

Section 1. Legislative Intent.

The Town of Liberty enacts this local law pursuant to Section 10 of the Municipal Home Rule Law and Article 16 of the Town Law to provide for the orderly development of the Town and to protect the health safety and welfare of its residents.

The local law consists of numerous revisions to the zoning law that help clarify provisions in several sections, making the overall zoning law more user friendly and improving its consistency with state enabling statutes.

Revisions include the addition of a purpose section; the amendment and addition of several use definitions; and restructuring of the Zoning Board of Appeals section.

Deleted: clarification of language in the Cluster Development, Multiple Dwellings, Planned Unit Development and Permit Procedures sections;

This local law also adds a Wellhead Protection Overlay District for two well areas.

Section 2. Amendment of Article I

A new section, Purposes, shall replace § 147-1. (Reserved) as follows:

§ 147-1. Purposes.

This law is intended to implement the recommendations and fulfill the goals and objectives of the Town of Liberty Comprehensive Plan, as amended. Specific purposes of this law include those contained in §263 of the Town Law and the following:

- A. Preserving and enhancing the town's open spaces, scenic character, aesthetics and general living environment by providing for the proper relationships between man, building and open space in all site planning.
- B. Designing appropriate districts in the town for various land uses at densities which will conserve and enhance the value of property while meeting the community development needs of the town.
- C. Providing for a variety of housing units, in compatible residential environments, to address the full range of needs in terms of incomes, ages and family sizes.
- D. Encouraging compatible mixes of permitted uses within specified zoning districts.
- E. Establishing reasonable standards of development to which uses, buildings or structures shall conform so as to provide for the health, safety and general welfare of residents and reduce future costs to the community.
- F. Promoting orderly development to maintain the stability of residential, business and agricultural areas and improve the overall economic base of the Town.

Section 3. Amendment of Article II

§ 147-4

Seven definitions are removed and replaced with new definitions as follows:

AGRI-BUSINESS — Business activities utilizing 50% or more of product grown and/or produced on the property, including but not limited to: U-picks, CSAs, expanded road stands, corn mazes, hay rides, pumpkin patches, seasonal events, school programs, weddings and parties, farm markets, dairy barns, bakeries, farm stores and restaurants, bed-and-breakfasts, farm support businesses such as community kitchen, and farm-compatible businesses, farm distilleries, and farm vineries.

CURB CUT — A ramp built into the curb of a sidewalk to ease passage to the street for vehicles, or a separate ramp for bicyclists, pedestrians with baby carriages, and physically disabled people.

EATING AND DRINKING PLACES -- An establishment where food and drink are prepared, served, consumed and sold primarily within the principal building or its outdoor terrace or patio area. The term “restaurant” shall not include “Restaurants, Fast Food” as defined herein. A bar or tavern that also serves food shall be considered an Eating and Drinking Place.”

HOME OCCUPATION — Any use conducted entirely within a single-family dwelling or accessory building, and carried on by the inhabitants, which use is clearly incidental and secondary to the principal building and does not change its character. Home occupations may include but are not limited to medical and dental offices, other professional offices, custom dressmaking, or tailoring, artist or musician studios, foster family care (for not more than four children simultaneously), tutoring (for not more than five students at a time).

VEHICLE AND EQUIPMENT SALES AND SERVICE — A building and/or area arranged, intended or designed to be used for the rental, lease, sale and/or resale of motor vehicles, new or used, including but not limited to; boats or trailers; farm tractors or combines; or other equipment. A selection of motor vehicles, boats or trailers or other equipment may be displayed within a totally enclosed building but still others may require an outdoor area for their storage.

Four new definitions are added as follows:

FARM EQUIPMENT SALES AND SERVICE OPERATIONS - A use primarily engaged in the sale and rental of farm tools and implements such as feed, grain, tack, animal care products, farm and garden supplies and machinery, excluding large vehicles such as farm tractors or combines.

Deleted: **AGRI-TOURISM** — Activities conducted by a farmer on-farm for the enjoyment or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life. Agri-tourism activities include, but are not limited to, on-farm bed-and-breakfasts, U-pick operations, and pumpkin patches.¶
¶
BUNGALOW COLONY — a residential use in which the ownership of the development is held in common by means of a condominium, cooperative, Property Owners Association or similar type agreement, or by a single owner acting as landlord. See "dwelling, multiple."¶
¶

SHOOTING RANGE, INDOOR, PRIVATE OR COMMERCIAL – The use of a structure for archery and/or the discharge of firearms for the purposes of target practice or temporary competitions.

