacturing, industrial and large commercial development in an area having adequate access to highways.
- 4.2.5. Commercial-Residential (C-R). The purpose of this district is to maintain the historically mixed-use area on the north side of Route 20 from New Lebanon Center east to the southerly intersection of Route 20 and Route 22.
- 4.2.6. Flood Zone Overlay (FZ-O). The purpose of the Flood Zone Overlay is to protect the public health and safety by regulating development in the area of town subject to flooding as such area is identified on a map prepared by the Federal Emergency Management Agency, as such map may be amended from time-to-time and to protect the important role these locations have in the environment.

- 4.3. The locations and boundaries of the zoning districts hereby established are shown on a map entitled “Zoning Districts of the Town of New Lebanon.” The FZ-O is shown on the map entitled “Flood Insurance Rate Map.” The maps and all notations, references and other information shown thereon are hereby declared to be a part of this law and shall be kept up to date in the offices of the Town Clerk for the use and benefit of the public.
- 4.4. Where uncertainty exists as to the locations of any boundaries shown on the zoning map, the following rules shall apply;
  - 4.4.1. Where district boundaries are indicated as following the center lines of streets, highways, railroad rights-of-way or waterways, these shall be construed to be such boundaries.
  - 4.4.2. Where such boundaries are indicated as approximately following lot lines as they exist on the date of adoption of this law, such lot lines shall be construed to be such boundaries.
  - 4.4.3. Where such boundaries are indicated to be approximately parallel or perpendicular to center lines of streets, highways, railroad right-of-ways or waterways, such boundaries shall be construed as being parallel or perpendicular thereto and at such distances therefrom as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale on said zoning map.
  - 4.4.4. Where a district boundary divides a lot at the time of adoption of said boundary lines, the regulations for the less restricted portion of such lot shall apply to the remainder of said lot up to a distance of not more than fifty (50) feet from said boundary line.

## 5. GENERAL REGULATIONS

- 5.1. No building or part thereof shall be erected, moved or structurally altered, nor shall any building or lands be used or occupied, except in conformity with the regulations of this local law, herein specified for the district in which such building or land is located. The regulations herein are deemed to be specific. Those uses and structures for which there are no specific provisions in this local law shall be deemed to be prohibited. Any use not specified as permitted or allowed by a Special Permit for any district as per the Use Schedule is prohibited.
- 5.2. No yard or open space required in connection with any building or use shall be considered as providing a required open space for any other building or use on the same or any other lot.
- 5.3. No lot shall be formed from part of a lot already occupied by a building unless such building and all yards and open spaces connected therewith on the remaining lot comply with all requirements prescribed by this local law for the district in which said lot is located. No permit shall be issued for the erection of a building on any new lot thus created unless such building and lot comply with all the provisions of this local law.
- 5.4. Incentive Zoning
  - 5.4.1. Statement of Policy. Pursuant to §261-b of the New York State Town Law, the Town of New Lebanon hereby establishes a policy of encouraging the preservation of open space and agricultural lands and the provision of facilities and amenities that would benefit the Town by providing incentive(s) to applicants seeking approval of a subdivision plat.
  - 5.4.2. Purpose. The purpose of the Town's system of incentive zoning is to advance the goals and policies expressed in the Town's Comprehensive Plan. As set forth below the Town Board has established standards for the proper application of incentive zoning and the specific findings the Planning Board shall make prior to approving an adjustment to the maximum unit density requirements of this Chapter.
  - 5.4.3. Grant of Authority. In considering an application for approval of a subdivision the Planning Board is hereby authorized to adjust the maximum density requirements of the zoning district in which the property is located in exchange for one or more of the specifically identified benefits, and in accordance with the standards and conditions set forth below.
  - 5.4.4. Applicability. The incentives set forth herein shall be applicable to land parcels zoned residential and for which an application for approval of a subdivision pursuant to the Subdivision Law has been filed.
  - 5.4.5. Incentives. Notwithstanding any contrary provision of this law that limits or restricts the maximum unit density of a proposed subdivision, for the permanent preservation in its undeveloped state of not less than fifty percent (50%) of the gross land area of a proposed subdivision including, but not limited to, active agricultural lands and areas having prime soils or statewide important soils, a thirty percent (30%) increase in the maximum unit density for the zoning district may be approved. The calculation of the incentive is based on the maximum density for a proposed subdivision as determined by the Planning Board pursuant to Article 7, section 7.2.10.

- 5.4.6. Findings. Before approving an adjustment to the maximum unit density requirements of this Section in exchange for the identified benefits, the Planning Board shall make the following specific findings:
- 5.4.6.1. That the proposed adjustments would not have a significant adverse impact on the property, or to adjoining property, or to the neighborhood in which the property is situated.
  - 5.4.6.2. That the open space protected pursuant to this section would maximize conservation or agricultural value.
  - 5.4.6.3. That proper easements, surety or performance guarantees between the applicant and the Town or an authorized land preservation trust ensuring the permanent preservation of the land to be preserved in its undeveloped state, covering future title, dedication and provisions for the costs of land or improvements, are or will be in existence as of the date the final plat map is signed by the Chairman of the Planning Board.
  - 5.4.6.4. That the proposed adjustments would not adversely affect the public health, safety or welfare, or those of the residents of the project or neighboring lands.
  - 5.4.6.5. That the necessary water and septic requirements can be met with the proposed density adjustments.

## 6. DISTRICT REGULATIONS

6.1. The following requirements apply to uses within the specified districts in addition to all other applicable requirements.

### 6.1.1. Regulations Specific to the Agricultural/Conservation District (RA-5)

6.1.1.1. The use of a conservation subdivision plan in this district is specifically *required* when the parcel contains, in whole or in part, one or more of the following:

6.1.1.1.1. State and/or federal freshwater wetlands occupy 25% or more of the site.

6.1.1.1.2. Slopes of greater than 20% occupy 25% or more of the site.

6.1.1.1.3. The site contains a Flood Plain or Flood hazard area as mapped by the Federal Emergency Management Agency's Flood Insurance Maps.

6.1.1.1.4. The site contains a Critical Environmental Area designated pursuant to 6 N.Y.C.R.R. 617.14(g).

6.1.1.1.5. The site contains an identified scenic view or scenic vistas.

6.1.1.1.6. The lot or parcel is under a DEC Forestry Management Plan.

6.1.1.2. All development within the Agricultural/Conservation District should incorporate smart or "low impact development" procedures to reduce the impact of new growth. Components of these procedures include, but are not limited to:

6.1.1.2.1. Limit total impervious surface coverage

6.1.1.2.2. Retain and incorporate natural site features that promote infiltration of stormwater on a developed site.

6.1.1.2.3. Use bio-retention, pervious surfaces, open space surface water dispersion, soil restoration, and other dispersed facilities to control storm-water as close to the origin as possible.

6.1.1.2.4. The use of traditional conveyance and pond technologies to manage stormwater quality and quantity should only be considered after all other low impact development techniques have been considered and used to the greatest extent possible.

6.1.1.3. The appropriate Board may specify the location of the building envelope, to preserve trees or other resources, take advantage of soil conditions, or make the development more rural in character. In major subdivisions, building envelopes should be moved to provide irregular spacing of buildings and to break up the linearity of the street façade of buildings. The building envelope shall be recorded on the final plat in lieu of setback lines.

6.1.1.4. Other Rural Siting Guidelines

- 6.1.1.4.1. Encourage the integration of new subdivisions with the surrounding existing neighborhoods and rural character. The site layout of new development should protect roadside views and ensure that home sites blend into the landscape to the greatest extent possible.
- 6.1.1.4.2. Retain existing tree rows and hedgerows, stone walls, and similar features in the development of any new use or the expansion of any existing use.
- 6.1.1.4.3. New buildings adjacent to significant historic structures should be designed in a manner that harmonizes with the general architectural features of such historic structures in terms of form, materials, fenestration, and roof shape.
- 6.1.1.4.4. New streets should be designed with rural characteristics including minimal tree clearing, minimal grading and filling of existing topography, and usage of natural drainage where practicable. Reuse farm roads or country lanes whenever possible.
- 6.1.1.4.5. The Planning Board is authorized to identify a building envelope placement during site plan or subdivision review. Placement of new structures in the center of former agricultural fields should be minimized. Hedgerows and other natural features should be incorporated into the layout.
- 6.1.1.4.6. Major modifications to the existing landscape such as extensive grading, clear-cutting of trees, or other similar activities shall be avoided.
- 6.1.1.4.7. Streets should be designed to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel. Road design should reflect the context and characteristics of the area. The use of narrow roads, similar to existing country routes, is encouraged. Utilize street trees to provide shade and separate the roadway from pedestrians.
- 6.1.1.4.8. Minimize the number of curb cuts on existing roads and utilize shared driveways, linked/shared parking where possible.

6.1.2. Residential-Agriculture District (RA-2, RA-1)

- 6.1.2.1. In addition to the regulations in Section 1, above, the Planning Board shall encourage 50% of the parcel to remain as open space by clustering lot layouts.
- 6.1.2.2. Conservation Subdivisions: The Planning Board is authorized to allow or require adherence to the requirements of the Subdivision Law (Chapter 179 of the Code of the Town of New Lebanon) regarding clustering and open space preservation for all subdivision applications in these zoning districts where, in the opinion of the Planning Board the purposes of this zoning law can not be met under conventional subdivision methods.

6.1.3. Regulations Specific to the Commercial Districts (C, C-Rec, C-I)

In addition to the design guidelines established in Article 8, Section 5, the following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any commercial use in these districts:

- 6.1.3.1. The development of public parks, commons, or pedestrian plazas with amenities such as benches and landscaping should be encouraged.
  - 6.1.3.2. Where practicable, existing tree rows and hedgerows, stonewalls, and similar features should be retained in the development of any new use or the expansion of any existing use.
  - 6.1.3.3. Where practicable, new buildings should be designed in a manner that harmonizes with the general architectural features of the traditional and rural nature of New Lebanon in terms of form, materials, and fenestration and roof shape.
  - 6.1.3.4. All new streets shall be designed to permit the installation of electric, water, sewer, and gas utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.
  - 6.1.3.5. Cross-easements shall be used to provide shared access to parking whenever possible.
- 6.1.4. Regulations specific to the Commercial-Residential District (C-Res)
- Residential uses shall be subject to the requirements applicable to the same uses in the Residential Agricultural District (RA-1).
- Commercial uses shall be subject to the requirements applicable to the same uses in the Commercial District (C).
- 6.1.5. Flood Zone Overlay (FZ-O)
- All uses and structures located in the Flood Zone Overlay District shall comply with Chapter 113 of the Code of the Town of New Lebanon.

## 7. LOT AREA AND WIDTH, YARDS AND BUILDING COVERAGE

### 7.1. 1. Schedule 1- Area and Bulk Regulations

District (1) (2)	Min. Lot Size	Max. Building Coverage (foot-print) of principal building	Min. Front Setback (ft.) *	Min. Side Yard each side (ft.)	Min. Rear Yard (ft.)	Max. Stories	Max. Hgt. (ft.)	Min. Road Front-age (ft.)
<b>RA-5</b>	5 acre	10,000	75	75	75	2 ½	35	25
<b>RA-2</b>	2 acre	4,000	75	50	50	2 ½	35	25
<b>RA-1</b>	1 acre	4,000	75	35	50	2 ½	35	25
<b>C</b>	30,000**	75% of lot	75	20***	25	3	40	100
<b>C-Rec</b>	30,000**	50% of lot	20***	25	25	3	40	200
<b>C-I</b>	30,000	25% of lot	75	50	50	3	40	200
C-Res See note below								

- (1) See Regulations specific to overlay districts for additional area and bulk requirements  
 (2) In the Commercial-Residential District residential uses shall be subject to the area and bulk regulations applicable to the RA-1 District and Commercial uses shall be subject to those applicable to the Commercial District.

\* Measured from center of the traveled portion of the road.

\*\* Except for wholesale store, hotel and/or motel, which requires 2 acres minimum

\*\*\* 50 when adjacent to res. zone and 40 when adjacent to existing building

Regulations governing lot area and lot width; front, side and rear yards and building coverage are as specified in Schedule 1, above. The regulations appearing in Schedule 1 are subject to the Supplementary Regulations of Article 8 and additional regulations as follows:

### 7.2. Additional Area Regulations

#### 7.2.1. Lots of Less than Required Dimensions.

Nothing contained herein shall prohibit the use of a lot of less than the prescribed area, width or depth, when such lot is owned individually or separately from any adjoining tract at the time of enactment of this local law, provided that all other provisions of this local law are met. The Planning Board is authorized to vary residential lot width, depth and/or area for conservation subdivisions.

#### 7.2.2. Corner Lot.

On a corner lot in any district where a front setback is required, a setback shall be provided on each street equal in depth to the required front setback on such streets. One rear setback shall be provided on each corner lot and the owner shall designate the rear setback on the application for a zoning permit. In no case shall the designated rear lot width be so interpreted as to reduce

the building width of a corner lot facing an intersecting street, and of record at the time of the passage of this local law to less than twenty-four (24) feet.

7.2.3. Visibility at Street Corners.

On a corner lot in any district where a front yard is required, no fence, wall, hedge or other structure or planting more than three feet in height shall be erected, placed or maintained so as to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distant from the point of intersection, measured along said lines.

7.2.4. Walls, Fences and Hedges.

The setback requirements of this local law shall not prohibit any retaining wall nor any fence, wall or hedge permitted by Town law or ordinance, provided that in any RA district, such fence, wall or hedge shall be no closer to any front lot line than one foot and shall comply with visibility at street corners as provided in this article.

7.2.5. Accessory Structures

For accessory structures such as storage buildings, sheds, antennae, “dishes”, etc. (not over 140 sq. ft.) excluding swimming pools, the required setbacks are ten (10) feet for the sides and ten (10) feet for the rear, and they must meet front setback requirements.

7.2.6. Where there is proposed to be more than one principal building on a single lot, the buildings shall be located on the lot in a manner so that all of the minimum area regulations governing building location are met by all principal buildings. Specifically, the structures shall be located so the minimum lot size and width requirements, minimum front, side and rear yard requirements and lot coverage maximums are met.

7.2.7. 100 Foot Set-Back from Lake or Stream:

No building, building envelope, septic tank, or tile field shall be located closer to a stream, creek or other body of water except that: on existing undersize lots where this requirement cannot be met, the septic tank and tile field shall be located as far from the water as possible, but in no case less than 50 feet away. Open porches and decks attached to a residence shall be exempt, providing all other requirements can be met, and provided such porch or deck shall not be enclosed.

7.2.8. Height Exceptions

District building height regulations shall not apply to flagpoles, radio or television antennae, electric transmission towers or cables, wind electric generating equipment installed by a Residential Customer Generator or a Farm Customer Generator in compliance with New York State Public Service Law section 66-l, spires or cupolas, chimneys, elevator or stair bulkheads, parapets or railings, or water tanks or cooling towers,—provided that such structures in their aggregate coverage occupy no more than 10% of the roof area of the building. Barns, grain elevators and silos may exceed height limitations of this Local law provided that for each one foot such structure exceeds 35 feet, the minimum yard requirements shall be increased by one foot but in no case may exceed 100 feet. The Planning Board may, as part of Site Plan review, waive height restrictions for wind electric generating equipment installed for use in a commercial or industrial use.

