Zoning Ordinance

of the

Village of Upper Nyack

COUNTY OF ROCKLAND

STATE OF NEW YORK

ADOPTED JANUARY 18, 1962
WITH AMENDMENTS

$25.00 per copy

Printed 05/16

OFFICIALS

OF THE

VILLAGE OF UPPER NYACK

Municipal Building
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Upper Nyack, NY 10960
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Building Inspector
ROY WANAMAKER

Village Clerk
CAROL G. BROTHERHOOD

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Village of Upper Nyack Official Zoning Map

ZONING ORDINANCE
OF
THE VILLAGE OF UPPER NYACK

RESOLVED: The Board of Trustees of the incorporated Village of Upper Nyack, in the Town of Clarkstown, County of Rockland, State of New York, does on this 18th day of January, 1962, hereby amend the Village Zoning Ordinance of the Village of Upper Nyack heretofore enacted June, 1928, and all such amendments thereto thereafter enacted, by revoking and deleting the same in their entirety, and does hereby adopt and enact the following Zoning Ordinance which shall be known and may be cited as "The Village of Upper Nyack Zoning Ordinance of 1961."
Amended by Local Law # 14 of 2004, approved 12/16/04, Filed 12/27/04

ARTICLE I

PURPOSE OF THE ORDINANCE

§ 1. Purpose of the Ordinance

This Ordinance adopted pursuant to Article VI-A of the Village Law of the State of New York regulating Zoning in Villages, is for the purpose of promoting the health, safety, morals, and general welfare of the Village of Upper Nyack, New York, by regulating and restricting the height, number of stories and size of buildings and other structures, prescribing the percentage of a lot area that may by occupied and the size of yards, courts, and other open spaces, fixing the density of population, and the location and use of buildings, structures and land for trade, industry, residence and other purposes, and dividing the Village into districts of the number, shape, and area deemed best suited to accomplish such purposes; and further creating a Board of Appeals to determine and vary the application thereof in harmony with its general purpose and intent; and further providing the fines and penalties for violations, and providing for enforcement.

ARTICLE II

DEFINITIONS

§ 2. Definitions [Amended by LL # 1 of 2008, filed 6/11/08; LL # 3 of 2011, filed 12/28/11]

Except where specifically defined herein all words used in this Zoning Ordinance shall carry their customary and dictionary meanings. Words used in the present tense include the future, and the plural includes the singular, the word "person" includes a corporation, the word "lot" includes the words "plot" and "parcel," the word "building" includes the word "structure," the word "shall" is intended to be mandatory, the words "used" or "occupied" shall be considered as though followed by the words: "or intended, arranged, or designed to be used or occupied." Specific definitions are as follows:

ACCESSORY BUILDING OR STRUCTURE: A building or structure on any lot which is used for a purpose that is considered an accessory use to the main use of the lot. In the case of a building, the building shall be separated by air and space from the primary building in order to be considered accessory, whether or not the building is inhabited by humans. **LL #1 of 1999**

ACCESSORY USE: A use that is incidental to and on the same legally existing lot as the primary use. **LL #1 of 1999**

ADULT DAY CARE: Provision of nonmedical care for adult persons on a less than 24-hour basis. **LL #1 of 2008**

ALTERATIONS: As applied to a building or structure: - a change or rearrangement in the structural parts or in the entrance or exit 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, BUILDING: The maximum horizontal area of a building and its accessory buildings at the ground level.

AREA, LOT: The total area within the property lines excluding external streets.

BASEMENT: A story partly underground but having at least one-half of its height above the average level of the adjoining ground. A basement shall be counted as a story for the purpose of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet or if used for business or dwelling purposes. (see "Cellar" for comparison)

BOARDING HOUSE: A dwelling in which four or more persons either individually or as families are housed or lodged for hire with or without meals. A "Rooming House," a "Furnished Room" house or a "Lodging House" shall be deemed a Boarding House.