SHOOTING RANGE, OUTDOOR, PRIVATE OR COMMERCIAL – The use of land for archery for the purposes of target practice or temporary competitions. Excluded from this use shall be general legal hunting and unstructured and nonrecurring discharging of firearms on private property.

NYS BUILDING CODE – The New York State Uniform Fire Prevention and Building Code.

The definition of SPECIAL USE is amended as follows:

Replace therein “§ 274(a)” with “§ 274(b)”.

Section 4. Amendment of Article III

§ 147-5 Enumeration of districts is hereby amended by replacing the existing section as follows:

The Town of Liberty is hereby divided into the following types of districts.

AC Agricultural/Conservation

This district is intended to encourage preservation of agricultural land and open space, and to minimize residential development through protection of sensitive natural areas, viable farmlands and water resources. Ensuring these resources protect the rural character of the town and are used in ways which adapt to those limitations and do not threaten the health and safety of adjacent neighbors.

RD Rural Development

The purpose of this district is to provide a transition area between the AC and R-1 districts while complementing the agricultural lands and open space as well as providing low density single-family dwellings that maintain the rural character of the town.

RD-2 Rural Development 2

The purpose of this district is to provide for the establishment of new camps or additions to existing camps in a manner that is compatible with neighboring land uses and with the orderly development of land uses in the town. Regulations of this district shall apply in addition to those of the underlying district(s).

R-1 Low-Density Residential

The purpose of the R-1 residential district is to provide areas adjacent to the village with neighborhoods of single-family and two-family dwellings of low to moderate density.

R-2 High-Density Residential

The purpose of this district is to provide areas adjacent to the village for higher density neighborhoods of single-family, two-family and multifamily dwellings.

DCC Downtown Commercial Core

This district is intended to provide for the development of a traditional historic hamlet, urban cores and community centers, with both commercial and residential uses within this area.

SC Service Commercial

This district is intended to provide areas within the Town for the development of commercial businesses and enterprises that serve the service needs of Liberty residents as well as the traveling public.

IC Industrial Commercial

This district is intended to provide areas within the Town for the development of job-producing business and industrial uses where such enterprises can be assured that their activities will not be in conflict with residential uses. Development of this zone should reflect the rural quality of the Town and should follow design guidelines to ensure buildings are compatible.

PUD Planned Unit Development

This is a "floating district" intended to provide landowners who wish to develop functionally integrated communities or complexes with the flexibility to do so provided sufficient open space will be preserved and the development is designed with safeguards to protect the public health, safety, and welfare.

FP Floodplain

This is an "overlay" district defined by and subject to the requirements of the Town of Liberty Floodplain Law.

RH Resort Hotel

This district is intended to provide areas within the Town for the normal development and expansion of resort hotel facilities along with related recreational enterprises, which facilities are typically characterized by a variety of building types, activities and densities of a substantially different nature from the surrounding area, including a mixture of recreational, commercial and residential uses.

WP Public Wellhead Protection Overlay District

The purpose of the Public Wellhead Protection Overlay District is to minimize the potential for harmful or unwanted contaminants to enter the municipal water supply at wellheads within the town from nearby activities.

Deleted: local

Section 5. Amendment of Article IV

The following sentence is added at the end of the paragraph in §147-8. Schedule of District Regulations:

“Any use not listed in the Schedule of District Regulations is prohibited.”

A new section is added to Article IV as follows:

§147-8(A) Public Wellhead Protection Overlay District

A. Purpose. The purpose of the Public Wellhead Protection Overlay District is to minimize the potential for harmful or unwanted contaminants to enter the municipal water supply at wellheads within the town from nearby activities.

Deleted: local

B. Applicability. The Public Wellhead Protection Overlay District shall act as an overlay to other existing zoning districts shown on the official zoning map. Any uses permitted in the underlying zoning districts shall be permitted within the Public Wellhead Protection Overlay District areas, except where the overlay prohibits such uses or activities, or imposes greater restrictions. The overlay shall only apply to those areas of a property which are within the zone shown on the zoning map, and does not apply to the entire property.

C. District Boundary Interpretation. The Public Wellhead Protection Overlay District is defined as a zone which extends 400 feet outward in all directions from the property line of the parcel containing each protected wellhead.

D. Site Plan Review. Site plan review shall be required for all new and modified uses within the Public Wellhead Protection Overlay District. The requirements of this section shall supplement and be in addition to the requirements of §147-27 Site Plan Review.