## 7.2.9. Structures in Required Yards.

- 7.2.9.1. The following accessory structures may be located in any required yard except where such constitute a permanent obstruction in a required front yard in any district;
  - 7.2.9.1.1. Chimneys and pilasters;
  - 7.2.9.1.2. Open arbor or trellis;
  - 7.2.9.1.3. Unroofed steps, patio or terrace not less than twenty (20) feet from the highway right-of-way;
  - 7.2.9.1.4. Awning or movable canopy not to exceed ten (10) feet in height;
  - 7.2.9.1.5. Retaining wall, fence or masonry wall;
  - 7.2.9.1.6. Overhanging roof not in excess of ten percent (10%) of the required front yard depth;
- 7.2.9.2. An accessory structure, except as allowed herein, shall not be located within the minimum front yard setback.
- 7.2.9.3. The following accessory structures may be located in any side or rear yard, subject to the limitations contained herein:
  - 7.2.9.3.1. Solar Energy collection devices not less than ten (10) feet from the side or rear lot line; and
  - 7.2.9.3.2. Permitted accessory buildings, provided all the following criteria are met:
    - 7.2.9.3.2.1. No such building shall exceed the average height of the principal structure on the lot;
    - 7.2.9.3.2.2. No such building shall be set back less than ten (10) feet or the height of the accessory structure, whichever is greater, from any lot line;
    - 7.2.9.3.2.3. All such buildings in the aggregate shall not occupy more than thirty percent (30%) of any required yard;
    - 7.2.9.3.2.4. No such building shall project closer to the fronting street than the minimum front yard setback; and
    - 7.2.9.3.2.5. Not more than two (2) such accessory structures, other than a permitted sign or satellite antenna, of which no more than one shall be a private sign or a private garage, shall be permitted by right on an individual lot. In the event the lot exceeds 2 acres, any additional accessory structure may be allowed by a special use permit.

## 7.2.10. Calculating Density

The maximum permitted number of dwelling units shall be determined based on buildable area. This is determined by deducting from the total tract area the following features and then applying the density required for that district:

- 7.2.10.1. Land contained within public rights-of-way;
- 7.2.10.2. Land contained within the rights-of-way of any existing or proposed streets;
- 7.2.10.3. All areas occupied by public utility easements; and
- 7.2.10.4. All floodplains, regulated wetlands, slopes of 25% or greater, and waterbodies located on the property.

## 8. SUPPLEMENTARY REGULATIONS

### 8.1. Motor Vehicle Storage

- 8.1.1 Unregistered vehicles in the Town of New Lebanon, other than farm equipment on an active farm, shall be stored in an enclosed building or behind fencing adequate to conceal them from public view. A maximum of two (2) unregistered motor vehicles (each not exceeding 25 feet in length) may be parked or stored outside on any lot, but limited to the side or rear yard, unless specifically indicated as “for sale”. Junk vehicle lots are prohibited.
- 8.1.2 No junk storage area shall be located within 250 feet from the following: any adjoining property line; any public park, church, educational facility, nursing home, public building or other place of public gathering; any river, stream, lake, pond, wetland or other body of water; or the right-of-way of a public road.

### 8.2. Water Recreation and Water Storage

The accessory use of land for water recreation or water storage such as swimming pools (whether above ground or in-ground), ponds, or open outdoor water storage tanks shall comply with the following requirements:

- 8.2.1 The facility shall comply with setback requirements.
- 8.2.2 Plans for the drainage of a facility, where applicable, shall be adequate to assure that there will not be interference with the public or private water supply system or existing sanitary facilities.
- 8.2.3 An above-ground swimming pool or other above ground storage structure will be located so that there is no danger to surrounding properties or water supply or sewerage systems in the event of a break in the container.

### 8.3. Manufactured Homes

- 8.3.1 A Manufactured Home installed in the Town of New Lebanon shall be installed in compliance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code. The Manufactured Home shall be placed upon a permanent foundation.
- 8.3.2 The Manufactured Home shall be securely located on its foundation and shall be either permanently affixed to a concrete pad or foundation.
- 8.3.3 The Manufactured Home foundation shall be closed by a skirt securely fastened and extending from the outside wall of the home. The skirt shall be constructed of sturdy wood, plastic, masonry, or metal material capable of withstanding weather conditions. No skirt shall be required where a perimeter foundation fully encloses the area between the unit and the ground level. Skirting must be installed within 10 days of installation of the Home on the foundation.
- 8.3.4 Manufactured Home lots shall meet applicable area and dimensional requirements.
- 8.3.5 A permit may be granted to the owner of a farm located within a certified New York State Agricultural District to allow placement of not more than two (2) Manufactured Homes to be

occupied only by full-time farm workers and their families employed by the owner and provided that the Manufactured Homes are located on a lot of at least 100 X 150 feet and are no closer than 40 feet to the farmhouse and any farm building. All water and septic system requirements for single family homes shall be met.

8.3.6. Manufactured Homes shall be considered and treated as a single-family structure.

#### 8.4. Driveways

8.4.1. A driveway permit from the Town is required for access to town roads. Driveway cuts not installed by the Town Highway Department must meet the standards of Appendix B of Chapter 179 of the Code of the Town of New Lebanon.

8.4.2. Access by emergency vehicles to all buildings is required.

8.4.3. The minimum driveway width is 10 feet and of suitable alignment to allow for access by emergency vehicles. Driveways shall be constructed with a minimum of 6 inches of run-of-bank gravel and crowned in the middle.

8.4.4. Driveways shall intersect roads at approximately a 90-degree angle but in no case less than 70 degrees. The intersection of the road and driveway shall be connected with a minimum radius of 20 feet and the first 50 feet from the edge of shoulder shall not be steeper than 3%. The driveway grade shall not exceed 10%. Lengths of drive at 10% grade shall be interrupted by flatter slopes every 500 feet.

8.4.5. Adequate ditches and culverts shall be provided to accommodate drainage. Where driveways cross road ditches, an approved culvert not less than 15 inches in diameter shall be provided. The driveway shall not increase runoff onto the existing road unless approved by the Town Engineer.

8.4.6. In order to minimize curb cuts onto existing or proposed roads, to maintain vegetated buffers along existing roads, and to preserve open space and rural character, the Planning Board may accept or require adjoining lots to utilize a shared driveway, or two adjoining driveways with a single curb cut. Shared driveways or access ways are preferred over multiple curb cuts. The Planning Board shall require that an offering plan be filed or a no-action or similar determination letter be obtained from the New York State Department of Law whenever there is a common interest in real property such as a shared road or driveway.

8.4.7. The Planning Board, upon recommendation of the Highway Superintendent may also designate curve radii for driveway intersections with the street and may require special provisions to assure visibility.

#### 8.5. Commercial Building Layout and Design Guidelines

The standards listed below are intended to establish an appropriate contextual character for all new commercial, industrial, and multifamily residential development within the Town of New Lebanon including modification and/or expansion of existing buildings and uses. New buildings are expected to respect and complement the tradition of New Lebanon's rich history. The applicant shall be expected during the Planning Board's site plan review, subdivision approval or special use approval process to demonstrate the appropriateness of the specific design and material elements selected to conform to these design guidelines. During project development and review, attention should be given to the compatibility of adjoining developments when reviewing project proposals. It is not the intent

to discourage contemporary architectural expression, but to preserve the integrity and authenticity of the district and to ensure the compatibility of new structures with existing.

- 8.5.1. The side of the building that provides frontage for the lot on which the building is located should be aesthetically compatible with, but not necessarily the same as, the surrounding area.
- 8.5.2. Parking areas should be located away from the road or behind structures.
- 8.5.3. Drive-up windows for any proposed or existing land use, where allowed by lot configuration, should be placed at the rear of the building. Adjacent properties shall be screened from any glare from vehicles or building lights resulting from use of a drive-up window.
- 8.5.4. In order to control traffic, the Planning Board may require, where appropriate, reductions in lane widths, use of shared access drives, shared parking lots, and rear service road connections.

#### 8.6. Conservation Subdivisions

- 8.6.1. Permitted, accessory and special permit uses. Permitted, accessory and special permit uses within a conservation subdivision shall be the same as those otherwise allowed in the zoning district in which the development is located.
- 8.6.2. Density. Except as authorized by the Planning Board pursuant to Article 5, subdivision 4, the permitted number of dwelling units shall not exceed the number of units that would be permitted as calculated in conformance with Article 7, section 7.2.10.
- 8.6.3. Unit Mix. The conservation subdivision design may include a mix of single-family and multi-family dwellings as a means of achieving housing diversity and preserving open space if such multi-family dwellings are allowed in the district. Within the conservation subdivision the number of multi-family units shall be limited to not more than one-third (1/3) of the total number of dwelling units.
- 8.6.4. Conservation subdivision design and review process is set forth in Subdivision Law (Chapter 179 of the Code of the Town of New Lebanon).

## **9. OFF STREET PARKING AND LOADING**

- 9.1. Off-street Parking. Off-street parking space shall be required for all buildings constructed after the effective date hereof and no off-street parking or loading area shall be constructed or provided until a site plan describing such parking and loading improvements has been approved by the Planning Board.
  - 9.1.1. Each off-street parking space shall consist of at least one hundred and eighty (180) square feet with a minimum width of eight (8) feet.
  - 9.1.2. In addition, space necessary for aisles, maneuvering and drives shall be provided. Parking requirements are specified below.
  - 9.1.3. The Planning Board shall determine reasonable and appropriate off street parking requirements based on the guidelines set forth below. The number and layout of parking spaces shall be based on the need to protect public safety and convenience while minimizing harm to the

character of the community and to environmental, historic and scenic resources. Since businesses vary widely in their need for off-street parking, it is most appropriate to establish parking requirements based on the specific operational characteristics of the proposed uses. In determining the parking requirements for any proposed use, the Planning Board shall consider the maximum number of persons who use the parking lot at times of peak usage. The recommended number of spaces for off-street parking is detailed below. For structures and uses which do not come within the following guidelines, the Planning Board shall determine reasonable parking requirements taking into consideration all factors entering into the parking needs of each such case as part of their site plan or special permit study and review.

- 9.1.4. Where practicable, all off-street parking shall be located to the rear or side of the building and to the rear of the front building line of the building it serves. Where it is not practicable to locate off-street parking in this manner, the Planning Board may require screening of such parking, such as with a stone wall, landscaped berm, and/or landscaping sufficient to effectively screen from view the automobiles parked therein when viewed from the street or walkway.
- 9.1.5. No improvement that is a part of any off-street parking facility shall be located closer than five feet from any lot line exclusive of any driveway providing access for such facility.
- 9.1.6. Parking shall not dominate any site when viewed from the street providing frontage for such site. No off-street parking shall be located within any required open space.
- 9.1.7. Large uninterrupted areas of parking stalls that significantly reduce the continuity or quality of natural open space shall not be permitted. Off-street parking shall be developed as small (6,000 - 12,000 sq. ft.), well-distributed and landscaped areas, interconnected by driveways and walkways that provide visual relief.
- 9.1.8. All parking stalls shall be provided with a backup and maneuvering aisle. When 90 degree angle parking is used, the stall length and aisle width, when combined, shall provide a clear uninterrupted dimension of at least:
  - 9.1.8.1. 60 feet when stalls are located along both sides of the aisle;
  - 9.1.8.2. 35 feet when stalls are located along one side only of the aisle;
  - 9.1.8.3. Parking designs with angle parking less than 90 degrees may have shorter total dimensions of stall and aisle as the Planning Board finds appropriate.
- 9.1.9. All off-street parking shall be graded and maintained to the extent necessary to avoid nuisances of dust, erosion or excessive storm water flow onto or across walkways, streets or adjacent lands.
- 9.1.10. All off-street parking for more than five vehicles shall be marked in accordance with generally accepted standards or applicable regulations to identify individual parking stalls, maneuvering aisles, pedestrian crossings, handicap spaces, entrances, exits, vehicle movement and fire lanes.
- 9.1.11. Any off-street parking for 20 or more vehicles should provide curbed planting islands or beds within the parking area equal in total area to 15% of the total square footage of all stalls and aisles.

## 9.2. Off-Street Parking Landscaping.

- 9.2.1. All parking lots for more than 10 cars shall be landscaped. Any planting bed located within a parking lot should contain at least one tree and such other plant materials as are recommended by a landscape design professional, architect or engineer for such location for purposes of establishing vertical interruption and definition to vehicular movement.
- 9.2.2. Any required street parkway or median should include trees, shrubs, groundcover and grass as appropriate to minimize impervious materials and to provide definition for any walkway contained therein.
- 9.3. All open parking areas shall be properly drained.
- 9.4. Required parking spaces may be provided in areas designed to jointly serve two (2) or more establishments whether or not located on the same lot, and the number of required spaces in such joint facilities shall not be less than the total required for all such establishments.
- 9.5. When any lot contains two (2) or more uses having differing parking requirements, the parking requirements for each use shall apply to the extent of that use. Where it can be conclusively demonstrated that one or more such uses will be generating a demand for parking spaces primarily during periods when the other use or uses is not, or are not, in operation, the Planning Board may reduce the total number of parking spaces required for that use with the least requirement.
- 9.6. Lighting in parking lots. The Planning Board may require that lighting in parking lots be extinguished within 1 hour of the end of closing. Building security lights on motion detector switches are acceptable. Parking areas in which lights are necessary all night shall be lighted in a manner that does not result in glare to adjacent residential properties or cause traffic hazards due to glare.
- 9.7. Future Parking. The Planning Board may require that an applicant set aside additional land to meet potential future parking needs. Such land may remain in its natural state or be landscaped, but may not be used in a manner that would prevent it from being used for parking in the future.
- 9.8. Shared Parking. When feasible, all parking areas should be designed to allow linkages to adjacent developments to promote efficient traffic flow and encourage shared parking areas to reduce the use of land for parking and development costs and impacts associated with impervious surfaces. Internal areas between buildings in a development should incorporate shared parking areas. In cases where two or more developments are adjacent, the Planning Board may require cross-access easements between adjacent parking lots to provide for interconnected parking and to facilitate traffic and control access on the main road. Shared parking facilities are encouraged.
- 9.9. Floor areas for the purposes of computing parking requirements shall be the sum of the horizontal area within exterior walls of the several floors of the building, excluding basement, cellar and attic areas used primarily for storage or service.
- 9.10. Off-Street Loading

At least one off-street loading facility shall be provided for each commercial or industrial establishment hereafter erected or substantially altered. Space for off-street loading shall be in addition to space for off-street parking. Such space shall not be less than 12 feet wide, 33 feet long and 14 feet in height when covered. Loading docks shall be placed behind or on the side of buildings in visually unobtrusive locations. Screening and landscaping shall prevent glare, noise, or exhaust fumes and shall prevent direct views of the loading areas from the public rights-of-way. Screening can also be achieved through use of walls or fences.

USE

SPACES

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Dwellings .....	1 space for each dwelling unit
Boarding house, tourist home, motel, hotel, bed and breakfast .....	1 space for each guest room
Administrative, professional, non-profit, governmental .....	1 space for each 200 square feet of floor space
Funeral Home.....	10 spaces, plus space for all employee and resident personal cars
Church or Temple .....	1 space for each 5 seating spaces in main assembly room
School: Elementary, Jr. High .....	1 space for each teacher or employee
School: Senior High .....	1 space for each classroom or office and 1 space for each 10 students
Theater or other place of Assembly .....	1 space for each 5 seating spaces
Nursing or convalescent home .....	1 space for each 4 beds
Retail Store or Bank .....	1 space for each 50 square feet of floor space devoted to customer use
Clubs and Restaurants .....	1 space for each 4 seating spaces
Bowling Alley .....	5 spaces for each alley
Industrial or manufacturing .....	1 space for each 2 employees on the maximum working shift
Skating Rink or Dance Hall .....	1 space for each 100 square feet of floor space
Automobile Racing Facility .....	1 space for each 3 seating spaces
Barber shop or Beauty Parlor .....	1 spaces per chair
Cleaner or Tailor .....	2 spaces for establishment plus space for all employees
Professional Offices .....	Adequate spaces for customers/personnel
All other uses.....	Same as for professional office

## 10. NON-CONFORMING USES AND BUILDINGS

### 10.1. Continuation

A non-conforming use, building or structure that existed lawfully at the time of enactment of this local law or amendment thereto may be continued, subject to the regulations that follow in this Article. In order to constitute a lawful non-conforming use, the use must be active at the time of the enactment of this local law or the amendment thereto.