BUILDING: Any man-made structure, whether made temporary or permanent that has more than three walls and a roof and is at least six feet high. **LL #1 of 1999**

ARTICLE II DEFINITIONS

BUILDING, DETACHED: A building surrounded by open space.

BUILDING, FRONT LINE OF: The line of that face of a building nearest the front line of the lot. This face includes sun parlors and porches whether enclosed or unenclosed but does not include steps.

BUILDING, HEIGHT OF: The highest point of the roof for flat roofs, to the deck line for mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.
Refer to LL #1 of 1999

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

CELLAR: A portion of a building partly underground and having more than one-half of its height below the average level of the adjoining ground. A cellar shall not be considered in determining the permissible number of stories. (See "Basement" for comparison)

CEMETERY: A place containing graves or tombs for the interment of the dead. **LL # 1 of 2008**

DAY CARE CENTER/NURSERY SCHOOL/DAY CAMP: a place of assembly for providing care and instruction between the hours of 7AM and 7PM for ten or more children operated in accordance with the New York State Social Services Law. **LL #1 of 2008**

DORMITORY: A place of assembly that is operated by a school located on the same lot, the purpose of which is to provide only living accommodations, without cooking facilities, for fulltime students attending the school, adult staff residents directly responsible for the overnight supervision of such students, and members of the immediate families of such adult staff residents. **LL # 1 of 2008**

DWELLING: A building designed 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 detached building containing two dwelling units.

DWELLING, MULTIPLE: A building or portion thereof containing three or more dwelling units, and further as defined by the Multiple Residence Law and the State Building Code of the State of New York.

DWELLING UNIT: A building or portion thereof providing complete housekeeping facilities for one family, including independent cooking, sanitary and sleeping facilities, and physically separate from any other dwelling unit whether or not in the same building. **LL # 1 of 2008.**

ARTICLE II DEFINITIONS

FAMILY: Either (1) a head of household plus one or more persons related by blood, marriage, or adoption or other domestic bond limited to the spouse, domestic partner, parents, or lineal descendants of the head of household, or of the head of household's spouse or domestic partner, living together as a single, not-for-profit unit sharing housekeeping duties and cooking, eating, living, and recreational facilities; or (2) a maximum of five persons not sharing a relationship described in (1) above, but living together as a single housekeeping unit sharing housekeeping duties and cooking, eating, living, and recreational facilities. All living situations meeting one of the above definitions of Family must still comply with the occupancy standards set forth in the Property Maintenance Code of New York State of providing not less than 400 square feet per person. **LL # 1 of 2008.**

FILLING STATION: Any area of land, including structures thereon, which is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning or otherwise cleaning or servicing such motor vehicles.

FLAG LOT: A lot not meeting minimum street frontage requirements where access to the public street is by a narrow private right-of-way or driveway.

FRONTAGE OF A LOT: The lineal footage actually abutting a street.

GARAGE, PRIVATE: An enclosed space for the storage of one or more motor vehicles; provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a non-resident of the premises.

GARAGE, PUBLIC: A garage not private, which is used for storage, repair and rental of motor vehicles, and for servicing or supplying them with gasoline or oil, parts and accessories.

GRADE, FINISHED: The elevation of completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

GROUP FAMILY DAY CARE HOME: An establishment providing day care services for fewer than ten children within a single-family dwelling unit in accordance with the New York State Social Services Law Section 390. **LL #1 of 2008**

GROUP HOME: A not-for-profit or for-profit boarding home licensed by the New York State Department of Social Services for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation. **LL #1 of 2008**

HABITABLE SPACE: Space occupied by one or more persons for living, sleeping or eating. Kitchens and bathrooms are excluded from habitable space.

