

## **ARTICLE VIII ADMINISTRATON AND ENFORCEMENT**

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### **SECTION 800 - ENFORCEMENT**

The duty of administering and enforcing the provisions of this Ordinance is hereby conferred upon the Code Enforcement Officer. The Code Enforcement Officer shall be appointed by the Town Board and receive compensation as determined by the Town Board.

### **SECTION 801 - DUTIES AND PROCEDURES OF THE CODE ENFORCEMENT OFFICER**

- A. Administer the Zoning Ordinance, Local Laws and the Building Code of New York State - The Code Enforcement Officer shall review all applications for building permits to determine compliance with all applicable requirements of this Ordinance, all local laws of the Town of Clarendon, and the Building Code of New York State and all subsequent amendments thereto. If and when an applicant has demonstrated that all of the foregoing requirements are met, the Code Enforcement Officer shall issue a building permit in accordance with Section 301 of this Ordinance. Otherwise, the Code Enforcement Officer shall deny the application for a building permit in writing.
- B. Referral to the Zoning Board of Appeals - In any case where an applicant has appealed any action of the Code Enforcement Officer to the Zoning Board of Appeals (ZBA) pursuant to Section 802, the Code Enforcement Officer shall notify the Chairperson of the ZBA of the appeal and forward all necessary supporting information.
- C. Zoning, Local Law and Building Code Violations
  - 1. Stop-Work Orders –  
Whenever the Code Enforcement Officer has reasonable grounds to believe that work on any building or structure is proceeding without a permit or is otherwise in violation of the provisions of any applicable law, code, ordinance, rule or regulation, or is not in conformity with any provisions of the application, plans or specifications on the basis of which a permit was issued, or is being conducted in an unsafe or dangerous manner, the Code Enforcement Officer shall notify either the owner of the property or the owner's agent or the person, firm or corporation performing the work to immediately suspend all work. Such stop-work order shall be in writing on a form prescribed by the Code Enforcement Officer and shall state the reason for the stop-work order, together with the date of issuance. The stop-work order shall bear the signature of the Code Enforcement Officer, or that of any deputy or assistant, and shall be prominently posted at the work site. In such instance, any and all persons shall immediately suspend all related activities until the stop-work order has been duly rescinded.

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2. Notices and Appearance Tickets
  - a. Whenever it is found that there has been a violation of this Ordinance, any local law, the Building Code of New York State or any other applicable law, code, ordinance, rule or regulation enforcement of which is the responsibility of the Code Enforcement Officer, the Code Enforcement Officer may issue a violation notice and/or appearance ticket to the person, individual, partnership or corporation owning, operating or maintaining the premises in which such violation has been noted.
  - b. Violation notices shall be in writing; shall identify the property or premises; shall specify the violation or remedial action to be taken; and shall specify that the violation must be corrected within ten (10) days from the receipt of the violation notice, unless the ten (10) day period is modified by the Code Enforcement Officer or unless a shorter period of time has been prescribed for by law.
  - c. Violation notices and other orders or notices referred to in this Ordinance shall be served on the owner or on one of the owner's executors, legal representatives, agents, lessees, any tenant or other person occupying the premises or other persons have a vested or contingent interest in the premises, either personally or by certified mail, addressed to the last known address, if any, of the owner or one of the owner's executors, legal representatives, agents, lessees or other persons having a vested or contingent interest in the same, as shown by the last preceding completed record of the Receiver of Taxes, or in the office of the County Clerk.
  - d. The Code Enforcement Officer shall have the authority, pursuant to the Criminal Procedure Law, to issue an appearance ticket subscribed by him or her, directing a designated person to appear in court at a designated time in connection with the commission of a violation of this Ordinance, any local law, the Building Code of New York State, or any other applicable law, code, ordinance, rule or regulation, the enforcement of which is the responsibility of the Code Enforcement Officer, or any order made thereunder.
  - e. The Code Enforcement Officer shall also have the authority to commence proceedings or impose penalties against any person violating any of the foregoing pursuant to the provisions of Section 105 and Section 106 of this Ordinance.
- D. Report to the Town Board - A monthly report to the Town Board describing the enumerating actions taken and permits issued shall be given by the Code Enforcement Officer.
- E. Public Record - The Code Enforcement Officer shall file all permit actions with the Town Clerk.