### 10.2. Restoration

A non-conforming building or a building or structure devoted to a nonconforming use, destroyed or damaged by fire, wind, explosion, structural failure or other natural causes may be repaired or rebuilt to its original exterior dimensions. The restoration of said building must be initiated within one year of the date of destruction or damage.

### 10.3. Non-conforming Use

10.3.1. Extension, Expansion, Alteration. The non-conforming use of the land shall not be enlarged or extended beyond the size of the use, or the area of land occupied by such use at the time of the adoption of this local law or amendment thereto. A non-conforming use of land may not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such non-conforming use at the time of adoption of this local law.

10.3.2. Changes. A non-conforming use of a building or land may not be changed except to a conforming use. When so changed, the non-conforming use may not be resumed thereafter.

10.3.3. Discontinuance. A non-conforming use of land, buildings or structures or a portion thereof, which has been abandoned or discontinued for a period of twelve consecutive months shall not be re-established, and any subsequent use shall conform to the use regulations of the district in which the premises are located.

### 10.4. Non-conforming Buildings

10.4.1. Additions. A non-conforming building may be added to or enlarged so long as the addition does not make the building any more non-conforming, except as provided in section 10.4.3 of this article.

10.4.2. Alterations and Repairs. Maintenance and repairs required to keep a non-conforming building or structure in sound condition shall be permitted. However no structural alterations shall be made to a non-conforming building or structure, unless such alterations are required by law.

10.4.3. Additions and alterations that would make a non-conforming building more non-conforming can be made only upon grant of an area variance pursuant to Article 12. In considering an application for an area variance from the owner of a non-conforming building the ZBA shall consider the extent, nature and impact of the non-conforming aspects of the existing building as well as those related to the proposed enlargement pursuant to Article 12, Section 12.3.3.

# 11. ZONING ADMINISTRATION AND ENFORCEMENT

## 11.1. Zoning Enforcement Officer

- 11.1.1. The provisions of this local law shall be administered and enforced by a person designated by the Town Board as the “Zoning Enforcement Officer” who shall have the power to make inspections of buildings or premises necessary to carry out his duties in the enforcement of this local law. No zoning permit or certificate of occupancy required hereunder shall be issued by the Zoning Enforcement Officer except in compliance with the provisions of this local law, or as directed by the Board of Appeals under the provisions of Article 12.
- 11.1.2. The Zoning Enforcement Officer shall submit a monthly report which includes a list of all permits issued or denied, as well as a complete list of all cases which are, as of the report date, pending further action, to the Town Board, Planning Board and Zoning Board of Appeals. Said report shall be submitted on a form promulgated by the Town Board in cooperation with the Planning Board and Zoning Board of Appeals.
- 11.1.3. The Zoning Enforcement Officer and the Deputy Zoning Enforcement Officer, if the Town Board appoints a deputy, shall be appointed by the Town Board and shall receive such compensation as such board shall determine.
- 11.1.4. Should the Zoning Enforcement Officer or deputy be in doubt as to the meaning or intent of any provision of this Local law, or as to the location of any district boundary line on the Zoning Map, or as to the propriety of issuing a zoning permit or a permit of occupancy in a particular case related to the provisions of this local law, he shall address the matter to the Board of Appeals for interpretation.

## 11.2. Zoning Permit

- 11.2.1. No building shall be erected, moved, structurally altered, added to or enlarged, no use of land or buildings shall be established or changed and no excavation for any building shall begin unless and until a zoning permit has been issued by the Zoning Enforcement Officer.
- 11.2.2. Applications for zoning permits shall be submitted on a form or forms provided by the Zoning Enforcement Officer. The Planning Board, Assessor and Town Clerk shall maintain copies of all permits issued. Each application shall set forth the purpose for which the building or land is intended to be used and shall be accompanied by a plot plan showing the dimensions of the lot and building and dimensions of required and proposed yards. The Zoning Enforcement Officer may require additional information other than that called for on the application form, as may reasonably be needed for him to determine if the proposed building, its use and the use of the land are in conformity with the provisions of this local law.
- 11.2.3. If the Zoning Enforcement Officer or deputy should mistakenly issue a zoning permit which violates the provisions of this local law, such zoning permit shall be invalid.
- 11.2.4. Fees. Each application for a zoning permit shall be accompanied by a fee in accordance with the fee schedule set by the Town Board by resolution.

## 11.3. Certificate of Zoning Compliance

- 11.3.1. A certificate of Zoning Compliance may be obtained from the Zoning Enforcement Officer. Such certificate shall be issued only if the proposed use of the building or land conforms to the

provisions of this local law. The Zoning Enforcement Officer shall make an inspection of each building or lot for which a Zoning Compliance Certificate has been applied before issuing such certificate. Such inspection shall be made within ten (10) business days from the date of application., Failure to make such inspection and determination within the specified period of time shall be deemed to be approval of the application of Zoning Compliance.

#### 11.4. Violations and Penalties

##### 11.4.1. Complaints

- 11.4.1.1. Any person may file a complaint with the Zoning Enforcement Officer regarding a violation of this local law.
- 11.4.1.2. All complaints shall be in writing and filed in person with the Zoning Enforcement Officer and/or Clerk.
- 11.4.1.3. All such filed complaints shall be investigated by the Zoning Enforcement Officer and a report prepared thereon and action instituted where appropriate within thirty (30) business days

##### 11.4.2. Procedure with Respect to Violations

- 11.4.2.1. Where a violation of this Local law is determined to exist, the Zoning Enforcement Officer shall serve notice by certified mail, return receipt requested, on the owner, agent or contractor of the building, structure, or lot where such violation has been committed or exists, and on the lessee or tenant of the part of or of the entire building, structure or lot where such violation has been committed or exists; and on the agent, architect, contractor or any other such person who takes part or assists in such violation, or who maintains any building, structure or lot in which any such violation exists.
- 11.4.2.2. Such notice shall require the removal of the violation within ten (10) days after service of the notice.
- 11.4.2.3. In such cases where removal of the violation within the ten (10) days would be manifestly impossible, the Zoning Enforcement Officer shall apply to the Town Board for a determination as to a reasonable period of time within which such violation shall be removed.
- 11.4.2.4. If those persons notified shall fail to remove such violation within the allotted time period, the Zoning Enforcement Officer shall charge them with such violation of this law.
- 11.4.2.5. The Zoning Enforcement Officer is hereby given the authority to issue appearance tickets directing any such person to appear in the Justice Court of the Town of New Lebanon, at a designated future time in connection with that person's alleged commission of a violation of this law.

##### 11.4.3. Penalties

- 11.4.3.1. A person or corporation, whether as owner, lessee, agent or employee, who violates any of the provisions of this law or who fails to comply with any order or regulation made thereunder, or who erects, alters, moves or uses any building or uses any land in violation of any statements or plans submitted by him and approved under the provisions of this law, shall be guilty of an offense and upon conviction shall be punished by a fine not

exceeding three hundred fifty dollars (350) or imprisonment not to exceed six months, or both, for a conviction of a first offense in accordance with the provisions of Article 16 of the Town Law, Section 268 and amendments thereto and any other Article relating thereto. The penalty for a conviction of a second offense both of which were committed within a period of five years, is punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars or more than one thousand dollars or imprisonment for a period not to exceed six months, or both. Each week's continued violation shall constitute a separate additional violation.

- 11.4.3.2. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used in violation of this local law, the proper local authorities of the Town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct or abate such violation to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such building, structure or land.
- 11.4.3.3. If the Zoning Enforcement Officer fails or refuses to act upon or to refer a violation of this local law to the Town Attorney for legal action in accordance with the provisions contained herein within a thirty (30) calendar day period following written request by any resident or property owner to so proceed, then any three (3) or more residents of the Town of New Lebanon, who are jointly or severally aggrieved by such violation, may institute appropriate legal action in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this local law.

## 12. ZONING BOARD OF APPEALS

12.1. Creation, Appointment and Organization. A Zoning Board of Appeals is hereby established in accordance with Article 16, Section 267 of the Town Law. It shall consist of five members, each to serve for a term of five years. The term of office of the members of the Board of Appeals and the manner of their appointment shall be in accordance with the provisions of Article 16, Section 267 of the Town Law. Vacancies occurring in said Board shall be filled for such unexpired period only.

The Zoning Board of Appeals shall have the duties, rights, powers and functions conferred upon it by Sections 267, 267-a and 267-b of Article 16 of the Town Law and any other provisions of the Town Law and any other provisions of law or local law applicable thereto, including the following:

12.2. Procedure.

12.2.1. Meetings, minutes, records. Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

12.2.2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the town clerk within five business days and shall be a public record.

12.2.3. Assistance to Zoning Board of Appeals. Such board shall have the authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.

12.2.4. Hearing appeals. Except when reviewing applications for Special Use Permits, the jurisdiction of the Zoning Board of Appeals shall be appellate and shall include hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the Zoning Enforcement Officer. An appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.

12.2.5. Filing of administrative decision and time of appeal.

12.2.5.1. Each order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer shall be filed in the office of the town clerk, within five business days from the day it is rendered, and shall be a public record.

12.2.5.2. An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer, by filing with such officer and with the Zoning Board of Appeals, a notice of appeal, specifying the grounds thereof and the relief sought. The Zoning Enforcement Officer shall transmit to the zoning board of appeals all the papers constituting the record upon which the action appealed from was taken.

12.2.6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Zoning Board of Appeals, after

the notice of appeal shall have been filed with the Zoning Board of Appeals, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

- 12.2.7. Hearing on appeal. The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney. In addition to the public notice of a hearing, notice shall be given in writing to all property owners of the land included in such proposed change, and the land immediately adjacent extending one hundred (100) feet therefrom, and the land directly opposite thereto extending one hundred (100) feet from the street or highway frontage of such opposite land, as said property owners and addresses appear on the latest completed assessment roll of the town. At the hearing, any party may appear in person or by agent or by attorney.
- 12.2.8. Decision. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the officer from whom the appeal is taken.
- 12.2.9. The Zoning Board of Appeals shall decide upon the appeal within sixty-two days after the close of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.
- 12.2.10. Filing of decision and notice. The decision of the Zoning Board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- 12.2.11. Notice to county planning board. At least five days before such hearing, the Zoning Board of Appeals shall mail notices thereof to the county planning board as required by Section 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of the proposed action, as defined in Subdivision 1 of Section 239-m of the General Municipal Law.
- 12.2.12. Compliance with State Environmental Quality Review Act. The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law) and its implementing regulations as codified in Title 6, Part 617 of the New York Codes, Rules and Regulations.
- 12.2.13. Rehearing. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

#### 12.2.14. Voting requirements.

12.2.14.1.1. Decision of the board. Except as required by subparagraph L, every motion or resolution of the Zoning Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency the voting provisions of Section 239-m of the General Municipal Law shall apply.

12.2.14.1.2. Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the Zoning Enforcement Officer within the time allowed by Section 12.2.9., the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision 12 of this section.

#### 12.3. Permitted action by Zoning Board of Appeals.

12.3.1. Orders, requirements, decisions, interpretations, determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the Zoning Enforcement Officer, and to that end shall have all the powers of the Zoning Enforcement Officer.

#### 12.3.2. Use variances.

12.3.2.1. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

12.3.2.2. No such use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,

12.3.2.2.1. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

12.3.2.2.2. that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

12.3.2.2.3. that the requested use variance, if granted, will not alter the essential character of the neighborhood;

12.3.2.2.4. that the alleged hardship has not been self-created; and

12.3.2.2.5. such other additional or different demonstrations that may be prescribed by section 267-b of the Town Law, as it may be amended from time to time.

12.3.2.3. The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems necessary and adequate to address the 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.

12.3.3. Area variances.

12.3.3.1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

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

12.3.3.2.1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

12.3.3.2.2. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

12.3.3.2.3. whether the requested area variance is substantial;

12.3.3.2.4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

12.3.3.2.5. 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; and

12.3.3.2.6. such other additional or different considerations that may be prescribed by section 267-b of the Town Law, as it may be amended from time to time.

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

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

## 13. SPECIAL USE PERMITS

### 13.1. General Provisions.

- 13.1.1. New Lebanon is a culturally, economically, socially and architecturally diverse community. The Planning Board and Zoning Board of Appeals shall consider this diversity in imposing conditions on Special Permits and shall not impose specific requirements concerning the exterior aesthetics of the structures being reviewed, except as required to achieve compliance with the performance standards of this article and the height, areas, size, setbacks and all other minimum and maximum limitations as detailed in this law.
- 13.1.2. Reviewing Agency. Special use permit applications shall be made to, and decided by, the Zoning Board of Appeals where the proposed use or development does not require Site Plan Review, or the Planning Board, where Site Plan Review is required. (As used in this Article 13, the term “Board” refers to either the Planning Board or Zoning Board of Appeals).
- 13.1.3. All uses allowed subject to special use permits are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered an individual case. Special permit uses are specifically declared to be allowed within the district in which they are located provided the Board makes a written finding that the individual case meets the special use permit standards of this Article. The Board shall not issue a permit to allow any use subject to the special use permit provisions of this Article unless the Board first finds that the use, as proposed, will be in compliance with the standards set forth in this Article.
- 13.1.4. For uses requiring a special use permit, no Building Permit or Certificate of Occupancy shall be issued by the Building Inspector until such use has been approved by the Board as provided herein. No premises shall be occupied or used and no Certificate of Occupancy shall be issued until all of the requirements of this Article, and all conditions of the special use permit, have been complied with. All uses allowed by special use permit are subject to site plan review pursuant to Article 14. To the greatest extent practicable, the Planning Board shall conduct special permit review and site plan review concurrently.
- 13.1.5. Violations. No special use permit approval shall be issued for any use or construction where there is on the subject property an existing violation of the Zoning Law. Further, upon written report or receipt of a notice from the Building Inspector of violation or order to cease and desist, the Board shall not review, hold public meetings or public hearings, and shall take no action regarding an application for special use permit approval until notified by the Building Inspector that such violation has been cured or ceased by the applicant. However, the Board may, upon written recommendation of the Building Inspector, review and act on an application involving property for which there is a violation where such application is a plan to cure the violation and bring the property or use of the property into compliance with this law.