ARTICLE II DEFINITIONS

HOME OCCUPATION: Any use customarily conducted entirely within a dwelling and carried on only by the residents thereof, using only customary home appliances, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and conforms to the following additional requirements:

1. Not more than one person outside the family shall be employed.
2. There shall be no exterior display, no exterior sign (except as permitted under Section 6:2), no exterior storage of materials and no other exterior indication of the Home Occupation or variation from the residential character of the principal building.
3. No noise, vibration, smoke, dust, odors, heat or glare shall be produced.
4. There shall be no pick-ups or deliveries other than regular mail, commercial mail service, and next-day courier service. **LL #1 of 2008**

HOSPITAL: A building used for the diagnosis, treatment or other care of human ailments.

HOUSE TRAILER: Any portable or mobile vehicle used or designed to be used for living purposes having its wheels, rollers, skids or rigid supports in place.

IMPERVIOUS SURFACE: Any material that substantially reduces or prevents the infiltration of storm water into previously undeveloped land. Impervious surface shall include graveled or paved driveways and parking areas, patios, walkways and similar elements. **LL #1 of 1999**

LINE, STREET: The established dividing line between the street and the lot.

LOT: A plot or parcel of land occupied or capable of being occupied by one building or group of buildings where so permitted, and the accessory buildings or uses customarily incident to them, and including such open spaces as are required by this Ordinance.

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

LOT COVERAGE: The percentage of any legally existing lot covered by structures and/or buildings. **LL#1 of 1999**

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.

LOT, INTERIOR: A lot other than a corner lot.

LOT, THROUGH: An interior lot having frontage on two parallel or approximately parallel streets.

LOT LINE, FRONT: In the case of a lot abutting upon only one street, the line separating the lot from the street; in the case of any other lot, the owner shall for the purpose of this Ordinance, have the privilege of electing any street lot line as the front lot line.

LOT LINE, REAR: The lot line which is generally opposite the front lot line; if the rear lot line is less than ten feet in length, or of the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line not less than ten feet long, lying wholly within the lot and farthest from the front lot line.

LOT LINE, SIDE: The property line or lines extending from the front lot line to the rear lot line.

MAIN BUILDING: See BUILDING, PRINCIPAL **LL # 1 of 2008**

MAPPED STREET: See STREET **LL # 1 of 2008**

MONOPOLE: A free-standing pole having a single point of location on the ground comprising a part of a wireless communication services facility. For purposes of this Local Law, the term monopole shall include, in addition to the pole, all other components of the wireless communication services facility. **LL # 1 of 2008**

NONCONFORMING USE: Use of a building, structure or land legally existing at the time of enactment of this Ordinance or amendment thereof but not conforming to the regulations of the district or zone in which the property is situated.

NOT-FOR-PROFIT CORPORATION: A corporation formed or existing under the Not-For-Profit Corporation Law of any state. **LL # 1 of 2008**

NURSERY SCHOOL: See DAY CARE CENTER **LL # 1 of 2008**

OFFICIAL MAP: An official document that indicates the location of key features of the Village, including boundaries, village or public streets, streams and other key drainage and infrastructure features. **LL # 1 of 2008**

OPEN SPACE: An unoccupied space open to the sky on the same lot with the principal building.

PARKING SPACE: An off-street space available for the parking of one motor vehicle and having an area of no less than two hundred square feet exclusive of appurtenant passageways and driveways, and having direct access to a street.

PERSON: Any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies. **LL # 1 of 2008**

PERSONAL WATERCRAFT: A vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing or kneeling on, or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel. **LL #4 of 2003**

PLACES OF ASSEMBLY: Uses which involve the periodic gathering together of groups of 20 or more people for a shared purpose and which therefore require specific standards to ensure the safety, health and well-being of the users and of nearby residents and businesses. All places of assembly require the issuance of a special use permit and are subject to periodic inspection by agents, officers or employees of the Village of Upper Nyack or other government bodies with jurisdiction. A gathering is considered to be periodic if it occurs more than six times in one calendar year.
LL # 1 of 2008; LL # 3 of 2011