### **SECTION 802 - REVIEW OF CODE ENFORCEMENT OFFICER ACTIONS**

- A. Interpretations and Variances from the Zoning Ordinance - Whenever it is claimed that the Code Enforcement Officer misinterpreted or misconstrued this Zoning Ordinance in approving or disapproving any application or granting or refusing to grant any permit under this Ordinance, or where the Code Enforcement Officer has denied a permit or application and the applicant seeks a variance from the provisions of this Ordinance, all such appeals shall be heard and determined by the Zoning Board of Appeals in accordance with Section 820 of this Ordinance.
- B. Appeals Related to Application of the Building Code of New York State -
  1. Whenever it is claimed that the Code Enforcement Officer misconstrued the Building Code of New York State in approving or disapproving any application or granting or refusing to grant any permit or certificate of occupancy, the person affected may appeal from the decision of the Code Enforcement Officer to the Zoning Board of Appeals pursuant to Section 820 of this Ordinance.

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2. Where strict compliance with any provision or requirement of the Building Code of New York State would entail practical difficulties or unnecessary hardship or otherwise be unwarranted, petitions for variances from or modifications to the application of the Building Code of New York State in particular instances may be made to the Regional Board of Review in accordance with the Part 450 of Title 19 of the New York Code, Rules and Regulations, entitled Uniform Code: Board of Review as promulgated by the New York Department of State (hereinafter Part 450).
3. In routine cases, as defined in Part 450, the New York State Department of State may grant variances from or modifications to the application of the Building Code of New York State in particular instances in accordance with Part 450 in lieu of transmitting a petition to the Regional Board of Review.
4. The Code Enforcement Officer shall maintain a copy of Part 450 for public inspection and a copy of all decisions rendered by the Regional Board of Review and Department of State pertaining to matters affecting the Town of Clarendon.

### SECTION 810 - DUTIES AND PROCEDURES OF THE PLANNING BOARD

- A. Pursuant to Section 271 of Town Law, there shall be a Planning Board consisting of five(5)members, with members appointed by the Town Board. At least one member should be a person engaged in agricultural pursuits as defined in Section 271 of Town Law. Terms of all Planning Board members shall be staggered as the law requires. *(Rev. 11/15/2011)*
- B. In accordance with Local Law #2 of 1996 (See Appendix #6: Authorizing the Appointment of Alternate Members to the Planning Board and Zoning Board of Appeals of the Town of Clarendon) two alternate members of the Planning Board may be appointed by the Town Board.
- C. Officers, rules and expenses of the Planning Board:
  1. The Town Board may select a Chairperson of the Planning Board, or on failure to do so, the Planning Board shall elect a chairperson from its own members.
  2. The Planning Board may adopt rules or by-laws for its operation.
  3. The Town Board shall provide an appropriation to the Planning Board to cover necessary expenses, including a means for the Planning Board to maintain a written record of its meetings and public hearings.
  4. All decisions shall be by a majority vote of the membership(three votes)except in those cases contrary to a County Planning Board disapproval referral recommendation. In such cases, a super majority vote (majority plus one vote) shall be required. *(Rev.11/15/2011)*
- D. Functions of the Planning Board:
  1. Approval of Special Permits as authorized by Town Law, Section 271 and as prescribed in Article X of this Ordinance.
  2. Conduct site plan review as authorized by Town Law, Section 274-A and as prescribed in Article IX of this Ordinance.
  3. Prepare a Town comprehensive land development plan or amendments thereto if authorized by the Town Board under Town Law, Section 272-a.
  4. Review and comment on all proposed zoning amendments.
  5. Conduct subdivision reviews; approval of plans; development of filed plans as authorized by Town Law, Section 276 and as prescribed by Local Law #1 of 1996 (See Appendix #4: Design

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Criteria and Construction Specifications for Land Development in the Town of Clarendon).