### 13.2. Special Use Performance Standards.

- 13.2.1. In granting any special use permit, the Board shall take into consideration the public health, safety and general welfare, and the comfort and convenience of the public, in general, and of the immediate neighborhood in particular. The Board shall consider whether aspects of the proposed use are subject to regulation by other levels of government and whether compliance with such regulations is adequate to protect the public health, safety, and general welfare, and the comfort and convenience of the public. The Board may require

modifications to development proposals, submission of alternative design and layout proposals, and may attach reasonable conditions and safeguards to eliminate or minimize potential impacts as a precondition of its approval. Before making a decision on whether to approve, approve with modifications, or disapprove a special use permit, the Board shall give specific consideration to the following:

- 13.2.1.1. Fire and explosion hazards. All activities involving the storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion. Methods of prevention and suppression of these hazards shall be approved by the local officials responsible for fire prevention and public safety.
- 13.2.1.2. Radioactivity or electrical disturbance. No activities shall be permitted that emit radioactivity or electrical disturbance that will jeopardize the health of adjacent residents and properties or property or otherwise adversely affect the operation of any equipment other than that on the premises.
- 13.2.1.3. Noise. The maximum noise level at the property line applicable to the use involved shall not exceed 70 dB as measured in accord with the procedure specified by the American National Standards Institute.
- 13.2.1.4. Vibration. No vibration shall be permitted which is detectable, other than by instrument, at the property line.
- 13.2.1.5. Glare. No direct or reflective glare from any lighting or process shall be permitted where such will interfere with traffic safety or the useful enjoyment of adjoining properties.
- 13.2.1.6. Smoke. No emission shall be permitted of a shade equal to or darker than Ringelmann Smoke Chart No. 2.
- 13.2.1.7. Odors. No emission of noxious gases or other matter shall be permitted in a quantity or of a type that permits it to be detectable, other than by instrument, at the property line.
- 13.2.1.8. Other forms of air pollution. No emission of fly ash, dust, smoke, vapors, gases or other forms of air pollution, including construction related dust and odors, shall be permitted which can jeopardize human health, animal or vegetable life or which otherwise contributes to the deterioration of or detracts from adjacent properties; provided that for specific air pollutants that are regulated under federal or state law, compliance with all such applicable laws, regulations and/or permits issued thereunder shall constitute compliance with this performance standard.
- 13.2.1.9. Discharge of water. No polluting or objectionable waste shall be discharged into any stream or other natural drainage channel or upon the land that will in any way interfere with the quality, operation or continuation of these natural systems or contribute to their despoliation.
- 13.2.1.10. Traffic access. All proposed traffic access ways shall be adequate but not excessive in number, adequate in width, grade and alignment and visibility, and sufficiently separated from street intersections and places of public assembly, and shall meet other similar safety considerations.

- 13.2.1.11. Parking. Adequate off-street parking and loading spaces shall be provided in accordance with this local law to prevent parking in public streets of the vehicles of any persons connected with or visiting the use. Shared parking is encouraged where the peak parking demands of different uses occur at various times of the day. Use of a widely accepted means of projecting demand for shared use, such as the Urban Land Institute's Shared Parking report, shall be employed to demonstrate shared parking effects.
- 13.2.1.12. Circulation. The interior circulation system shall be adequate to provide safe accessibility to all required off-street parking, and to provide for the convenience and safety of vehicular, pedestrian, and bicycle movement within the site and in relation to adjacent areas or roads.
- 13.2.1.13. Landscaping and screening. All parking and service areas shall be reasonably screened at all seasons of the year from the view of adjacent residential lots and streets and the general landscaping of the site shall be in character with that generally prevailing in the neighborhood. Existing trees shall be preserved to the maximum extent practical.
- 13.2.1.14. Character. New Lebanon is a culturally, economically, socially, and architecturally diverse community. The Board shall consider this diversity in making conditions on Special Use Permits. The character of the proposed use, buildings, structures, outdoor signs and lighting shall be in general harmony with the character of the surrounding neighborhood and of the Town of New Lebanon.
- 13.2.1.15. Historic and natural resources. The proposed use shall be designed and shall be carried out in a manner that protects historic and natural environmental features on the site under review and in adjacent areas.
- 13.2.1.16. Sewage Treatment and Water Supply. The adequacy of available sewage disposal and water supply services supporting the proposed activity or use shall be sufficient to meet the needs of the proposed activity or use.
- 13.2.1.17. Emergency Services. All proposed buildings, structures, equipment and/or material shall be readily accessible for fire, police, and other emergency service protection.
- 13.2.1.18. Size and scale. The location and size of such use, the nature and intensity of operations involved in or conducted in connection with the use, the size of the site in relation to the use, its site layout and its relation to existing and future access streets shall be such that both pedestrian and vehicular traffic will not be hazardous or inconvenient to or incongruous with said residence district or conflict with the normal traffic of the neighborhood.
- 13.2.1.19. Additional safeguards and conditions. The Board shall impose additional conditions and safeguards upon the special use permit as may be reasonably necessary to assure continual conformance to all applicable standards and requirements, including reasonable assurance that these conditions and safeguards can be responsibly monitored and enforced.

### 13.3. Application Requirements, Review Procedures and Decision Schedule.

#### 13.3.1. Applications.

- 13.3.1.1. Applications for special use permits shall be in writing and on forms and in such quantity as may be prescribed by the Board, which forms at a minimum shall require the applicant to show, respectively, for each of the twenty performance standards set forth in Section 13.2 above how the proposed use meets the standard or why the standard is not applicable to the proposed use.
- 13.3.1.2. The application shall be accompanied by an Environmental Assessment Form and all necessary documentation to comply with SEQRA.
- 13.3.1.3. An application for a special use permit shall contain an agricultural data statement if any portion of the proposed use is located on property within an agricultural district containing a farm operation, or other property with boundaries within 500 feet of a farm operation located in an agricultural district. The agricultural data statement shall contain the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.
- 13.3.1.4. Prior to submittal of an application for a special use permit approval, applicants are encouraged to meet with the Zoning Enforcement Officer to review the proposed application and obtain a clear understanding of the application requirements, and the requirements of the Town Zoning Law. Although not required, applicants are encouraged to commence discussions with the owners of land abutting or in proximity to the project site to ascertain local concerns and local development issues early in the project design process.
- 13.3.1.5. Fees and costs. An application for a special use permit shall be accompanied by payment of an application fee as set by the Town Board. The application fee is in addition to any required escrow fees, and does not cover the cost of environmental review. The applicant shall be responsible for the total cost of environmental reviews that are determined to be necessary to meet the requirements of the State Environmental Quality Review Act (SEQRA). If the Board requires professional review of the application by a private planning, engineering, legal or other consultants, or if it incurs other extraordinary expense to review documents or conduct special studies in connection with the application, reasonable fees shall be paid for by the applicant and an escrow deposit will be required.

### 13.3.2. Procedures.

- 13.3.2.1. Within five (5) business days of receipt of an application, the Planning and Zoning Clerk will determine if the filing includes the required number of copies and all required accompanying documents. The Clerk will notify the applicant if copies or documents are missing. Properly filed applications will be forwarded to the Planning Board.
- 13.3.2.2. Provided that a properly filed application has been received by the Clerk at least five (5) business days prior to the next regularly scheduled meeting, at such meeting the Board shall review the application contents and determine if the application is complete. If deemed incomplete, the Board shall notify the applicant within five (5) business days in writing of the application's deficiencies. No application shall be deemed complete until a Determination of No Significance has been made pursuant to

SEQRA, or until a Draft Environmental Impact Statement has been accepted by the lead agency.

13.3.2.3. Within 62 days of receipt of a complete application, the Board shall hold a public hearing. Notice of the public hearing shall be published in the official newspaper at least ten (10) days prior to the date set for public hearing. In addition, not less than (10) days before the date of the hearing (not counting the date of the hearing), written notice of the public hearing shall be mailed to the owners of all property abutting the exterior boundaries of the land involved in the application, and to all other landowners having property located within 300 feet of the exterior boundaries of the land involved in the application, as the names of said owners appear on the last completed assessment roll of the Town. The notice shall include the name of the project, the location of the project site, and the date, place, time and subject of the public hearing at which the site plan will be reviewed. If an application for a special use permit contains an agricultural data statement, written notice of such application, including a description of the proposed project and its location, shall be mailed to the owners of land as identified by the applicant in the agricultural data statement. At least ten (10) days before such hearing, the Board shall mail notices thereof to the county planning board as required by section 239-m of the General Municipal Law.

13.3.2.4. Time of decision. The Board shall grant or deny the special use permit application within 62 days after the close of the public hearing, subject to compliance with the requirements of SEQRA and General Municipal Law section 239-m. In rendering its decision the Board shall grant, deny or grant with modifications and conditions the special use permit. The time within which the Board must render its decision may be extended by mutual consent of the applicant and the Board. The decision of the Board shall be filed in the office of the Town Clerk within five business days of the date such decision is rendered and a copy thereof shall be mailed to the applicant

13.4. Expiration. A special use permit shall be deemed to authorize only the particular special use or uses permitted in any district and shall expire if:

13.4.1. (i) where the special use involves construction requiring a building permit, the building permit application has not been filed within ninety (90) days of the date the special use permit was granted, or (ii) construction has not been commenced within one year, and has not been completed within two years of the date special use permit approval is granted.

13.4.2. If no construction is involved, approval shall expire if the use or uses have not been commenced within one year of the date special use permit approval is granted.

13.4.3. The special use or uses shall have ceased for more than 12 consecutive months.

13.5. Prescribed Standards for Certain Special Permit Uses. In addition to all other applicable requirements, uses for which a special permit is required shall meet the requirements set forth below:

13.5.1. Bed and Breakfast

13.5.1.1. Bed-and-breakfast shall be established, maintained and operated so as to preserve and complement the character and integrity of the surrounding area.

13.5.1.2. Off-street parking shall not be located in a front yard and shall be screened from roads and adjacent properties so as to not detract from the residential character of the site.

Off-street parking spaces for members of the owner's family residing in the dwelling unit as well as one parking space per room shall be provided. Any outdoor lighting shall use fully-shielded fixtures and shall not cause light to glare onto neighboring properties.

- 13.5.1.3. A single exterior sign or display may be established on the site of the bed-and-breakfast.

#### 13.5.2. Boarding House

- 13.5.2.1. In addition to meeting the minimum lot size requirements for the district within which it is located, there shall be a minimum of 5,000 sq. ft. on the lot, per room designated as sleeping accommodation for boarders, as well as 5,000 sq. ft. for the family residing on the lot.

- 13.5.2.2. All prescribed standards for Bed and Breakfast uses shall be met. Off-street parking shall not be located in a front yard and shall be screened from roads and adjacent properties so as to not detract from the residential character of the site. Off-street parking spaces for members of the owner's family residing in the dwelling unit as well as one parking space per room shall be provided. Any outdoor lighting shall use fully-shielded fixtures and shall not cause light to glare onto neighboring properties.

#### 13.5.3. Campgrounds; Seasonal Camps.

- 13.5.3.1. Such use shall conform to the requirements of the New Lebanon Local law entitled "Camping Ground Ordinance."

#### 13.5.4. Commercial Excavation.

- 13.5.4.1. Mining Operations may be subject to the Mined Land Reclamation Law (ECL Article 23, Title 27). In addition to meeting the requirements below, the granting of a special permit for any mining operation for which more than 1,000 tons of materials will be removed from the earth within 12 successive calendar months will be contingent upon the applicant obtaining a mining permit from the New York State Department of Environmental Conservation.

- 13.5.4.2. The Board in granting any such special use permit may impose reasonable conditions as allowed under the Mined Land Reclamation Law (ECL Article 23, Title 27) including conditions related to the following:

- 13.5.4.2.1. ingress and egress to public roads controlled by the Town of New Lebanon;

- 13.5.4.2.2. routing trucks on roads controlled by the Town of New Lebanon;

- 13.5.4.2.3. conditions in DEC's mining permit relating to setbacks, dust control, hours of operation;

- 13.5.4.2.4. enforcement of the reclamation requirements in DEC's mining permit.

- 13.5.4.3. A security or bond in a dollar amount to be determined by the Board to be sufficient to guarantee fulfillment of conditions imposed shall be posted.

- 13.5.4.4. No such permit shall be issued except upon written application. Such application shall include a diagram to scale of the land concerned, indicating existing and proposed elevations in the area to be excavated and stating the ownership and boundaries of the land for which such permit is sought, the names of all adjoining locations of existing and private ways nearest such land.
- 13.5.4.5. An applicant for a permit issued pursuant to Title 27 of Article 23 of the Environmental Conservation Law (or a successor statute) shall provide a copy of its application and supporting documents to the Board at the time its application is filed with DEC. The Board shall participate in DEC's mining permit process and shall advise DEC about the following issues:
  - 13.5.4.5.1. the appropriate setbacks from roads and property boundaries. There shall be a 200 foot setback from all road and property lines;
  - 13.5.4.5.2. the location and design of barriers to restrict access to the mine. Barriers shall be placed in first 200 feet and may only remove or alter the landscape/vegetation to the minimum extent necessary to create an entrance/exit for the operation. All entrance and exits shall ensure a safe line of site for trucks and other traffic;
  - 13.5.4.5.3. dust control issues;
  - 13.5.4.5.4. hours of operation. Hours shall be from 7 am to 5 pm only;
  - 13.5.4.5.5. whether mining is prohibited in that location;
  - 13.5.4.5.6. potentially significant environmental impacts.

#### 13.5.5. Day Care Centers

- 13.5.5.1. There shall be not more than (1) child for every 1,500 square feet of lot area..
- 13.5.5.2. All buildings, structures, and areas of organized activity such as play areas, swimming pools, etc., shall be not less than 75 feet from any property line.
- 13.5.5.3. Off-street parking areas shall be not less than 50 feet from any property line.
- 13.5.5.4. Outdoor floodlighting or public address systems are prohibited.

#### 13.5.6. Flea Markets

- 13.5.6.1. Flea markets may be permitted only in Commercial and Commercial Recreation areas on Routes 20 and/or 22.
- 13.5.6.2. 70% of Flea Market area must be reserved for parking.
- 13.5.6.3. Sanitary facilities shall be provided by the owner on site.
- 13.5.6.4. There shall be no on-street parking.

13.5.6.5. All access to Routes 20 and/or 22 shall have New York State Department of Transportation approval.

13.5.7. Motor Vehicle Fueling Stations; Motor Vehicle Repair Shops.

13.5.7.1. The lot shall have a minimum frontage along the principle street or highway of at least 150 feet.

13.5.7.2. No church, school, library, playground, or similar place of public assembly shall be within 500 feet of the site.

13.5.7.3. All pumps or buildings and lubricating and other devices shall be located at least 25 feet from any adjacent building, structure and street line.

13.5.7.4. Entrance or exit driveways shall be approved by the appropriate highway authority.

13.5.7.5. The area devoted to the outdoor storage of motor vehicles and/or parts thereof, or to purposes of dismantling, shall be screened from view of persons on adjacent properties by enclosing such within a solid fence eight (8) feet high, or such area shall be located inside a building.

13.5.7.6. Outdoor storage of other than motor vehicles shall be prohibited at all times. Premises shall not be used for the sale, rent or display of trailers, mobile homes, boats or other vehicles.

13.5.7.7. The business of selling gasoline may be accessory to a retail store pursuant to these standards.

13.5.7.8. The Board may limit the number of gas pumps to ensure consistency in scale between the gas filling station and adjacent land uses.

13.5.7.9. There shall be no glare of gas canopy islands outside the boundaries of the site.

13.5.7.10. All gas canopy lights shall be recessed with no bulb, lens or globes extending below the casing or canopy ceiling.

13.5.7.11. No signs shall be allowed on the canopy mansard, fascia or roof area covering gas dispensers.

13.5.7.12. All pumps, pump islands, tanks, piping and canopies shall be removed when fuel dispensing activity has been inactive for a period of 12 months.

13.5.7.13. Construction, maintenance and inspection of motor vehicle fueling stations shall comply with all applicable federal, state and county environmental protection and mitigation requirements relative to installation, use and removal of tanks and pumps. The Town will be supplied with copies of all bulk storage permits.

13.5.7.14. The Board shall require a traffic impact analysis.

13.5.7.15. The Board may limit hours of operation or limit acceptable hours of fuel delivery if residential structures are impacted.

13.5.7.16. Applicants shall evaluate site conditions and provide information, analysis, and evidence that the proposed gasoline station will not degrade the quality of groundwater.

13.5.7.17. A Motor Vehicle Repair Shop that engages in motor vehicle sales must comply with motor vehicle sales requirements. For Motor Vehicle Repair Shop uses, all repairs shall be conducted in an enclosed building.