(1) The following information shall be provided on any site plan for a use or activity proposed within the overlay:

(a) The location of the proposed use or activity in relation to the overlay boundary;

(b) The size and location of any existing impervious surfaces, and new proposed impervious surfaces, which would collect stormwater runoff. Any impervious surfaces which are outside the boundary of the overlay, but extend into it, shall be included.

(c) The existing, and proposed new, topographic grading contours of the site.

(2) In addition to other site plan review criteria, the Planning Board shall make a determination and recommendations regarding the following:

(a) The extent to which the proposed site construction or activity may increase the potential for groundwater contamination within the overlay boundaries;

(b) The adequacy of the proposed site plan design to prevent or mitigate potential groundwater contamination within the overlay boundary.

(c) Recommended site plan changes to address the concerns of items (a) and (b) above, as well as to remind and educate the property owner about the sensitive nature of this land and their responsibility to help protect it for all residents in the Town of Liberty.

E. Minimum Lot Size. The minimum lot size for residential parcels within the **Public** Wellhead Protection Overlay District which are served by on-site septic systems shall be the same as permitted in the underlying zoning, except may not be less than 3 acres.

F. Restricted Activities.

(1) Storage, stockpiling or disposal of hazardous chemicals, fuels or waste including but not limited to petroleum, fertilizers, manure, sewage, gasoline, coal, de-icing compounds, road salt and similar materials.

G. Restricted Uses. The following uses are not permitted within the overlay, even if they would normally be permitted within the underlying zoning:

(1) Automobile service stations

(2) Auto body shops

(3) Cemeteries

(4) Industrial or manufacturing facility which is subject to the NYSDEC State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges or the USEPA National Pollution Discharge Elimination System (NPDES) stormwater permit program.

(5) Junkyard or salvage operation

(6) Dry cleaning or laundry establishment

(7) Golf courses

(8) Maintenance and repair shops for motor vehicles, internal combustion or electric motors, household appliances, electrical equipment/devices.

(9) Mining or extraction

(10) Concentrated animal feeding operation (CAFO) or intensive use poultry and swine operations

(11) Any use or activity which, at the discretion of the Town of Liberty Planning Board, is considered to have a reasonable potential to contaminate the soil and groundwater within the overlay.

H. Conflict. In case of a conflict between these requirements and any other regulations, the more restrictive regulations shall apply.

Section 6. Amendment of Article V

§ 147-14. A. (1) is amended by correcting a typographical error; remove one copy of the repeated term “accessory structure”.

§ 147-14. C. is amended by adding the word “building” immediately before the word “permits” in the first sentence; and adding the word “building” immediately before the word permits in the third sentence.

Section 7. Amendment of Article VI

§ 147-18. A. is amended by removing the word “summer”

§ 147-19. is amended by removing the word “zoning” from the first sentence.

§ 147-20 A. is amended by removing the text of (3) and replacing it the text of (4) as follows:

(3) Nonresidential employees. Nonresidential employees shall not exceed three persons.

§ 147-33. is amended as follows:

If any nonconforming structure or use is damaged or destroyed as a result of a casualty, it may, pursuant to special use procedures, be restored or reconstructed within 12 months of the date of the occurrence, with extensions to the 12-month period at the discretion of the Planning Board. The Planning Board shall consider the degree to which the use is nonconforming with the regulations of the district where it is located.

Deleted: B

Deleted: ARTICLE

Deleted: Section 8. Amendment of Article VII¶

¶
§ 147-21. B. is amended as follows: ¶

¶
Permitted number of units. A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. In determining the density allowed on the site, the following areas shall not be included in the calculation: ¶

¶
147-21. E. is amended as follows:¶

¶
Development standards. Development standards for lot size, lot width and lot depth normally applicable within the district where clustering is proposed may, for the purpose of clustering, be reduced by the Planning Board to 1/2 the normal requirement provided no dwelling structure is located on less than 30,000 square feet of land where on-site sewer and water facilities are to be provided. Offsite sewer/wastewater or onsite shared community wastewater facilities are not permitted with cluster developments. ¶

¶
§ 147-22. A. (1) is amended as follows: ¶

¶
Multiple dwelling projects shall be special uses subject to the provisions of this chapter. If a multiple dwelling project involves a subdivision, the Town of Liberty Subdivision Regulations shall also apply, regardless of whether or not the subdivision is connected with building development or conveyance of land or buildings involved, and the approvals required shall be requested and acted upon concurrently. Application for preliminary approval of multiple-family dwelling projects that involve subdivisions, accordingly, will be made to the Town of Liberty Planning Board in the manner provided under § 130-13 of the Subdivision Regulations. The developer shall also submit all information required by § 130-13 of said Regulations, plus the following additional information, as applicable.¶