6. Render assistance to the Zoning Board of Appeals on its request.
7. Research and report on any matter referred to it by the Town Board.
8. Make investigations, maps, reports, and recommendations in any matter related to planning and development as it deems desirable, providing the expenditures of the board do not exceed its appropriations (Town Law, Section 275).

### **SECTION 820 - DUTIES AND PROCEDURES OF THE ZONING BOARD OF APPEALS**

- A. Pursuant to Section 267 of Town Law and in accordance with Local Law #4 of 2007, decreasing the membership of the Zoning Board of Appeals, there shall be a Zoning Board of Appeals consisting of five (5) members, with members appointed by the Town Board. Terms of all Zoning Board of Appeals members shall be five (5) years in duration and shall be staggered as the law requires. The Town Board shall appoint a chairperson of the Zoning Board of Appeals. *(Rev. 11/20/07)*
- B. In accordance with Local Law # 2 of 1996, Authorizing the Appointment of Alternate Members to the Planning Board and Zoning Board of Appeals of the Town of Clarendon, two alternate members of the Zoning Board of Appeals may be appointed by the Town Board.
- C. Officers, rules and expenses of the Zoning Board of Appeals:
  1. The ZBA may adopt rules or by-laws for its operation.
  2. The Town Board shall provide an appropriation to the ZBA to cover necessary expenses, including a means for the ZBA to maintain a written record of its meetings and public hearings.
  3. All decisions shall be by a majority vote of the membership (four votes) except in those cases contrary to a County Planning Board disapproval referral recommendation. In such cases, a super-majority vote (majority plus one vote) shall be required.
- D. Functions of the Zoning Board of Appeals
  1. Interpretation - Upon appeal of a decision by the Code Enforcement Officer, or a request for interpretation from the Town Board or Planning Board, the ZBA shall decide any question involving interpretation of any provisions of this Ordinance.
  2. Appeals for Variances - Upon denial of a building permit by the Code Enforcement Officer, or a referral from the Town Board or Planning Board, the ZBA shall hear requests for variances.

### **SECTION 830 - VARIANCES**

- A. General Policy. The granting of variances shall be principally for those seeking area variances. Use variances seek to allow activities otherwise prohibited in the zoning district, and such requests will be carefully reviewed.
- B. Granting Area Variances:
  1. Pursuant to Section 267-b of Town Law, when making its determination to grant or deny an area variance, 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.
  2. In determining whether to grant or deny an area variance, the ZBA shall also consider:
    - a. Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance;
    - b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
    - c. Whether the requested area variance is substantial;

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- d. Whether the proposed area variance will have an adverse effect or impact on the physical or environment conditions in the neighborhood or district;
  - e. Whether the alleged difficulty was self- created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.
- C. Granting Use Variances:
- 1. Pursuant to Section 267-b of Town Law, no use variance shall be granted by the ZBA without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.
  - 2. In order to prove such unnecessary hardship the applicant shall demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located:
    - a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
    - b. 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;
    - c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
    - d. That the alleged hardship has not been self-created.
- D. Procedures for Granting a Variance:
- 1. All applications for variances shall be on forms established by the ZBA. Forms shall be available from the Code Enforcement Officer.
  - 2. Every application shall refer to the specific provisions of the Ordinance or local law involved and establish the details of why the variance should be granted.
  - 3. Upon receipt of the completed application, the ZBA shall:
    - a. Refer the application to the County Planning Board, if required by General Municipal Law, Section 239. Refer to Section 837 of this Ordinance for additional information.
    - b. Schedule a public hearing and arrange for the publication of a notice of the public hearing as described in Paragraph E. of this Section.
    - c. Prepare the appropriate SEQRA environmental assessment form short form or full form) and determine whether a Draft Environmental Impact Statement should be prepared.
    - d. Within sixty-two (62) days after the close of the public hearing, the ZBA shall render a decision. If the matter was referred to the County Planning Board, a copy of the ZBA\*s finding and decision must be sent to the County Planning Board.
- E. Notice of Public Hearing:
- 1. The board shall fix a reasonable time for hearing of appeals, not to exceed sixty-two (62) days where cases are referred to the County Planning Board, and shall give due notice of the time set for the hearing to the applicant. Public notice shall be by publication of a notice in the official newspaper of the Town, and shall briefly describe the nature of the appeal and the time and place of the hearing.
  - 2. The notice of the public hearing shall be published at least five (5) calendar days prior to the date of the public hearing and shall contain sufficient information so as to identify the property involved and the nature of the proposed action.