#### 13.5.8. Golf Course; Private Recreation Area

13.5.8.1. There shall be a minimum lot size of two (2) acres.

13.5.8.2. All activities of such use shall be contained on the site at sufficient distance from the boundaries, and shall be laid out as not to adversely affect surrounding property and to assure that there is no danger to surrounding properties.

13.5.8.3. The golf course shall: utilize storm water pollution prevention techniques; incorporate best management practices; utilize natural landscaping; utilize integrated pest management techniques, minimize water usage, and protect environmentally sensitive locations and habitats on site.

#### 13.5.9. Home Occupation/Home Professional Office

There are three levels of HOME OCCUPATION, HO1, HO2, and HO3. HO2 and HO3 are defined and controlled as follows:

13.5.9.1. HO2 (Category 2) is a “minimal impact” use and is allowed with a non-transferable HOME OCCUPATION PERMIT issued by the Zoning Board of Appeals. No exterior aspects of the home occupation shall disrupt the residential character of the area. The Zoning Board of Appeals (ZBA) may place some restrictions on the operation of a HO2. This category is limited to a use which meets all of the following conditions:

13.5.9.1.1. Is carried on totally within the confines of the buildings.

13.5.9.1.2. Is carried on by a resident(s) of the property and not more than 2 non-resident persons.

13.5.9.1.3. Has no exterior storage of material or exterior variations from the residential character of the neighborhood.

13.5.9.1.4. Produces no unusual appearance, noise, vibration, smoke, dust, odors, heat, glare or electrical disturbances that would exceed those normally produced by a residence.

13.5.9.1.5. Does not substantially increase traffic in the neighborhood.

13.5.9.1.6. May have one (1) specialized vehicle on the premises, if screened or stored under cover.

13.5.9.2. HO3 (Category 3) is an “acceptable impact” use. This category requires a one (1) year renewable Home Occupation Permit with conditions for use of the property. This non-transferable permit is designed for Home Occupations that have the possibility of generating some noise, traffic or be somewhat intrusive to the present character of the neighborhood. This category may have special restrictions placed on it by the Board. If the Board in its judgment finds that unrestricted operation of the HO3 could appreciably alter the character of the neighborhood, the permit will be subject to revocation should those limits be exceeded. This category is restricted to a use that meets the following conditions.

13.5.9.2.1. Is carried on primarily within the confines of the buildings, but may make some minor use of outside space.

13.5.9.2.2. Is carried on by a resident(s) of the property and not more than three (3) non-resident employees.

13.5.9.2.3. May store more than one specialized vehicle, providing they are screened or under cover.

13.5.9.2.4. Produces no substantial offensive appearance, noise vibration, smoke, dust, odors, heat, glare or electrical disturbances beyond that produced by a normal residence. The ZBA may place restrictions on specific materials and quantities.

13.5.9.2.5. Does not cause a major increase in neighborhood traffic.

13.5.9.2.6. Has sufficient off-street parking for customers/clients.

13.5.9.2.7. The Special Use Permit will be for a period of one (1) year, extendable annually. For extension the resident will make an application to the Zoning Enforcement Officer. The Zoning Enforcement Officer will ascertain (by inspection) that all conditions (general and specific) of the permit are being met. If conformance is determined, or is being established during a one (1) week extension period, following notification of the resident by the Zoning Enforcement Officer, then the Zoning Enforcement Officer will renew the Special Permit for another year.

#### 13.5.10. Multi-family Dwellings

13.5.10.1. In addition to meeting the minimum lot size requirements for the establishing of the principal use, there shall be a minimum of 5,000 square feet on the lot per dwelling unit.

13.5.10.2. The Board, as part of the sketch phase of site plan review, shall evaluate the building design. Multi-family structures that have an appearance of a single-family dwelling are preferred. The Board shall ensure that the design is compatible with the existing character of neighborhood and town.

#### 13.5.11. Temporary Mobile Homes

13.5.11.1. A Mobile or Manufactured Home may be used as a temporary residence or business while a permanent building is being constructed. A Special Use Permit for one (1) year, renewable for two (2) six (6) month periods may be issued.

13.5.11.2. The first six-month extension shall be granted only upon satisfactory completion of the foundation, framing and sheathing of the permanent structure and shall be extended only upon good cause being shown and a showing that construction has not been completed. The Mobile or Manufactured Home shall be removed from the premises upon expiration of the permit.

#### 13.5.12. Motor Vehicle Sales

13.5.12.1. Motor vehicle sales are limited to that portion of Route 20 west of Route 22 to the western town line.

13.5.12.2. Repairs shall be conducted in an enclosed building.

13.5.12.3. Only minor repairs of motor vehicles which are for sale at this establishment may be performed unless the owner has received permits required to operate a Motor Vehicle Repair Shop.

13.5.12.4. Entrance and exit driveways shall total no more than two (2) in number and shall have an unrestricted width of no less than eighteen (18) feet, nor more than thirty (30) feet and be located no closer than twenty (20) feet to any side-lot line. Driveways must be approved by the proper authorities.

13.5.12.5. All vehicles shall be set back behind the curbing not less than 50 feet from the centerline of travel portion of the road. Curbing shall be required at the frontage of the road and cars shall be set back far enough behind the curbing so as not to interfere with visibility.

13.5.12.6. No banners, pennants, string flags, balloons or other such display shall be permitted.

#### 13.5.13. Adult Uses. See Chapter 60, Adult Bookstores and Adult Entertainment.

#### 13.5.14. Automobile Racing Facility

13.5.14.1 There shall be a minimum lot size of 5 acres.

13.5.14.2 The use shall be located along a state or county highway only; primary access shall be on the state or county highway and ingress and egress shall be approved by the New York State Department of Transportation or the County Department of Public Works.

13.5.14.3 Such use shall have a landscaped buffer area at least 50 feet wide along exterior lot lines and street frontages, suitably planted and maintained to provide a visual screening from adjacent properties.

13.5.14.4 At least 10 feet of such landscaped area shall be a coniferous evergreen planting a minimum of 6 feet in height, except within 10 feet of ingress and egress points, at which the coniferous planting shall be a maximum of 3 feet in height.

13.5.14.5 No structure shall be located within 100 feet of any property lines.

13.5.14.6 All activities of such use shall be contained on the site at sufficient distance from the boundaries, and shall be laid out as to not adversely affect surrounding property and to assure that there is no danger to surrounding properties.

13.5.14.7 Adequate off-street parking shall be available.

13.5.14.8 Any lighting shall be arranged so as not to cause a glare on surrounding properties.

## 14. SITE PLAN REVIEW

- 14.1. Intent and purpose. Through site plan review, it is the intent of this local law to promote the health, safety and general welfare of the town. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the town and, in addition, such an environment is deemed essential to the maintenance of the quality of life in the town and the general welfare of its inhabitants. It is further the intent of this local law to ensure optimum conservation, protection, preservation, development and use of the natural and man-related resources of the town, by regulating land use activity within the town through review and approval of site plans consistent with the adopted Town of New Lebanon Comprehensive Plan. It is the intent of this Article to promote and encourage good design standards, adequate site amenities and visual and physical qualities in residential, commercial and industrial development.
- 14.2. Authorization of Planning Board to review site plans. The Planning Board is hereby authorized to review and approve or disapprove site plans for land uses within the town as hereinafter designated pursuant to and in accordance with the standards and procedures set forth in this local law.
- 14.3. Costs. Cost incurred by the Planning Board for consultation fees or other expenses including but not limited to engineering, legal, architectural, planning, or traffic engineering services in connection with the review of the proposed site plan shall be charged to the applicant. The applicant shall deposit into an escrow account, established by the town specifically for this purpose, a sufficient amount to be used solely by the Town of New Lebanon to retain a qualified experts needed for review of the proposal as determined by the Planning Board.
- 14.4. Applicability of review requirements. The Use Table sets forth those land use activities that require site plan review and approval before being undertaken.. Any person uncertain of the applicability of this local law to a given land use activity may apply to the Zoning Enforcement Officer for such determination. Applicants who disagree with the determination of the Zoning Enforcement Officer, may apply for review by the Planning Board for a jurisdictional determination.
- 14.5. Procedures. Generally. Prior to receiving a building permit and undertaking any new land use activity requiring site plan review applicants shall prepare a sketch plan and attend the sketch plan conference as hereinafter set forth. The sketch plan shall be filed no fewer than five (5) working days prior to the next regularly scheduled Planning Board meeting.
  - 14.5.1. Sketch plan. A sketch plan conference shall be held between the Planning Board and the applicant prior to the preparation and submission of the application. The intent of such a conference is to enable the applicant to inform the Planning Board of his proposal prior to the preparation of a detailed site plan; and for the Planning Board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan application. In order to accomplish these objectives, the applicant shall provide the following for a sketch plan:
    - 14.5.1.1. A statement describing the project, giving evidence of compatibility with the Town of New Lebanon Comprehensive Plan and a time period for completion of the project.
    - 14.5.1.2. A rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations;

- 14.5.1.3. An area map showing the parcel under consideration for site plan review, and all properties, subdivisions, streets, rights-of-way, easements, agricultural operations, and other pertinent features within 200 feet of the boundaries of the parcel; and
  - 14.5.1.4. A topographic or contour map of adequate scale and detail to show site topography with contour intervals of at least 20 feet.
- 14.5.2. Application. Following the sketch plan conference, an application for site plan approval shall be made in writing to the chairman of the Planning Board. Five copies shall be filed with the clerk. The application shall include:
- 14.5.2.1. A description of the planned use;
  - 14.5.2.2. An erosion and storm water control plan to prevent the pollution of surface of ground water, erosion of soil both during and after construction, excessive runoff, excessive raising or lowering of the water table and flooding of other properties, as applicable. This plan must comply with the New York Guidelines for Urban Erosion and Sediment Control and if more than one acre of a site is disturbed, must be permitted by the New York State Department of Environmental Conservation. Where appropriate, the Planning Board may request soil logs, percolation test results and storm runoff calculations;
  - 14.5.2.3. A description of the method of sewage disposal and location, design and construction materials of such facilities;
  - 14.5.2.4. A description of the method of securing potable water and location, design and construction materials of such facilities;
  - 14.5.2.5. An estimated project construction schedule;
  - 14.5.2.6. Identification of any noise producing elements of the project and an estimation of noise levels to be generated in decibels.
  - 14.5.2.7. Identification of any permits from other governmental bodies required for the project's execution and a schedule showing when applications for such permits will be filed;
  - 14.5.2.8. An Agricultural Data Statement as defined in this local law;
  - 14.5.2.9. Other elements integral to the proposed development as may be considered necessary in the particular case by the Planning Board; and
  - 14.5.2.10. Disclosure if Industrial Development Agency funding, tax-exempt status or tax abatements are to be sought in conjunction with this project.
  - 14.5.2.11. A drawing or drawings containing the following:
    - 14.5.2.11.1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
    - 14.5.2.11.2. North arrow, scale and date;
    - 14.5.2.11.3. Boundaries of the property plotted to scale;
    - 14.5.2.11.4. Existing buildings and right-of-ways;

- 14.5.2.11.5. Rock outcrops, depth to bedrock, soil characteristics, watercourses, slopes in excess of 15% and grading and drainage plan, showing existing and proposed contours;
  - 14.5.2.11.6. Location, architectural design, type of construction, proposed use and exterior dimensions of all buildings;
  - 14.5.2.11.7. Location, number, design and type of construction of all parking and truck loading areas, showing access and egress, including those spaces dedicated for handicapped parking;
  - 14.5.2.11.8. The location of all present and proposed public and private ways, driveways, sidewalks, ramps, curbs, paths, and other pedestrian access;
  - 14.5.2.11.9. Location of outdoor storage, and location, type and screening details for all waste disposal containers, if any;
  - 14.5.2.11.10. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, catch basins, head walls, end walls, hydrants, detention ponds, drainage swales, retaining walls and fences;
  - 14.5.2.11.11. Location of fire and other emergency zones, including the location of fire hydrants, if any;
  - 14.5.2.11.12. Location, design and construction materials of all energy production and distribution facilities, including electrical, gas and solar energy;
  - 14.5.2.11.13. Location, size, height, materials, and design and type of construction of all proposed signs;
  - 14.5.2.11.14. Location and proposed development of all buffer areas, including existing vegetative cover and buffers designed to protect stream corridors, if present;
  - 14.5.2.11.15. Location, height, design, intensity and bulb type of outdoor lighting facilities;
  - 14.5.2.11.16. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;
  - 14.5.2.11.17. General landscaping plan and planting schedule. The landscape plan should show existing natural features that may influence the design of the proposed use such as rock outcrops, single trees eight or more inches in diameter located within any area where clearing will occur, forest cover and water sources and all proposed changes to these features. Water sources include ponds, lakes, wetlands, watercourses, aquifers, floodplains and drainage retention ponds; and
  - 14.5.2.11.18. If the proposed project is located within the Flood Zone Overlay, all site plans for development shall be in conformance with the provisions of Chapter 113 of the Code of the Town of New Lebanon (Flood Damage Prevention).
- 14.5.2.12.A Full Environmental Assessment Form as required by SEQRA. A short Environmental Assessment Form will be sufficient for proposed single and two-family residences located in a New York State-certified Agricultural District.

14.5.3. Required fee. An application for site plan review shall be accompanied by the currently applicable fee.

14.6. General review standards and considerations. The Planning Board's review of the site plan shall include, as appropriate, but is not limited to, the following general considerations and shall ensure compatibility between the proposal and the Town of New Lebanon Comprehensive Plan and applicable state and county regulations:

14.6.1. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs. Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture (including but not limited to roof style and facades), massing, and placement, shall harmonize with traditional elements of the area, and shall avoid features such as flat roofs, large expanses of undifferentiated facades and long plain wall sections. Architectural design shall be in keeping with the small-town architectural character of the area. Exterior lighting fixtures shall minimize glare and use design features such as, but not limited to, fully shielded fixtures to prevent light from shining onto neighboring properties or public ways and unnecessarily illuminating the night sky. Structures should be optimally placed to protect important viewsheds. Structures and activities shall be placed or buffered in a manner that protects adjacent agricultural operations.

14.6.2. Adequacy, arrangement, and compliance with the applicable municipal regulations regarding vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls, and adequacy of snow storage and ease of snow removal. The Town Planning Board shall forward the site plan to the Highway Department for review.

14.6.3. Location, arrangement, appearance and sufficiency of off-street parking and loading. Use of pervious surfaces such as gravel or pavers are encouraged to reduce stormwater runoff.

14.6.4. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.

14.6.5. Adequacy of storm-water and drainage facilities and compliance with all applicable NYS DEC Storm-water Regulations.

14.6.6. Adequacy of water supply and sewage disposal facilities as per Columbia County Health Department.

14.6.7. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation. Landscaping shall be an integral part of the project area. To the extent practical, existing trees and other vegetation shall be conserved and integrated into the landscape design plan. Landscaping shall buffer incompatible uses such as large-scale commercial uses and residences.

14.6.8. Adequacy of fire lanes and other emergency zones to provide emergency access to structure(s) and the provision of fire hydrants if necessary.

14.6.9. Protection of adjacent or neighboring properties against noise, glare, unsightliness or nuisances.

14.6.10. Adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

14.6.11. Overall impact on the neighborhood including compatibility of design consideration.

14.6.12. Adequacy and impact of structures, roadways and landscaping in areas of steep slope and along ridgelines.

14.6.13. Overall impact on wetlands and surface water resources especially related to impacts of erosion and other forms of pollution.