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§ 147-22. A. (1) (c) is amended as follows: ¶

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In the first sentence, replace “chapter” with “C. of this section” ¶

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§ 147-22. A. (2) is amended as follows: ¶

¶
Add “and the Special Use Permit requirements in Article VIII, as applicable.” to the end of the second sentence. ¶

¶
§ 147-22. A. (3) is amended as follows: ¶

¶
Remove “building” from the first and third sentences, so that only “special use permit” remains. ¶

¶
¶

Deleted: Code Enforcement Officer

Section 8. Amendment of Article X

Deleted: 9

§ 147-38. A. is amended as follows:

General procedures. All persons desiring to undertake any new construction, structural alteration (including demolition) or changes in the use of a building or lot shall apply to the Code Enforcement Officer for a building permit and/or certificate of occupancy by filling out the appropriate application form and by submitting the required fee. The Code Enforcement Officer will then either issue or refuse the permit or refer the applicant to the Planning Board should the permit application involve a special use permit or site plan review approval and/or the Zoning Board of Appeals should the permit application involve a matter requiring a variance. After the building permit has been issued by the Code Enforcement Officer and received by the applicant, the applicant may proceed to undertake the action permitted in the building permit and, upon completion of such action, shall apply to the Code Enforcement Officer for issuance of a certificate of occupancy. If the Code Enforcement Officer finds that the action of the applicant has been completed in accordance with the permit, the Code Enforcement Officer shall then issue a certificate of occupancy or a certificate of compliance with respect thereto.

§ 147-38. B. is amended as follows:

Required permits. A building permit or certificate of occupancy shall be required prior to the erection, addition, demolition or alteration of any building or portion thereof; prior to the use or change of use of a building or land; and prior to the change or extension of a nonconforming use. It shall be unlawful for any person to commence work for the erection of any building or for a change in land use until a permit has been duly issued therefor. A special use permit, site plan review approval, or a variance may also be required prior to the application for a building permit. The following classes of permits may be required:

- (1) Permitted use. A permit for a principal permitted use or an accessory use requiring a permit may be issued by the Code Enforcement Officer on his own authority.
- (2) Special use. A permit for a special use may be issued by the Code Enforcement Officer after review and approval by the Planning Board.
- (3) Variance. A permit for a use or structure which requires a variance may be issued by the Code Enforcement Officer only upon order of the Zoning Board of Appeals in accordance with Article XI.
- (4) Temporary use. A temporary permit may be authorized by the Town Board and issued by the Code Enforcement Officer for a nonconforming structure or use which the Town Board deems necessary to promote the proper development of the community, provided that such nonconforming structure or use shall be completely removed upon expiration of the permit for a specified period not exceeding three years. Temporary permits for purposes of demolishing a structure may be issued by the Code Enforcement Officer and shall be for a period not to exceed 60 days.

Deleted: .

§ 147-38. C. is amended as follows:

In the first sentence, remove “anywhere” and replace it with “as accessory uses in certain districts”.

§ 147-38. D. (1) is amended as follows:

All applications for building permits shall be made using official town application forms and be accompanied by a plot plan in duplicate, drawn to show the actual shape and dimensions of the lot to be built upon, the exact size and location of any buildings existing on the lot, the lines within which the proposed building or structure shall be erected or altered, the existing and intended use of each building or part of a building, the number of families or dwelling units the building is designed to accommodate and also by such additional information as may be necessary to determine compliance with this chapter, all other pertinent Town regulations and State regulations, including the New York State Environmental Quality Review Act, where applicable. All applications with accompanying plans and documents shall become a public record after a permit is issued or denied.

Deleted: and

§ 147-38. F. (6) is amended as follows:

The first sentence shall read:

Renewal of permit. In any instance when a permit is approved by the Planning Board, the Town Board or the Zoning Board of Appeals, any of those may require their approval be periodically renewed. Such renewal shall be granted following due public notice and hearing, and may be withheld only upon determination by the Code Enforcement Officer to the effect that such conditions as may have been prescribed by the Board in conjunction with the issuance of the original permit have not been, or are no longer being , complied with. In such cases a period of 60 days shall be granted the applicant for full compliance prior to the revocation of said permit.

Deleted: or

§ 147-38. G. (5) is amended as follows:

The second sentence shall read:

Such certificate of occupancy shall be issued pursuant to the special use permit requirements in Article VIII of this chapter.