PLACE OF ASSEMBLY, NONPROFIT INSTITUTIONAL: A site or facility open to the public, owned or operated by a not-for-profit organization for social, educational or recreational purposes. Typical uses include, but are not limited to, museums, cultural centers, recreational facilities, botanical gardens and community services such as after-school care or tutorial services, child care or medical services. **LL # 1 of 2008**

PLACE OF ASSEMBLY, PRIVATE MEMBERSHIP CLUB: A site or facility owned or operated by a not-for-profit private membership club for social, educational, cultural, or recreational purposes where paid membership is required. The members of the organization shall have a financial interest in, and method of control of, the assets and management of the private membership club. Typical uses include fraternal or cultural organizations, field/sports clubs, or union halls. **LL # 1 of 2008**

PLACE OF ASSEMBLY, WORSHIP: A site or facility owned or operated by a tax-exempt religious group and/or a group organized or qualified under the New York State Not-For-Profit Law and/or 26 United States Code §501 (C) (3) that is used periodically, primarily or exclusively for religious worship activities and related services. Typical uses include, but are not limited to, churches, temples, mosques, synagogues, and chapels. **LL # 1 of 2008**

PRIVATE STREET: A road, lane, street or way that has not been accepted as a mapped street by the Village of Upper Nyack, does not appear on the Official Map, and does not receive public services such as pavement maintenance, refuse collection or snow clearance. **LL # 1 of 2008**

PREMISES: The area of land or lot with the building, accessories, and appurtenances thereon

PLAT: A map, plan or layout indicating the location and boundaries of an individual property, a group of properties or municipality.

RESIDENTIAL FACILITES: Those facilities, which provide housing or temporary housing to person(s); whether or not the housing has separate kitchen facilities. **LL #4 of 2003**

ROAD: See "Street."

ROOMING HOUSE: See "Boarding House."

SCHOOL: A public, private or other institution affiliated with a place of assembly providing education to any level of children and/or adults in subjects or skills. **LL # 1 of 2008**

SEAT (IN A PLACE OF ASSEMBLY): One individual fixed seat; or a length of 24 inches on a pew or bench; or a measurement of seven square feet per person for the assembly area where movable chairs or other portable seating fixtures are used, including aisle seating. **LL # 1 of 2008**

SENIOR CARE FACILITY: Housing, which is provided in a congregate setting that allows individuals age 55 and older to live in an individual apartment-like setting with staff assistance available for activities of daily living, including housekeeping, dressing, bathing, medicating, and meals, but not nursing or medical care. Apartments shall not have a separate kitchen and congregate dining facilities or room-to-room service for meals shall be provided. Other uses that shall be considered accessory to Senior Care Facilities and shall be limited to use by on-site residents are: transportation services, exercise facilities, meeting rooms, library, arts and crafts rooms, hair cutting and styling shops, gift and sundry item shops, offices for the staff of the facility, offices and exam rooms for doctors or dentists and their staff. This definition shall not be construed to allow independent living facilities whether they are homes, townhouses or apartment buildings.
LL #4 of 2003

SHED: A small accessory one story storage building with an area not exceeding 120 square feet.
LL# 2 of 2015

SHOPPING CENTER: A group of attached commercial establishments, planned, developed, owned and/or managed as a unit related in location, size and type of shops to the trade area that the unit serves, providing on site parking and other accessory uses and functions, and exceeding a gross building floor area of 5,000 square feet. **Effective 1/8/73**

SIGN: Any structure or part thereof or any device attached thereto or painted or represented thereon, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as or in the nature of an announcement, direction or advertisement. The word "sign" does not include the flag, pennant or insignia of any nation, state, city or other political unit, or of any political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event.