#### 14.7. Specific Standards

##### 14.7.1. General Lighting:

14.7.1.1. Where used for security purposes or to illuminate walkways, roadways, and parking lots, only shielded light fixtures shall be used. On-site lighting should be located to avoid harsh glares which distract the motorist's line of sight. The luminaire shall emit no direct light above a horizontal plane through the lowest direct light emitting part of the luminaire. Fully shielded fixtures are required. The maximum height of the luminaire may not exceed 18 feet.

14.7.1.2. Light fixtures used to illuminate flags, statues, or any other objects mounted on a pole, pedestal or platform shall use a narrow cone beam of light that will not extend beyond the illuminated object.

14.7.1.3. Direct light emissions shall not be visible above the building roof line for other upward directed architectural, landscape, and decorative lighting.

14.7.1.4. Externally illuminated signs including building identification signs shall only use shielded light fixtures.

##### 14.7.2. Light Trespass and Glare. All light fixtures shall be designed, installed, and maintained to prevent light trespass, as specified below:

14.7.2.1. Outdoor lighting shall be designed, installed, and maintained in a manner which does not present a disabling glare hazard to drivers or pedestrians. All reasonable measures, such as altering pole height, changing bulb type or using shielded fixtures, shall be taken to prevent the projection of a nuisance glare onto neighboring properties. Outdoor light fixtures properly installed and thereafter maintained shall be directed so that there will be no objectionable direct light emissions.

14.7.2.2. At the property line of the subject property, illumination from light fixtures shall not exceed 0.1 foot-candles on adjacent residential property, or 0.5 foot-candles on adjacent business property, measured in a vertical plane.

14.7.2.3. The Planning Board may, as it deems appropriate, require that lighting be controlled by automatic timing devices to extinguish offending sources during specified periods to mitigate impacts. The Planning Board may also require that lighting, except for security lighting, be extinguished between the hours of twelve midnight and 6:00 a.m. for businesses that are not in operation during that time.

14.7.2.4. Glare control shall be accomplished primarily through the proper selection and application of lighting equipment. Only after those means have been exhausted shall vegetation, fences, and similar screening methods be considered acceptable for reducing glare.

14.7.3. Light Fixture Design - Fixtures must be properly designed for the intended purpose. Lamps shall not be directly seen from normal viewing angles. Lamps shall be directed so that light output is directed toward the surface to be lighted.

14.7.3.1. Mercury-Vapor greater than 40 watts and Quartz Halogen Lamps are prohibited light sources.

14.7.3.2. Poles and fixtures shall harmonize with the architectural character of the development and surrounding area.

#### 14.7.4. Fixture Installation

14.7.4.1. Lighting fixtures shall not be mounted in excess of the maximum permitted building height, or as permitted in Sections 14.7.1 and 14.7.2.

14.7.4.2. Electrical feeds to lighting standards shall be run underground.

14.7.5. Lighting plans shall be included in site plan review. Lighting plans submitted for review and approval for subdivision and land development and site plan review shall include a layout of proposed fixture locations, footcandle data that demonstrate conforming intensities and uniformities; and a description of the equipment, glare control devices, lamps, mounting heights and means, hours of operations, and maintenance methods proposed.

#### 14.7.6. Landscaping Standards

14.7.6.1. Buffers. Landscape buffers shall be provided between all residential and new commercial uses. Buffers may include planted trees and shrubs, hedgerows, berms, or existing forest land. The width of such buffer areas will depend upon the topography, scale of the use and their location on the property but shall normally be between fifty and two hundred feet. Landscaping shall be an integral part of the entire project area and shall either buffer the site from or integrate the site with the surrounding area or both.

14.7.6.2. Existing Vegetation. Building placement and lot layout shall be designed to relate to and incorporate existing vegetation. Insofar as practical, existing trees and other vegetation shall be conserved and integrated into the landscape design plan.

14.7.6.3. Landscape Components. Primary landscape treatment shall consist of shrubs, ground cover and shade trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Selected landscape plants should be native to the area to the extent practicable. The Planning Board may require that shade trees three-inch in caliper or 12 feet in height be planted and maintained at twenty to thirty foot intervals along roads, preferably in the parkway between the road edge and sidewalk, if present, or within a ten-foot setback from the road edge.

14.7.6.4. Screening. Open storage areas, exposed machinery, and areas used for storing and collecting rubbish shall be screened from roads and surrounding land uses. Suitable types of screening include wood fences and dense evergreen hedges of five feet or more in height. Where evergreen hedges are proposed, a temporary fence shall be built to provide screening until the evergreens are of sufficient height.

#### 14.7.7. Roads and Road Access Standards.

- 14.7.7.1. Access from major streets. Lots in subdivisions should be arranged to minimize driveway access from major streets. Where driveway access from a major street may be necessary for several adjoining lots, the Planning Board may require that such lots be served by a combined access driveway in order to limit possible traffic hazard on such street. See also Driveways, Article 8, Section 8.4.6, above for standards related to shared driveways.
- 14.7.7.2. Frontage Required. No building permit or Certificate of Occupancy shall be issued for any structure or use unless the lot on which that structure or use is located has frontage of at least 60 feet on a street or common driveway.
- 14.7.7.3. Vehicle Access and Circulation. Multiple curb cuts shall be consolidated to the maximum extent practicable in order to provide clearly defined entrances and reduce conflicting vehicular movement.
- 14.7.7.4. Any new street shall be constructed in full compliance with the requirements of Road Specifications of the Town of New Lebanon (Chapter 179). New roads should be interconnected except in areas where extreme topographic or wetland conditions preclude connections.
- 14.7.8. Specific standards and considerations for Agricultural District. The following specific standards shall apply to site plans located within an Agricultural District. The Planning Board's review of the site plan for these locations shall include, as appropriate, but not limited to, the following general considerations and shall ensure compatibility between the proposal and the Town of New Lebanon Comprehensive Plan:
  - 14.7.9. Overall impact on existing agricultural operations within the district.
  - 14.7.10. The landscape plan will show a landscaped buffer a minimum of 50 feet or more where practicable between the proposed residential use and an adjoining agricultural use.
- 14.8. Public hearing, referral, and Planning Board decision.
  - 14.8.1. Public hearing. The Planning Board may conduct a public hearing on the site plan if considered desirable by a majority of its members. Such hearing shall be held within 62 days of the receipt of a completed application for site plan review and shall be advertised in the town's official newspaper, or if there is none, in a newspaper of general circulation in the town at least five (5) days before the public hearing. The Planning Board shall give notice to the applicant at least ten (10) days before the public hearing.
  - 14.8.2. Referrals to County Planning Board. At least ten days before such hearing, a copy of the application and any accompanying documents shall also be sent to the Columbia County Planning Board for its review, as required by section 239-m of the general municipal law, where any site plan review application affects real property lying within five hundred (500) feet of the town boundary, or of the boundary of any existing or proposed county or state park or other recreation area, or of the right-of-way of any existing or proposed county or state parkway, expressway, road or highway, or of the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines, or of the existing or proposed boundary of any county or state owned land on which a public building or institution is situated. In the event a public hearing is not required, such proposed action shall be referred before final action is taken thereon. No action shall be taken upon any matter referred to the Columbia County Planning Board until said Board shall have made a recommendation thereon to the Town Planning Board or thirty (30) days shall have elapsed since the date of referral. If the County Planning Board disapproves the proposal or

recommends modification thereof, the Town Planning Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one (1) of all members and after the adoption of a resolution fully setting forth the reasons for such contrary actions. If significant changes have been made by the Planning Board or applicant to a site plan after the Columbia County Planning Board has been completed, the Planning Board shall re-refer the site plan application to the County Planning Board for a new review under 239-m.

14.8.3. Planning Board decision. Within 62 days of receipt of the completed application for site plan approval or if a public hearing is held within 62 days of public hearing, the Planning Board shall render a decision. In its decision the Planning Board may approve, approve with modifications or disapprove the site plan. The time period in which the Planning Board must render its decision can be extended by mutual consent of the applicant and the Planning Board.

14.8.3.1. Approval. The Town Planning Board will approve the site plan, provided that it finds the facts submitted with the site plan establish that:

14.8.3.1.1. The location, nature and intensity of the use involved shall be such that it will be in harmony with the orderly development of the Town as proposed in the Comprehensive Plan, and will not discourage the appropriate development and use of adjacent land and buildings;

14.8.3.1.2. Existing streets are suitable and adequate to carry anticipated traffic generated by the proposed use and in the vicinity of the proposed use;

14.8.3.1.3. The proposed use will not be detrimental to personal safety within the area, the natural characteristics of the site or area, and surrounding uses; and

14.8.3.1.4. The use meets the standards listed in sections 14.6-14.8 of this article 14.

14.8.3.2. Upon approval of the site plan, and payment by the applicant of all fees and reimbursable costs due the town and not yet paid, the Planning Board shall endorse its approval on a copy of the site plan and shall file it and a written statement of approval within 5 business days with the town clerk. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.

14.8.3.3. Approval with modifications. The Planning Board may conditionally approve the final site plan. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

A copy of written statement containing the modifications required by the conditional approval will be mailed to the applicant by certified mail, return receipt requested. After adequate demonstration to the Planning Board that all conditions have been met, and payment by the applicant of all fees and reimbursable costs due the town, the Planning Board shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.

14.8.3.4. Disapproval. Upon disapproval of the site plan the decision of the Planning Board shall immediately be filed with the town clerk and a copy thereof mailed to the applicant by certified mail, return receipt requested, along with the Planning Board's reasons for disapproval.

#### 14.9. Miscellaneous provisions

- 14.9.1. Integration of procedures. Whenever the circumstances of proposed development require compliance with this Site Plan Review Law and with any other local law, ordinance or requirement of the town, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this local law with the procedural and submission requirements for such other compliance.
- 14.9.2. Enforcement. No certificate of occupancy shall be issued until all improvements shown on the approved site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed. This sufficiency of such performance guarantee shall be determined by the Town Planning Board after consultations with the Town Board, Zoning Officer, Town Attorney and/or other appropriate parties.
- 14.9.3. Expiration of Site Plan Approval. Site plan approval shall automatically terminate one (1) year after the same is granted unless a building permit has been issued and there is physical evidence to demonstrate that the project is in progress. An applicant may request one six-month extension of this time frame.
- 14.9.4. Consultant review. The Planning Board may consult with but not limited to the following: the Town Building Inspector, Fire Commissioners, environmental organizations, Highway Department Superintendent, Town Engineer, other local and county officials, the New York State Health Department, Department of Environmental Conservation, the New York City Department of Environmental Protection, and the New York State Department of Transportation. The Planning Board may hire a consultant, if needed, to review plans.

## 15. AMENDMENTS

### 15.1 Amendments, How Initiated

- 15.1.1 The Town Board may from time to time on its own motion, amend, supplement, repeal or change the regulations and district boundaries established by this local law, following the procedures set forth in subsections 15.2 through 15.5.
- 15.1.2 Whenever the owners of fifty (50) percent or more of the frontage in any district shall present a petition duly signed and acknowledged to the Town Board, requesting an amendment, supplement or change of the regulations prescribed for such district or part thereof, it shall be the duty of the Town Board to vote upon said petition within thirty (30) days after the filing of the same by the petitioners with the Town Clerk.
- 15.1.3 The Planning Board or Zoning Board of Appeals may by resolution propose an amendment to the Town Board suggesting a change or repeal of the regulations. Within thirty (30) days from the time such resolution is filed with the Town Clerk it shall be the duty of the Board to vote on such proposed amendment.

### 15.2 Referral of Proposed Amendments to the Town Planning Board and to the County Planning Board

- 15.2.1 All proposed amendments, supplements or changes originating by petition or by motion of the Town board shall be referred to the Planning Board for a report and recommendation thereon. The Planning Board shall submit its report within thirty (30) days after receiving such referral. If the Planning Board fails to report within the required time, the Town Board may act without such a report.
- 15.2.2 On any amendment proposal before the Town Board, a copy of a description of the proposal shall be mailed to the Columbia County Planning Board, in any case where the land involved in the proposal is within 500 feet of:

The boundary of any other municipality.

Any State or County park or recreation area.

The right-of-way of any State or County highway.

The right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines.

The boundary of any State or County owned land on which a public building or institution is situated.

- 15.2.3 No action shall be taken on proposals referred to the Columbia County Planning Board, until the County Board's recommendation has been received, or 30 days have elapsed after the Board has received the full statement on the applicant's proposal, unless the County and the Town agree to an extension beyond the 30 day requirement for the County's review.

### 15.3 Hearing on Proposed Amendment

Before any amendment, supplement or change in the regulations or district boundaries, there shall be a public notice and hearing thereon as provided by law.

### 15.4 Adoption of Amendment

After the public hearing, and referral to and report by the Planning Board, the Town Board shall act on the proposed amendment. A majority vote of the members of the Town Board shall be required to amend the zoning local law except as described in Section 15.6 below.

### 15.5 Publication and Posting

Every amendment to the Zoning Local law, including any map incorporated therein, adopted in accordance with the Town Law shall be entered in the minutes of the Town Board and a copy thereof, exclusive of any map incorporated therein, shall be published once in the official newspaper of the Town and a copy of such amendment together with a copy of any map incorporated there, shall be posted on a sign board maintained by the Town Clerk pursuant to Subdivision 6 of Section 30 of the Town Law. Affidavits of the publication and posting thereof shall be filed with the Town Clerk.

### 15.6 Protest Petition

If a protest against a proposed amendment, supplement or change is presented to the Town Board, duly signed and acknowledged by the owners of twenty (20) percent or more of the area of the land included in such proposed change, or by the owners of twenty (20) percent or more of the land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of twenty (20) percent or more of land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of four members of the Town Board.

### 15.7 Periodic Review of Zoning Local law

From time to time, at intervals of not more than three (3) years, the Planning Board shall re-examine the provisions of this local law and the location of district boundary lines and shall submit a report to the Town Board recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or the general welfare.

## **16. MISCELLANEOUS**

### 16.1 Validity

Should any section, clause or provision of this local law be declared by the courts to be invalid, the same shall not affect the validity of the local law as a whole or any part thereof other than the part so declared to be invalid and only to the extent of such invalidity.

### 16.2 Interpretation, Conflict with Other Laws

In their interpretation and application, the provisions of this local law shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety, or the general welfare. Whenever the requirements of this local law are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances the more restrictive, or that imposing the higher standards shall govern.

### 16.3 Effective Date

16.3.1 This Local Law, together with the Zoning Map, shall take effect upon filing with the Secretary of State.

## 17. DEFINITIONS

Any term used in this local law which is not defined hereinabove shall carry its customary meaning or that according to the New York State building code unless the context otherwise dictates.

Word used in the present tense includes the future tense.

The singular includes plural.

The word "person" includes a "corporation" as well as an "individual".

The word "lot" includes the word "plot" or "parcel".

The term "shall" is always mandatory.

The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied".

**ACCESSORY USE** – A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

**ADULT USE** – See Chapter 60 of the Code of the Town of New Lebanon.

**AGRICULTURAL OPERATION** – All activities directly related to the grazing, growing or raising of crops or livestock, including but not limited to horticultural and fruit production, but not including timber harvesting, provided that such activities are conducted on seven (7) acres producing \$10,000 in gross sales or less than seven (7) acres producing \$50,000 in gross sales. Timber harvesting and drainage or permanent alteration of wetlands, watercourses or controlled areas is not included in agricultural activities. See also definition for Farm.

**AGRICULTURAL DATA STATEMENT** – is a written identification of farm operations within an agricultural district located within 500 feet of the boundary of property upon which a site plan review is being conducted, as provided in Section 305-a of the Agricultural and Markets Law of the State of New York. An "Agricultural Data Statement" shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; and a tax map or other maps showing the site of the proposed project relative to the location of farm operations identified in the Agricultural Data Statement.