Section 9. Amendment of Article XI is amended as follows:

§ 147-40. Zoning Board of Appeals.

Deleted: 10

Deleted: <#>Establishment. Pursuant to §267. of the Town Law, a Zoning Board of Appeals is hereby established in the Town of Liberty.¶

¶ <#>Appointment. The Board shall consist of five members to be appointed by the Town Board. The terms of the initial appointees shall be for one, two, three, four and five years from and after the date of appointment. Their successors, including such additional members as may be appointed by the Town Board, shall be appointed for the term of five years after the expiration of the terms of their predecessors in office.¶

¶ <#>Appointment to fill vacancies. Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms became vacant. Such appointment to fill vacancies shall be made in the same manner as the original appointment. The Town Board may continue to legally operate while vacancies are waiting to be filled, provided there are enough members to constitute a quorum.¶

- D. General grant of power. The Board shall perform all the duties and have all the powers prescribed by §§ 267, 267-a, and 267-b of NYS Town Law and as herein described.
- E. Votes necessary for a decision. Three members of the Board shall, regardless of the number of members at a given point in time, constitute the necessary quorum for purposes of conducting any business. Except for a rehearing, the concurring vote of three of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of this enforcement officer or to decide in favor of the appellant any matter upon which it is required to pass under the terms of this chapter or to effect any variation of this chapter.

§ 147-41. Power and duties.

- A. Orders, requirements, decisions, interpretations and determinations. The Board 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 administrative official or body charged with the enforcement of this chapter, and to that end shall have all the powers of the administrative official or body from whose order, requirement, decision, interpretation or determination the appeal is taken.
- B. Area variances. The Board shall have the power, upon an appeal from a decision or determination of the administrative official or body charged with the enforcement of this chapter, to grant area variances as defined herein.
- C. Use variances. The Board shall have the power, upon an appeal from a decision or determination of the administrative official or body charged with the enforcement of this chapter, to grant use variances as defined herein.
- D. Interpretations. The Board shall, upon request from or appeal of a decision by the Building Inspector or any administrative body of the Town of Liberty, including the Town Board, decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

§ 147-42. Procedure.

- A. General procedures.
 - (1) The Board of Appeals shall act in strict accordance with the procedure specified by the Town Law and by this chapter. All appeals and variance applications made to the Board shall be in writing on forms prescribed by the Board or provided for herein. Every appeal or variance application shall refer to the specific provision of the chapter involved and shall exactly set forth the interpretation that is claimed, the use which is involved or sought

Deleted: The Board shall have the powers and duties authorized by the New York State Town Law and shall have the following specific powers and duties:¶

A. Orders, requirements, decisions, interpretations and determinations. The Board 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 administrative official or body charged with the enforcement of this chapter, and to that end shall have all the powers of the administrative official or body from whose order, requirement, decision, interpretation or determination the appeal is taken.¶

B. Area variances. The Board shall have the power, upon an appeal from a decision or determination of the administrative official or body charged with the enforcement of this chapter, to grant area variances as defined herein.¶

C. Use variances. The Board shall have the power, upon an appeal from a decision or determination of the administrative official or body charged with the enforcement of this chapter, to grant use variances as defined herein.¶

D. Interpretations. The Board shall, upon request from or appeal of a decision by the Building Inspector or any administrative body of the Town of Liberty, including the Town Board, decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.¶

C. Area Variances¶

¶ An area variance means the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations. The ZBA shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer, after public notice and hearing and in accordance with the requirements of law and this chapter, to grant area variances as defined herein.¶

¶ Notwithstanding any provision of law to the contrary, where a proposed site plan or subdivision plat contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance without the necessity of a decision or determination of the CEO.¶

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to the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case.

- (2) An appeal must be made within 30 days of the action of the Code Enforcement Officer. The applicant must file a signed notice of appeal with the Code Enforcement Officer and with the Secretary of the Board of Appeals. Such notice shall be made on the forms provided for that purpose. The administrative official from who the appeal is taken shall be responsible, at the direction of the Board, for providing any applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing said forms. All information required thereon shall be complete before an appeal is considered filed. Six copies of the proper appeal form shall be filed with the Board.