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- F. Meetings of the Zoning Board of Appeals:
1. The ZBA shall hold meetings at the call of the chairperson, or at the request of four (4) or more members.
  2. The presence of four (4) members shall constitute a quorum for the conduct of business before the ZBA.
  3. A concurring vote of four (4) members of the ZBA shall be necessary to decide in favor of the applicant for any variance or to decide upon any other matter brought before the ZBA, unless otherwise stipulated in this Ordinance.
  4. All votes of the ZBA shall be taken by roll call.
  5. In accordance with General Municipal Law, any member of the ZBA having a conflicting interest in a matter before the board shall abstain from any discussion or voting on that matter.
  6. The ZBA may request and obtain advice and opinions on the law relating to any matter before the board from the Town Attorney, and request the Town Attorney to attend its meetings.
  7. The ZBA may require the Code Enforcement Officer to attend its meetings to present any facts relating to any matter before the board.
  8. The ZBA shall keep minutes of all its meetings. The Town Board shall provide a secretary for the ZBA.
  9. The ZBA shall make factual records of all its proceedings including the reasons of the case, public hearing, deliberation, voting, and decisions of the board. These factual records shall be taken by a stenographic and/or tape recorder means and shall be accurate, but not necessarily a verbatim transcript, but may be in narrative form. The factual record shall be taken by the secretary of the board.

### **SECTION 837 - REQUIRED REFERRALS TO THE COUNTY PLANNING BOARD**

- A. General Municipal Law requires that any of the following local zoning actions be referred to the County Planning Board prior to action by any local board. Any application for a special permit, variance, site plan approval, zoning text or map revision, or rezoning which would affect real property lying within a distance of five hundred (500) feet from the boundary of:
1. Any county
  2. Any town
  3. Any village
  4. Any existing or proposed county or state park
  5. Any right-of-way of any county or state road or parkway
  6. Any stream or canal owned by the county
  7. Any land on which a public building or institution is situated must be referred to the County Planning Board who shall have thirty (30) days from the date of county receipt to take action on the matter. By mutual agreement of the county and the municipality, the thirty (30) day period may be extended in special cases.

### **SECTION 838 - EFFECT OF COUNTY PLANNING BOARD REVIEW**

- A. If the County recommends approval of a referral, then the local board decision is governed by a majority vote.
- B. If the County recommends disapproval of a referral, or approval of a referral subject to stated conditions or modifications, the local board may override the County opinion only by a super-majority vote (majority plus one vote).



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### **SECTION 839 - REPORT ON FINAL LOCAL ACTION**

The local board must send a copy of its final decision and reasons for such decision on a County referral case to the County Planning Board within thirty (30) days after the local decision is reached.

### **SECTION 840 - CONSULTATION**

Costs for consultant review of plans and supporting documentation incurred by the Town shall be borne by the applicant as a condition of permit approval, permit renewal or variance approval.

### **SECTION 841 - AGRICULTURAL DATA STATEMENT**

- A. In accordance with Section 283-a of Town Law, any application for a special permit, site plan approval, use variance or subdivision approval requiring municipal review and approval by the Planning Board or Zoning Board, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within 500 feet of a farm operation located within an agricultural district, shall include an agricultural data statement. The Planning Board or Zoning Board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district.
- B. 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 500 feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of the farm operations identified in the agricultural data statement.
- C. Upon receipt of such application by the Planning Board or Zoning Board, the board shall mail written notice of the application to the owners of land as identified by the applicant in the agricultural data statement. The notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or federal law, ordinance, rule or regulation for the project. The cost of mailing the notices shall be borne by the applicant.
- D. If the project location meets any of the criteria set forth in Section 837 of this Ordinance, the Planning or Zoning Board shall refer all applications and the agricultural data statement to the County Planning Board as required under Sections 239m and 239n of General Municipal Law.