SOLAR ENERGY COLLECTOR: A device or combination of devices relying upon solar radiation as an energy source that is employed for the purposes of the heating or cooling of a building, the heating of water or the generation of electricity. **LL # 1 of 2008**

SPECIALTY PROP-CRAFT: A vessel which is powered by an outboard motor or a motor driven propeller which is designed to be operated by a person sitting, standing, or kneeling on or being towed behind the vessel rather than in the conventional matter of sitting or standing inside the vessel. **LL # 4 of 2003**

STORY: That part of a building between the surface of a floor and the ceiling immediately above.

STORY, HEIGHT OF: The vertical distance from a floor to the top surface of the floor next above. The height of the topmost story is the distance from the top surface of the floor to the top surface of the ceiling joists.

STREET: An existing State, County, Town or Village road, or other right-of-way that is included on the Official Map of the Village of Upper Nyack. **LL # 1 of 2008**

STRUCTURE: Any man-made improvement to a legally existing lot, regardless of the intended use, as long as the structure is taller than three feet, or is considered a permanent improvement to the property. Structures shall include, but are not limited to buildings, parking areas, driveways, car ports, tennis courts, pools, sidewalks, retaining walls, fountains, fences, gazebos, sheds, patios, and any of the like improvements. Any permanently installed artificial surface that is impervious to water shall be considered a structure. The definition of a structure shall include buildings however, all structures are not necessarily defined as buildings. Also, water-permeable landscaping surfaces and plantings shall not be considered a structure. **LL #1 of 1999**

TAKE OUT FOOD SERVICE: A retail business that involves the preparation of food on site for sale to the general public, but does not generally offer seating or areas suitable for consumption on site. **LL #4 of 2003**

TEMPORARY BUILDINGS OR STRUCTURES: A structure or building that is considered a temporary improvement of less than six months, and placed on any legally existing lot for the convenience of the users on a non-permanent basis. **LL #1 of 1999**

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 nonconforming use or any use not specifically permitted by the text of the Ordinance.

USE, SPECIAL PERMIT: A use allowed in a district, subject to the issuance of a Special Permit by the Planning Board in accordance with the provisions of Article IV Section 15:8 of the Zoning Ordinance. **LL # 1 of 2008**

WETLAND: Areas that comprise hydric soils or are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation, and are designated as wetlands on the Official Map of the Village of Upper Nyack. **LL # 1 of 2008**

WIRELESS COMMUNICATION SERVICES: The provision of wireless communication services, including those more commonly referred to as "mobile" or "cellular telephones," which services are regulated by the Federal Communications Commission (FCC) in accordance with and as the term "personal wireless service" is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 332 (C)(7)(C), or as hereafter amended.
LL # 1 of 2008

WIRELESS COMMUNICATION SERVICES FACILITY: Any equipment used in connection with the commercial operation of Wireless Communication Services, as defined herein, and as the term "personal wireless services facility" is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 332 (C)(7)(C), or as hereafter amended, to transmit and/or receive frequencies, including, but not limited to antennas, monopoles, equipment, appurtenances and structures whether attached to a building or standing as a separate piece of equipment. **LL # 1 of 2008**

WIRELESS COMMUNICATION SERVICES FACILITY (MINOR): A wireless communication services facility located within a public right-of–way in which a cluster of antennas is structurally mounted to an existing utility pole, roadway sign, bridge or other similar type of structure, not exceeding the height of such structure by more than 3 feet, together with associated equipment to be located on the ground. **LL # 1 of 2008**

YARD: An unoccupied space open to the sky, on the same lot with a building or structure.

YARD, FRONT: An open unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the nearest street line. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard.

YARD, REAR: An unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into the required rear yard.

YARD, SIDE: An open unoccupied space on the same lot with the building and situated between the building and the side line of the lot. Any lot line not a rear line or a front line shall be deemed a side line. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into the required side yard.

ARTICLE III

GENERAL REGULATIONS

§ 3. Application of Regulations

§ 3:1 All regulations affecting the USE of land, water or buildings are mandatory and in the affirmative and no other or further USE is to be made of land, water or buildings except that provided in this Ordinance as applying to the District in which the land, water or building is located.