**AGRI-TOURISM** – Activities conducted on a farm and offered to the public, or to invited groups, for the sale of agricultural products, education, recreation or active involvement in the farm operation. An agri-tourism activity may be secondary to the primary farm use. Agri-tourism activities may be conducted in an accessory building or structure, and include, but not limited to on-farm bed and breakfasts, farm stay programs, u-pick operations and pumpkin patches.

**ALTERATIONS** – As applied to a building or structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

**AREA REGULATIONS** – The regulation of building size, setbacks or yards, parking and loading requirements and similar regulations, but excluding any performance standards.

**AUCTION SALES** – The use of land and/or buildings for the public sale of goods to the highest bidder. For the purposes of this local law, such use shall not include the sale of livestock and shall not be considered a store.

**AUTOMOBILE** – See "Motor Vehicle"

**AUTOMOBILE RACING FACILITY** - A facility designed for the outdoor recreation involving automobile racing, with or without spectators. For the purposes of this ordinance, this use shall not include the racing of vehicles such as motorcycles, dirt bikes, snowmobiles, jet cars, trucks and fire trucks.

**BAR** – Premises used primarily for the sale or dispensing of liquor by the drink for on-site consumption and where food may be available for consumption on the premises as accessory to the principal use.

**BED AND BREAKFAST** – An owner or operator occupied dwelling used for renting accommodations to transient fee paying guests and providing not more than one or two meals to guests only.

**BOARDING HOUSE** – A owner or operator occupied dwelling used by fee paying guests paying for sleeping accommodation with or without the provision of meals.

**BOND** – A written agreement issued by a qualified agent, which guarantees either the performance of a certain agreed-upon activity or an equivalent consideration if the activity is not completed as required.

**BOWLING ALLEY** – A recreational business that accommodates bowling. Such a use also serving food and alcoholic beverages would constitute different uses.

**BUFFER AREA, BUFFER ZONE** – Open space, landscape areas, fences, walls, berms or any combination thereof used to physically separate or screen one use or property from another use or property so as to visually shield or block noise, light, or other nuisances.

**BUILDABLE AREA** – The space remaining on a legal lot after the minimum yard, area and bulk requirements have been met.

**BUILDING** – Any structure other than a boundary wall or fence.

**BUILDING, ACCESSORY** – A supplemental building, the use of which is incidental to that of a main or principal building and located on the same lot therewith.

**BUILDING COVERAGE** – The amount of land covered or permitted to be covered by a building or buildings, measured in terms of a percentage of the total lot area. Such coverage is to be measured at mean grade level and excludes uncovered porches, terraces, and steps.

**BUILDING ENVELOPE** – The space within which a structure is permitted to be built on a lot and that is defined by minimum yard setbacks and includes all disturbances for building, driveways, well and septic systems.

**BUILDING, FRONT LINE OF** – The line of that face of the building nearest the front lines of the lot. This face includes sun parlors and covered porches whether enclosed or un-enclosed but does not include steps.

**BUILDING HEIGHT** – The vertical distance measured from the mean elevation of the proposed finished grade at the front entrance of the building to the highest point of the roof for flat roofs, to the deck line of the mansard roofs and to the medium height between eaves and ridge for gable, hip and gambrel roofs.

**BUILDING, PRINCIPAL** – A building in which is conducted the main or principal use of the lot on which said building is situated.

**CAMPGROUND** – Any lot, or adjoining lots if under the control of one person or business, including buildings and other structures on such lot, on which are located five or more campsites, tents, tent houses, trailers, cabins, camp cottages, vehicles, including recreational vehicles, or other structures intended for temporary or seasonal overnight occupancy. Excluded from this definition is the use of the yard of an

existing occupied residence for occasional and irregular overnight camping by (i) family members or guests of the resident or (ii) groups (such as scouts), being hosted by the resident.

**CAR WASH** – A structure containing facilities for washing motor vehicle.

**CELLULAR TOWER** – See telecommunications tower.

**CEMETERY** – A place for the interring of the deceased.

**CHURCH** – A building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

**COMMERCIAL EXCAVATION** – The use of land for quarrying, soil mining, the removing of fill gravel, stone or other earth materials, and for commercial (sale) purposes.

**COMPREHENSIVE PLAN** – The long range plan intended to guide growth and development of the town, expressing official policy on the course of its housing, public utilities, community facilities, transportation and land use distribution and intensity and adopted according to New York State Town Law 272-a.

**CONSERVATION SUBDIVISION** – a subdivision approved by the Planning Board that employs relaxed area and bulk requirements otherwise applicable so as to provide open space and natural resource protection. A Conservation Subdivision may include clustering but may also be approved for subdivisions involving as few as two resulting lots.

**CONVENIENCE STORE** – A freestanding retail store offering primarily packaged groceries and offering token selections of a wide variety of sundries. Convenience stores shall be a maximum of 5,000 square feet and shall not include the dispensing of gasoline or other motor vehicle fuels unless appropriate approvals for a gas station have been obtained.

**CONVERSION** – A change in use or occupancy of a dwelling.

**COVERAGE** – That percentage of the plot or lot area covered by the building area.

**DANCE HALL** – A structure used for the purpose of dancing where food and beverages may be provided as accessory use.

**DAY CARE, IN-HOME** – Daytime care or instruction of three or more individuals away from their own homes conducted in a residence for more than 3 but less than 24 hours per day on a regular basis by an individual, association, corporation, institution or agency, whether or not for compensation. Day Care is an HO2 or HO3 use.

**DAY-CARE CENTER** – A place other than an occupied residence, providing or designed to provide day care for any number of individuals.

**DENSITY** – The ratio of lot area per family or dwelling unit on a lot.

**DISTURBANCE** – All land preparation activities involving the movement, placement, removal, transfer or shifting of soil and/or vegetation, including but not limited to clearing, draining, filling, grading, re-grading or the building of structures or the placement of improvements on land including the construction of individual sidewalks, paths, roads or driveways. The condition of land disturbance shall be deemed to continue until the area of disturbance is returned to its original state or to a state complying with a permit for such disturbance granted in accordance with this Chapter.

**DWELLING** – A building designated or used as the living quarters for one or more families.

**DWELLING, ONE-FAMILY** – A detached 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 plot containing separate living units for three or more families for lease or rent only.

**DWELLING UNIT** – A building or portion thereof providing complete housekeeping facilities for one family.

**EXCAVATION** – Any activity which removes or significantly disturbs rock, gravel, sand, soil or other natural deposits.

**FAMILY** – One or more persons, related by blood, marriage or adoption, including foster children, who are living together and maintaining a common household, or up to five persons who are not so related who are living together and maintaining a common household

**FARM** – The land and on-farm buildings, equipment, manure processing and handling facilities, and practices, including the sale of products produced on premises, which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a commercial horse boarding operation as defined in this local law. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other. It includes necessary farm structures within the prescribed limits and the storage of equipment used for farm operations. It excludes the raising of furbearing animals, riding academies, and dog kennels.

**FARM MARKET** – A permanent year-round structure for the purpose of the retail sale of farm produce and agricultural products, whether produced on premises or elsewhere.

**FARM STAND** – A roadside structure used seasonally for the sale of farm produce and agricultural products produced on premises.

**FLEA MARKET** – An occasional or periodically held market in an open or structure where spaces are rented to groups or individual sellers who offer goods for sale to the public. This does not include individual garage or tag sales.

**FLOOR AREA** – The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

**FLOODPLAIN** – A land area adjoining a river, stream, watercourse, bay or lake that is likely to be flooded.

**FRONTAGE** – That side of the lot nearest the street. A corner lot shall be considered to have two such frontages.

**GARAGE SALE** – The sale of household items displayed in a yard, garage, barn or porch of a residence, provided the items are owned by the persons conducting the sale, one of whom must be the occupant of the residence where the sale is being held, and the duration of the sale is limited to no more than two consecutive weekends. Households may conduct or participate in such sales no more frequently than once per six calendar month period. “Garage Sale” includes “Porch Sale,” “Yard Sale,” “Tag Sale” and all other similar sales.

**GROCERY STORE** – A commercial establishment for the retail sale of food and related consumable items.

**HARMONIZE** – To arrange different uses, buildings and /or structures in a pleasing manner.

**HILLTOP** – See Ridgeline.

**HISTORIC PRESERVATION** – The protection, rehabilitation and restorations of districts, sites, buildings, structures and artifacts significant in American History, architecture, archaeology or culture.

**HOME OCCUPATION** – A profession or other occupation conducted within a dwelling unit by one (1) or more members of the family residing therein and clearly incidental to the principal use of the lot for residential purposes. In particular, a home occupation includes, but is not limited to, art studios, dressmaking, teaching, with musical or dancing instruction limited to a single pupil at a time, offices of a clergyman, lawyer, landscape architect, physician, dentist, architect, engineer, optician, realtor, accountant, plumbing and electrical contractors, barber shop, beauty parlor, or similar use, but shall not include animal hospital or dog kennels, automotive repair service, restaurant, clinic or hospital or similar use. Home occupations fall into one of three categories: HO1, HO2 or HO3.

**HOME OCCUPATION 1** is a “zero impact” use and is allowed in all districts in which residential uses are allowed. This category is designated for those occupations that make no impact on the neighborhood, so that there is no external evidence of the occupation. All of the following requirements must be met:

- a. No signs are allowed;
- b. No increase in traffic;
- c. No special purpose vehicles will be on the property; and
- d. No non-residents of the property shall be employed.

**HOME OCCUPATION 2 and 3** – See Article 13, Section 13.5.9.

**HORSE BOARDING OPERATION** – A farm operation consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives \$10,000 or more in gross receipts annually for fees generated either through the boarding of horses or through the production for sale of crops, livestock, livestock products, or through both such boarding and such production. A horse boarding operation provides care, housing, health, related services and training to animals kept on the premises or on other properties owned or leased by the farm operator. Riding and training activities that are directly related to and incidental to the boarding and raising of horses, including riding lessons for persons who own or have a long-term lease from the farm owner for the horse that is boarded at the farm and uses for such activities, are part of the farm operation. Riding academies offering riding lessons to the public and to individuals that do not own or have a long-term lease for the horse that is boarded and used at the facility for such riding and operations whose primary function is horse racing are not considered a horse boarding operation.

**HORSE FARM** – An agricultural operation related to the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this be construed to include operations whose primary on site function is horse racing.

**HOSPITAL** – Unless otherwise specified, the term “hospital” shall be deemed to include sanitarium, preventorium, clinic, rest home, nursing home, convalescent home, and any other place for the diagnosis, treatment or other care of human ailments.

**HOTEL** --A building containing more than five rooms for sleeping purposes which are used or rented by fee paying guests and where only a general kitchen and dining room are provided within the building or in an accessory building.

**IMPERVIOUS SURFACE** --Any material that prevents absorption of stormwater into the ground.

**INDUSTRIAL, LIGHT** – includes limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities such as: beverage bottling, distribution and warehousing; contractors offices and storage buildings; including general contractors, plumbers, electricians, heating, ventilating, air conditioning contractors, masons, painters, refrigeration contractors, roofing contractors, and other such construction occupations; distribution centers; ice production, storage, sales and distribution; laboratories for research, testing and experimental purposes; machine shops; manufacture of computers, computer peripherals, electrical appliances, electronic equipment, medical instruments, and other similar products from previously manufactured components; manufacture of precision instruments and equipment such as watches, electronics equipment, photographic equipment, optical goods and similar products; manufacturing of articles or merchandise from previously prepared or natural materials such as cardboard, cement, cloth, cork, fiber, glass, leather, paper, plastics, wood, metals, stones and other such prepared materials; printing and publishing.

**JUNK VEHICLE** – Any vehicle which:

- A. For any reason is incapable, without repair, of being moved or propelled by application of internal power, if it is a vehicle originally designed to be propelled by internal power (such as an automobile, bus, truck, motorcycle, etc.) or is incapable without repair of being drawn or towed, if it is a vehicle (such as a trailer) originally designed to be towed or drawn from behind an internally powered vehicle;
- B. As judged by the standards of an ordinary reasonable person, is unsightly in appearance because of the existence of one or more conditions, such as but not limited to the following: deterioration by rust of the body; deterioration of the exterior finish of the vehicle; broken windows, absence of component parts of the vehicle (such as fenders, panels, doors, tires, wheels, grille, roof, tailgate); physical parts of the vehicle; absence of interior components (such as seats, dashboard, interior door moldings, etc.); or
- C. Is incapable of being moved or propelled, drawn or towed without repair as provided in Subsection A above and has remained situated on any real property for a period in excess of 90 days.

**KENNEL, BOARDING** – A structure used for the harboring of more than three dogs that are more than six months old, for remuneration.

**KENNEL, BREEDING** – A structure used for the harboring of more than three dogs that are more than six months old and without remuneration.

**LAND USE ACTIVITY** – means any construction or other activity which changes the use or appearance of land or a structure or the intensity of use of land or a structure. “Land use activity” shall explicitly include, but not be limited to, the following: new structures, expansions to existing structures, new uses, changes in or expansions of existing uses, roads, driveways, and excavations for the purpose of extracting soil or mineral deposits. This shall include, but is not limited to residential structures, commercial buildings, residential or commercial accessory structures, signs, parking lots, communication towers, mines, roads, and wind mills.

**LAUNDROMAT** – An establishment providing washing, drying or dry cleaning machines on the premises for rental use to the general public.

**LINE, STREET** – The dividing line between the street and the lot.

**LIVESTOCK** – Animals, including but not limited to, domestic animals such as sheep, horses, cattle and goats.

**LOT** – A parcel of land occupied or capable of being occupied by one building or use and the necessary buildings or uses customarily incident to it, including such open spaces as are required by this local law.

**LOT, CORNER** – A parcel of land at the junction of and fronting on two or more intersecting streets.

**LOT, DEPTH OF** – A mean horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.

**LOT, WIDTH OF** – The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required setback line.

**LOT LINE** – Any line dividing one lot from another

**LOT LINE, FRONT** – The line of the lot located at the street right-of-way.

**LOT LINE, REAR** – The lot line most nearly opposite the front lot line and the one most parallel and closest to the front line.

**LOT LINE, SIDE** – Any lot line not a front lot line or a rear lot line is a side lot line

**LOT, DEPTH OF** – The mean distance from the street line of the lot to its opposite rear line measured in the general direction of the side lines of the lot.

**MANUFACTURING** – Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as oils, plastics, resins, or liquors.

**MANUFACTURED HOME** – a structure, intended primarily for residential occupancy that is transportable in one or more sections. In traveling mode, the home is eight feet or more in width and forty feet or more in length. A manufactured home is one that was built after June 15, 1976, and is designed and constructed to the Federal Manufactured Construction and Safety Standards and is so labeled. Manufactured Homes do not include Modular Homes, travel trailers or recreational vehicles or trailers.

**MOBILE HOME** – A Manufactured Home, built prior to June 15, 1976.

**MOBILE HOME PARK** – Facilities for the locating for residential occupancy of two or more Manufactured or Mobile Homes on a permanent or transient basis.

**MODULAR HOME** – A structure designed primarily for residential occupancy that is substantially fabricated in a factory, and designed for permanent installation on a permanent foundation to form a permanent single family, town house or multi-family unit, and which meet all New York State requirements and standards concerning factory manufactured homes and conforms to the New York State Uniform Fire and Building Codes.

**MORTUARY** – A place for the storage of human bodies prior to their burial or cremation.

**MOTEL/HOTEL** – A building or group of buildings, whether detached or in connected units, used as individual sleeping or living quarters with direct outside access and related office, and with or without restaurant facilities, designed primarily for transient automobile travelers, and provided with the accessory off street parking facilities. The term MOTEL includes buildings designed as tourist courts, motor lodges, auto courts, and other similar appellations, but shall not be construed to include parking areas for HOUSE TRAILERS OR MOBILE HOMES, or to include DWELLING UNITS except for that of the owner or manager.