B. Variance Requirements.

(1) Any property owner, tenant or representative thereof may, in appealing an administrative decision of the Town of Liberty with respect to this chapter, request a variance from its literal terms. Application for a variance may be made concurrently with application for a building permit, subdivision or special use/site plan and shall be delivered to the Code Enforcement Officer or Planning Board, respectively, who shall then, in acting upon the application, refer the matter to the Zoning Board of Appeals for a decision on the variance request. This shall not, however, preclude an applicant whose permit request has been denied from subsequently requesting a variance in conjunction with an appeal of such action if the appeal has been timely filed.

(2) Two types of variances may be granted by the Zoning Board of Appeals: area variances and use variances. Area variances involve relief from dimensional or other requirements for existing uses or uses allowed within the district under the terms of this chapter. Use variances involve a use of land not allowed in a district under the terms of this chapter.

(a) Area variance.

[1] Definition. "Area variance" shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or topographical requirements of this chapter.

[2] Determination. The Zoning Board of Appeals, on appeal from an administrative decision or determination of the Town of Liberty with respect to this chapter, shall have the power to grant variances from the area or dimensional

requirements of this chapter. In making its determination to grant area variances, 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:

- (i) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
- (ii) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
- (iii) Whether the requested area variance is substantial.
- (iv) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- (v) 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.

[3] Minimum variance. 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.

(b) Use variance.

[1] Definition. "Use variance" shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner or for a purpose which is otherwise not allowed or is prohibited by the applicable regulations of this chapter.

[2] Determination. The Zoning Board of Appeals, on appeal from an administrative decision or determination of the Town of Liberty with respect to this chapter, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of this chapter. No such use

variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that the applicable regulations and restrictions of this chapter have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that:

- (i) Under the applicable regulations of this chapter, the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.
- (ii) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
- (iii) The requested variance, if granted, will not alter the essential character of the neighborhood.
- (iv) The alleged hardship has not been self-created.

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

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

C. Requirements applicable to other appeals.

(1) Interpretations. The Town Board, Code Enforcement Officer or Planning Board of the Town of Liberty may request the Zoning Board of Appeals to decide any question involving the interpretation of any provision of this chapter and shall refer such other matters to the Zoning Board of Appeals as it is required to decide by the provisions of this chapter. The Zoning Board of Appeals' rules and regulations shall govern these matters. All

matters to be referred to the Zoning Board of Appeals in such circumstances shall be in writing to the Zoning Board of Appeals secretary and shall be acted on within 90 days of the secretary's receipt of same.

(2) Appeals from administrative acts. Any property owner, tenant, representative thereof or other person aggrieved by an administrative act of the Town of Liberty with respect to this chapter, who believes such decision to be in error, may appeal to the Zoning Board of Appeals.

(a) Administrative act. An administrative act shall include any order, requirements, decision, interpretation or determination made by the Code Enforcement Officer. The Zoning Board of Appeals may reverse of affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination as in its opinion ought to be made in the matter, and to that end shall have all the powers of the official from whom the appeal is taken.

(b) Time for appeal. An appeal must be made to the Zoning Board of Appeals within 30 days after the filing of any order, requirements, decision, interpretation or determination made by the Code Enforcement Officer. The applicant must file a signed notice of appeal with the administrative official or body from whom the appeal is taken and with the secretary of the Zoning Board of Appeals. Such notice shall be made on forms provided for such purpose.

(c) Application to Zoning Board of Appeals. The administrative official from whom the appeal is taken shall be responsible, at the direction of the Zoning Board of Appeals, for providing any applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing such forms. All information required thereon shall be complete before an appeal is considered filed. Six copies of the proper appeal form shall be filed with the Zoning Board of Appeals.

D. Hearings.

(1) Timing and notice. The Zoning Board of Appeals shall schedule a hearing on all appeals or applications within 62 days of the filing of the appeal or application. Public notice of the hearing shall be given at least five days prior to the date thereof by publication in a newspaper of general circulation in the Town. The cost of sending or publishing any notices relating to any appeal or application shall be borne by the appealing party and shall be paid to the Zoning Board of Appeals prior to the hearing.

(2) General conduct of hearing. Any party may appear in person or by agent or by attorney. Irrelevant or unduly repetitious evidence or cross-examination may be excluded. Except as otherwise provided by statute,

the burden of proof shall be on the party who is taking the appeal. No decision, determination, or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by an in accordance with substantial evidence.

(3) Rules of evidence. Unless otherwise provided by statute, the Zoning Board of Appeals need not observe the rules of evidence observed by courts but shall give effect to rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, the Zoning Board of Appeals may, for the purpose of expediting a hearing and when the interests of the parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(4) Records and evidence. All evidence, including records and documents in the possession of the Zoning Board of Appeals or parties to the hearing, of which the former desires to avail itself, shall be made a part of the record, and all all such documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

(5) Cross-examination. A party shall have the right of cross-examination.

(6) Official notice. Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialize knowledge of the Zoning Board of Appeals. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could be taken, every party shall be given notice thereof and shall, on a timely request, abe afforded (1) an opportunity prior to decision to dispute the fact or its materiality.

(7) Rehearing. Upon a motion initiated by any member and adopted by unanimous vote of the members present, but not less than a majority of all members, the Zoning Board of Appeals may review at a rehearing any order, decision or determination of the Zoning Board of Appeals not previously reviewed. Notice shall be given as on an original hearing. Upon such hearing, and provided it shall appear that no vested rights due to reliance on the original order, decision or determination will be prejudiced thereby, the Zoning Board of Appeals may, upon concurrence of all members present, reverse, modify or annul its original order, decision or determination. Requests for rehearing, however, shall be made within 30 days of the original order, decision or determination.

Deleted: ¶

<#>Hearing Appeals. The jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to Article 16 of NYS Town Law. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.¶

<#>Use Variances¶

(1) Required Findings. No such Use Variance shall be granted by the ZBA without a showing by the applicant that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship. 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. Area Variances ¶

(1) In making its determination, the ZBA shall take into consideration the benefit to the applicant if the Area Variance is granted and balance this benefit against the detriment to the health, safety and welfare of the neighborhood or community by making such grant. In making such determination the board shall consider each of the following factors:¶

- (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the Area Variance;¶

- (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an Area Variance;¶

- (c) whether the requested Area Variance is substantial;¶

- (d) whether the proposed Area Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and ¶

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E. Referral to County Planning Agency.

- (1) Prior to taking action on any matter which would cause any change in the regulations or use or land of buildings on a real property as specified in § 239-m of the General Municipal Law, the Board shall make referrals to the County Planning Agency.
- (2) If within 30 days after receipt of a full statement of such referred matter, the County Planning Agency recommends disapproval or modification thereof, the Zoning Board of Appeals shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof and after adoption of a resolution fully setting forth the reasons for such contrary action. The Chairperson shall read the report of the County Planning Agency at a public meeting on the matter under review prior to the Zoning Board of Appeals deciding on the matter.
- (3) If the County fails to report within such period of 30 days or such longer period as may have been agreed upon by it and the referring agency, the Board may act without such report.
- (4) The Zoning Board of Appeals may also refer matters to the Town of Liberty Planning Board for review and recommendation, provided the Zoning Board of Appeals decides on the matter within 62 days after the close of the public hearing.

F. Decisions.

- (1) Time of decisions. Decisions by the Board shall be made not later than 62 days from the date of the final hearing.
- (2) Form of decisions. The final decision on any matter before the Board shall be made by written order signed by the chairperson. Such decision shall state the findings of fact which were the basis for the Board's determination. The Board may reverse or affirm, wholly or partly, or may modify the order or requirement of the administrative official appealed from. The decision shall also state any conditions and safeguards necessary to protect the public interest.
- (3) Basis for decisions. The Board, in reaching said decision, shall be guided by standards specified herein.
- (4) Content of findings. The findings of the Board and the supporting facts shall be spelled out in detail.
- (5) Expiration of approvals. Any order or decision by the Zoning Board of Appeals for a use that requires a building permit or a certificate of occupancy shall expire within 90 days if the applicable permit is not obtained. The Zoning Board of Appeals may extend this time an additional 90 days.

- (6) Filing of decisions. Decisions of the Board 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. The date of filing of each decision shall be entered in the official records and minutes of the Board.
- (7) Notice of decision. Copies of the decision shall be forwarded to the applicant, the Town Planning Board and the County Planning Agency when referral to the County Planning Agency is required in the particular case.
- (8) Certification of decision. A certified copy of the Board's decision, including all terms and conditions, shall be transmitted to the Code Enforcement Officer and shall be binding upon and observed by him and he shall fully incorporate such terms and conditions of the same in the permit to the applicant or appellant whenever a permit is authorized by the Board.