**MOTOR VEHICLE** – Any device that is designed, manufactured or modified to be as a self-propelled conveyance of persons or objects by any power other than muscular power, including automobiles, cars and trucks.

**MOTOR VEHICLE FUELING STATION** – Any area of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories and which may or may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including the painting thereof by any means.

**MOTOR VEHICLE REPAIR SHOP** – A building, premises, and land in which or upon which a business involving the maintenance, servicing, repair, or painting of motor vehicles is conducted.

**MOTOR VEHICLE SALES** – The use of any building, land area or other premise for the display and sale of new or used motor vehicles and including any vehicle preparation or repair work conducted in connection with such sales.

**NEW YORK STATE CERTIFIED AGRICULTURAL DISTRICT** – is a district created under Article 25-AA of the Agriculture and Markets Law with the intent to provide for the protection and enhancement of agricultural land as a viable segment of the local economy and environmental resource or major importance.

**NON-CONFORMING BUILDING** – A lawfully existing building or structure which does not conform to the area setback regulations of the district in which it is located.

**NON-CONFORMING LOT** – A lawfully existing lot which does not conform to the area regulations (minimum lot width and/or lot size) of the district in which it is located.

**NON-CONFORMING USE** – A lawful use of a structure, building or land which does not conform to the use regulations of the district or zone in which it is situated.

**NURSING HOME** – Premises which provide lodging, meals and continuing nursing care for compensation to convalescent or chronically-ill persons. The term nursing home shall include convalescent home and rest home.

**OFFICE, PROFESSIONAL** – An office devoted to a professional service occupation, in which knowledge in some department of science or learning is applied to the affairs of others, either advising or guiding them, or otherwise serving their interest or welfare through the practice of a profession founded on such knowledge.

**OFFICIAL MAP** – The map established by the Town Board under New York State Law 270 showing streets, highways and parks.

**OPEN SPACE** – Land left in a natural state for conservation and agricultural purposes or land landscaped for scenic purposes, devoted to active or passive recreation, 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. Open space may be included as a portion of one or more large lots, or may be contained in a separate open space lot but shall not include private yards within 50 feet of a principal structure.

**PERSONAL SERVICE** – An establishment primarily engaged in provided services involving the care of a person or his or his personal goods or apparel.

**PREMISE** – A lot, parcel, tract, or plot of land together with the buildings and structures thereon.

**PRIVATE RECREATION AREA** – The use and ownership of land or structures by an organization, catering exclusively to members and their guests, used for recreational and athletic purposes (including archery or firearm activities), and not involving vending or merchandising or other commercial activities except as required generally for the membership and purposes of such organization.

**PRIVATE SCHOOL** – Private profit or nonprofit facility designed and used primarily as an educational institution, providing teaching and classes for its enrollees, with or without sleeping and eating facilities for the employees and enrollees.

**RAVINE** – A valley with sharply sloping walls created by the action of stream waters.

**RESEARCH** – An establishment or other facility for carrying on investigation in the natural, physical, or social sciences, which may include engineering and product development.

**RESTAURANT (no drive through)** – Any structure having as a principal use the preparation and dispensing of foods and beverages for consumption on the premises, whether food is served upon order or taken by self-service and where there are no facilities for drive-through service.

**RESTAURANT (with drive through)** – An establishment where food and/or beverages are sold in a form ready for consumption, where some portion of the consumption takes place or is designed to take place outside the confines of the restaurant, and where ordering and pickup of food may take place from an automobile.

**RETAIL USE, RETAIL BUSINESS, STORE OR SHOP** – Traditional establishments, such as florists, lumber and hardware stores, pharmacies, grocery stores, convenience stores, stationary stores, book stores, video-rental stores, clothing stores, department stores, shoe stores, antique stores, etc., that sell goods or merchandise to the general public for personal or household consumption.

**RETIREMENT HOME** – Any age-restricted development, which may be in any housing form, including detached, and attached dwelling units, apartments, and residences, offering private or semi-private rooms.

**RIDGELINE** – The highest elevation of a line of hills.

**RIGHT-OF-WAY** – A strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a street, crosswalk, railroad, electrical transmission lines, oil or gas pipelines, water line, sanitary line, storm sewer line, or other similar uses, and which exists for the purpose of allowing passage over the property of another.

**SAWMILL** – An establishment engaged in the manufacture of lumber and lumber products from raw uncut timber.

**SEASONAL CAMP** – Parcel of land used for the temporary use of travel trailers, tents, campers, cabins, etc.

**SEQRA** – The State Environmental Quality Review Act (Environmental Conservation Law, Article 8).

**SIGN** – See Sign Law, Code of the Town of New Lebanon.

**SPECIAL USE** – A land use which is deemed permissible within a given zoning district or districts, but which may have the potential to exhibit characteristics or create impacts incompatible with the purposes of such district. The special use shall, therefore, be subject to approval by the Zoning Board of Appeals in accordance with conditions set forth for such use, as well as other applicable provisions of this local law.

**SOCIAL, RECREATIONAL OR FRATERNAL CLUB** – A group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and by-laws.

**STABLE, COMMERCIAL** – A building in which horses are quartered, with remuneration.

**STABLE, PRIVATE** – A building in which horses are quartered, without remuneration.

**STREET** – A public or private way that affords the principal means of access to abutting structures.

**STREET, COLLECTOR** – a street that collects traffic from local streets and connects with minor and major arterials.

**STREET, MAJOR ARTERIAL** – A street with access control, channelized intersections, restricted parking, and that collects and distributes traffic to and from minor arterials.

**STREET, MINOR ARTERIAL** – A street with signals at important intersections and stop signs on side streets and that collects and distributes traffic to and from collector streets.

**STRUCTURE** – Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences and signs. Structure also includes the septic system (tank, distribution box, piping and perforated pipes of the absorption field) and any fill placed for the septic system.

**STRUCTURE, ACCESSORY** – means any structure designed to accommodate an accessory use but detached from the principal structure, such as, a free standing garage for vehicles accessory to the principal use, a storage shed, garden house or similar facility.

**SUBDIVISION** – The division of any parcel of land into two or more lots, with or without streets or highways, including subdivision of a single property previously separated by a road that meets all zoning requirements. Such division shall include re-subdivision of parcels of land for which an approved plat or deed has already been filed in the office of the County Clerk. The term "subdivision" may include any alteration of lot lines or dimensions of any lots (i.e., lot line adjustment). They shall not be in conflict with any provision or portion of the Comprehensive Plan, the Official Map or Chapter 115, Zoning, or these regulations.

**SUBDIVISION, MAJOR** – Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five or more lots, or any subdivision requiring any new street or extension of municipal services. Any minor subdivision re-subdivided into five or more lots within a five-year period becomes a major subdivision.

**SUBDIVISION, MINOR** – Any subdivision containing not more than four lots fronting on an existing street, not involving any new street or extension of municipal facilities and may include the alteration of lot lines or dimensions of any lots (i.e., lot line adjustment) with no additional lots being created.

**TAG SALE** – See Garage Sale.

**TELECOMMUNICATIONS TOWER** – Any structure greater than 35 feet in height which is capable of receiving and/or transmitting signals (for the purpose of communication) for commercial purposes.

**TEMPORARY MOBILE HOME** – A Mobile or Manufactured Home that is sited on an approved lot and used as a single family residence or a business for a period of time not to exceed 12 months.

**THEATER** – A building or part of a building devoted to showing motion pictures or for dramatic, dance, musical, or other live performances.

**TRUCK TERMINAL** – An area and building where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation.

**USE** – The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained. The term “permitted use” or its equivalent shall not be deemed to include any non-conforming use.

**USED MOTOR VEHICLE** – Any previously owned motor vehicle that is for sale, meets state inspection requirements and is ready to be driven by a customer.

**VARIANCE** – A modification of the use and/or area and bulk regulations of this Local Law in an individual case where, due to specific facts and conditions peculiar to a particular property, literal application and strict enforcement would result in undue and unnecessary hardship or practical difficulty that would deprive the owner of a reasonable use of the land or structure. Such unnecessary hardship or practical difficulty shall not be construed to include mere inconveniences or a desire to make more money.

**VARIANCE, AREA** – A variance from the area and bulk requirements or supplementary regulations of a related character (such as amount, size, location of design or access, off-street parking, landscaping, signs) to authorize on a specific lot a permitted use which could not feasibly be established without relief from one or more of the dimensional requirements pertaining to the district.

**VARIANCE, USE** – A variance from the use regulations to allow the establishment on a specific lot of a use otherwise prohibited in the district.

**VETERINARY HOSPITAL** – A facility for the care and treatment of injuries and diseases of animals and operated by a licensed veterinarian.

**WAREHOUSE** – A building used primarily for the storage of goods and materials.

**WHOLESALE STORE** – A facility designed for the storage and sale of goods and merchandise, in quantity and primarily for sale to retail merchants.

**YARD, FRONT** – An open unoccupied space on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot.

**YARD, REAR** – An open unoccupied space on the same lot with the building between the rear line of the building and rear line of the lot and extending the full width of the lot.

**YARD SALE** – See Garage Sale.

**YARD, SIDE** – An open unoccupied space on the same lot with the building situated between the building and the side lot line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

**ZONING ENFORCEMENT OFFICER** – Person(s) authorized to enforce this law.

**15. Appendix A - USE TABLE**

## Town of New Lebanon –Zoning Law Use Table

SP = Special Use Permit SPR = Site Plan Review P = Permitted Use Any use not listed shall be prohibited	Agriculture Conservation	Residential Agriculture 2	Residential Agricultural 1	General Commercial	Commercial Recreation	Commercial / Industrial <sup>1</sup>	Commercial-Residential	
	RA-5	RA-2	RA-1	C	C-Rec	C-I	C-R	
<b>Residential Uses</b>								
Boarding House or Group Home	SP	SP	SP	SP			SP	
Customary Accessory Uses	P	P	P	P	P		P	
Manufactured Home	P	P	SP/SPR	SP/SPR			SP/SPR	
Mixed Use				SP	SP		SP	
Mobile Home Park			SP/SPR				SP/SPR	
Multi-Family Dwelling	SP	SP	SP	SP			SP	
One-Family Dwelling	P	P	P	SP			P	
Temporary Mobile Home	SP	SP	SP				SP	
Two-Family Dwelling	SP	SP	SP	SP			SP	
<b>General Uses</b>								
Agri-tourism use	P	P	P	P	P		P	
Any Town Use	P	P	P	P	P	P	P	
Boarding Kennel	SP	SP						
Breeding Kennel	P	P						
Bus Station				P/SPR			P/SPR	
Campground/ Seasonal Camp	SP/SPR				SP/SPR			
Cemetery	SP	SP	SP					
Customary Accessory Use	P	P	P	P	P	SP	P	
Day Care (in-home)	SP	SP	SP	SP			SP	
Day Care Center (not as part of another business or office use)	SP/SPR	SP/SPR	SP/SPR	SP/SPR			SP/SPR	
Farm/ Agriculture	P	P	P	P	P		P	
Fire/Emergency Response Station		SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	
Garage, Porch or Yard Sale	P	P	P	P	P		P	
Historic Preservation	P	P	P	P	P	P	P	
Home Occupation 1	P	P	P	P	P		P	
Home Occupation 2	SP	SP	SP	SP			SP	
Home Occupation 3	SP/SPR	SP/SPR	SP/SPR	SP/SPR			SP/SPR	

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	RA-5	RA-2	RA-1	C	C-Rec	C-I	C-R	
Hospital		SP/SPR	SP/SPR	SP/SPR				
Museum/Library	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	SP/SPR	
Nursing Home		SP/SPR	SP/SPR	SP/SPR			SP/SPR	
Place of Worship	P/SPR	SP/SPR	SP/SPR	SP/SPR			SP/SPR	
Private School		SP/SPR	SP/SPR				SP/SPR	
Professional Office		SP/SPR	SP/SPR	P/SPR	P/SPR	P/SPR	SP/SPR	
Public Park, Forest or Recreational Area	P/SPR	P/SPR	P/SPR	P/SPR	P/SPR		SP/SPR	
Retirement Home	SP/SPR	SP/SPR	SP/SPR	SP/SPR			SP/SPR	
Social, Recreational or Fraternal Club				P/SPR	P/SPR			
Stable, Commercial	SP	SP	SP	SP	SP			
Stable, Private	P	P	P					
Temporary–Business Trailer				SP/SPR	SP/SPR	SP/SPR	SP/SPR	
Veterinary Hospital	SP/SPR	SP/SPR	SP/SPR	SP/SPR				
<b>Business Uses</b>								
Adult Use						SP/SPR		
Auction Sale, excluding Livestock Auction				SP/SPR				
Automobile Racing Facility					SP/SPR			
Bank				P/SPR	P/SPR	SP/SPR	P/SPR	
Bar				SP/SPR	SP/SPR		SP/SPR	
Bed and Breakfast	SP/SPR	SP/SPR	SP/SPR	SP/SPR			SP/SPR	
Bowling Alley				P/SPR	P/SPR		P/SPR	
Car Wash				SP/SPR	SP/SPR		SP/SPR	
Cellular Tower	SPR	SPR	SPR	SPR	SP/SPR	SPR	SPR	
Commercial Excavation	SP/SPR							
Convenience Store				P/SPR	SP/SPR		P/SPR	
Dance Hall				P/SPR	P/SPR			
Farm Market		SP/SPR	SP/SPR	P/SPR	P/SPR		P/SPR	
Farm Stand	P	P	P	P	P		P	
Flea Market				P/SPR	SP/SPR		P/SPR	
Greenhouse	P	P/SPR	P/SPR	P/SPR		P/SPR	P/SPR	
Laundromat				SP/SPR			SP/SPR	
Miniature Golf and Driving Range				P/SPR	P/SPR		P/SPR	
Mortuary and Funeral Parlor				P/SPR			P/SPR	
Motel and hotel				SP/SPR	P/SPR		SP/SPR	

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SP = Special Use Permit SPR = Site Plan Review P = Permitted Use Any use not listed shall be prohibited	Agriculture Conservation	Residential Agriculture 2	Residential Agricultural 1	General Commercial	Commercial Recreation	Commercial / Industrial <sup>1</sup>	Commercial-Residential	
	RA-5	RA-2	RA-1	C	C-Rec	C-I	C-R	
Motor Vehicle Fueling Station				SP/SPR	SP/SPR		SP/SPR	
Motor Vehicle Repair and Service				SP/SPR			SP/SPR	
Personal Service Shop (Barber, Beautician, Tailor, Cleaner)				P/SPR			P/SPR	P/SPR
Private Recreation Area, involving Firearms or Archery Range					SP/SPR			
Restaurant (non-drive through)				P/SPR	SP/SPR		P/SPR	P/SPR
Restaurant (with drive-through)				P/SPR	SP/SPR		P/SPR	
Retail store				P/SPR	P/SPR	SP/SPR	P/SPR	P/SPR
Self-storage units				P/SPR			P/SPR	
Social Club					SP/SPR			
Theater, except Drive-in				P/SPR	P/SPR			
Motor Vehicle Sales				SP/SPR	SP/SPR		SP/SPR	
Wholesale store				SP/SPR				
<b>Industrial Uses</b>								
Factory Outlet						SP/SPR		
Light Industrial						SP/SPR		
Manufacturing						SP/SPR		
Research						SP/SPR		
Sawmill						SP/SPR		
Warehouse and truck terminal				SP/SPR		SP/SPR		