G. Miscellaneous.

- (1) The Zoning Board of Appeals is hereby authorized to adopt rules and regulations for the conduct of its business consistent with this chapter and state statutes.
- (2) All applications and appeals made to the Board of Appeals shall be in writing on forms prescribed by the Board and signed by the applicant. Every application or appeal shall refer to the specific provision of this chapter involved and shall exactly set forth the interpretation that is claimed, the plans associated with and the details of the variance that is applied for, in addition to the following information:
 - (a) The name and legal permanent address of the applicant or appellant and telephone number if available.
 - (b) The name and address of the owner of the district lot to be affected by such proposed change or appeal.
 - (c) A brief description (or copy of survey or tax map number) and location of the district lot to be affected by such proposed change or appeal.
 - (d) A statement of the present zoning classification of the district lot in question, the improvements thereon and the present use thereof.
 - (e) A reasonable accurate description of the proposed improvements and the additions or changes intended to be made under the application, indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected, indicating the location and size of the lot and size of the improvements thereon and proposed to be erected thereon.
- (3) When a notice of appeal in any case where a permit had been granted or denied by the Code Enforcement Officer shall be filed, the Code Enforcement Officer shall forthwith transmit to the Zoning Board of Appeals all papers

constituting the record upon which the action appealed from was taken or, in lieu thereof, certified copies of said papers.

- (4) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate a stay would, in his 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 the Supreme Court on application, on notice to the Code Enforcement Officer and on due cause shown.
- (5) Any person aggrieved by a decision of the ZBA may apply to the State Supreme Court for review by proceedings under Article 78 of the Civil Practice Law and Rules. Such proceedings must be instituted within 30 Days after the filing of a decision in the office of the Town Clerk.
- (6) Whenever the Board, after hearing all the evidence presented upon an application or appeal under the provisions of this chapter, denies the same, the Zoning Board of Appeals shall refuse to hold further hearings on the said or substantially similar application or appeal by the same applicant, his successor or assign for a period of one year, unless the Zoning Board of Appeals shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, property and general welfare and that a reconsideration is justified.

Section 10. Amendment of Schedule of District Regulations.

Deleted: Section 11

The Schedule of District Regulations incorporated by reference in §147-8 and attached to the Zoning Law is hereby amended as follows:

A new schedule with respect to the “WP – Wellhead Protection Overlay District” established by this local law is hereby added to the Schedule of District Regulations, and sequentially shall appear immediately following the existing RH – Hotel Area District, as follows:

District Name and Intent	Principal Permitted Uses	Special Uses	Accessory Uses	Development Standards
“WP -Wellhead Protection Overlay District” The purpose of the Wellhead Protection Overlay District is to minimize the	Uses permitted in the underlying zoning district(s), except where the	Special Uses permitted in the underlying zoning districts(s), except	Accessory Uses permitted in the underlying zoning district(s), except where	Those development standards permitted in the underlying zoning district(s), except as otherwise specified in §147-8(A)

potential for harmful or unwanted contaminants to enter the local water supply at wellheads within the town from nearby activities. The regulations of this district shall apply in addition to those of the underlying district(s).	overlay prohibits such uses or activities, or imposes greater restrictions. See §147-8(A)	where the overlay prohibits such uses or activities, or imposes greater restrictions. See §147-8(A)	the overlay prohibits such uses or activities, or imposes greater restrictions. See §147-8(A)	Lot size and dimensional requirements: same as underlying district(s) and in accordance with §147-8(A)
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Section 11. Amendment of the Official Zoning Map of the Town of Liberty.

Deleted: 12

The Zoning Map of the Town of Liberty is hereby amended so that all or part the following parcels shall fall within and comprise the WP – Public Wellhead Protection Overlay District:

Swan Lake Overlay Parcels

44.-1-28.15, 44.-1-28.53, 44.-1-39.15, 44.-1-66, 44.-1-70.1, 44.-1-70.2, 44.-1-2.1, 44.-1-2.2, 44.-1-28.11, 44.-1-28.12, 44.-1-28.13, 44.-1-28.4, 44.-1-28.51, 44.-1-28.54, 44.-1-28.56, 44.-1-28.6, 44.-1-35, 44.-1-36.1, 44.-1-37, 44.-1-38, 44.-1-39.18, 44.-1-39.2, 44.-1-4, 44.-1-40.1, 44.-1-40.2, 44.-1-40.3, 44.-1-40.4, 44.-1-5

WSS Overlay Parcels

32.-5-3.2, 32.-5-2, 32.-5-3.1, 39.-1-12, 39.-1-13, 39.-1-1.1, 39.-1-14, 32.-5-1

Section 12. Savings clause.

Deleted: 13

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjusted finally by a Court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or any part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby stated to be the legislative intent that the remainder of this local law would have been adopted had any such provisions not been included.

| Section 13. Effective date.

Deleted: 14

This local law shall take effect immediately upon filing in the office of the Secretary of State.