§ 3:2 No land, water or building shall hereafter be used or occupied, and no building or any part thereof shall be erected, relocated, altered, used or occupied unless in conformity with the regulations of this Ordinance.

§ 3:3 **Amended 10-15-70, Effective 11-4-70**

a. No existing lot line, nor the location of any structure, shall be moved, altered or eliminated, nor shall any land or structure be partitioned, unless a Zoning Permit shall first be obtained from the Zoning Inspector, as provided in Sec. 16 of this Ordinance.

b. No existing lot line, nor the location of any structure, shall be moved altered or eliminated, nor shall any land or structure be partitioned, so as to create any nonconformity with, or violation of, this Ordinance, except by variance duly granted by the Zoning Board of Appeals, as provided in Sec. 17 of this Ordinance.

c. In the event any proposal for the moving, alteration or elimination of any lot line or location of any structure, or for the partition of any land or structure, shall provide for contour changes in land, or in the event any proposed subdivision or development may result in grading, excavating, removal or destruction of the natural topsoil, trees or other vegetative cover of the land, the Zoning Inspector shall, prior to issuing any Zoning Permit, submit said proposal to the Planning Board of the Village of Upper Nyack, which board shall examine said proposal, make or cause to be made such studies as it shall deem necessary, and make a written report and recommendations to the Zoning Inspector with respect to, and governing, the issuance of, and conditions to be attached to, said Zoning Permit.

d. No part of a street frontage, yard or other open space required by or about any structure for the purpose of complying with the provisions of this Ordinance, shall be included or considered as a part of a street frontage, yard, or other open space required by or about any other structure to comply with the provisions of this Ordinance.

§ 3:4 No "House Trailer" shall be used or occupied within the area limits of the Village.

§ 3:5 STREETS: No building permit shall be issued unless the lot upon which the structure is to be built has the required frontage on a Street as defined in the Ordinance, which street shall have been suitably improved in accordance with Village specifications, as provided in Local Law # 9 of 2004.

§ 3:6 Buildings on corner lots are to be set back the required front yard distance on both street frontages.

§ 3:7 INTERPRETATION: In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements necessary for the promotion of the public health, morals, safety and the general welfare of the Village as stated in Section 1. Wherever the requirements of this Ordinance are at variance with the requirements of any State law; or of any other lawfully adopted rule, regulation or ordinance of the Village; or any lawfully existing covenant or agreement, the more restrictive requirement or that imposing the higher standards shall govern.

§ 3:8 VALIDITY: Should any section or provision of this Ordinance be held or decided by a court of law to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any parts of said Ordinance other than that part which was so held or decided to be unconstitutional or invalid.

§ 4. Application of the Bulk and Use Regulations

§ 4:1 SCHEDULE OF REGULATIONS: The general regulations affecting the USE of buildings and the BULK and arrangement of buildings, material or equipment occupying the land, are hereby established as shown or stated in the following tables which are appended hereto and made a part of this Ordinance.

§ 4:2 LIVABLE FLOOR AREA: In the determination of LIVABLE FLOOR AREA of dwellings as provided in this Ordinance, such LIVABLE FLOOR AREA shall be calculated to include the thickness of interior and exterior walls, but there shall be excluded therefrom all unenclosed floor extensions and outside porches and patios and attached garages.

§ 5. Special Permits- Multiple Dwelling Conversion [Amended by LL # 1 of 2008]

§ 5:1 An Application for a Special Permit for conversion of a building constructed prior to the effective date of this Ordinance into a Multiple Dwelling shall be submitted to the Planning Board of the Village of Upper Nyack, accompanied by the following:

a. A $100.00 fee, payable to order of the Village of Upper Nyack.

b. Four copies of a plot plan of the proposed development drawn to scale of no more than 50 feet to the inch and showing topographic lines at intervals of not more than each ten feet of elevation. Said plot plan shall also show the size, shape and location of all buildings and structures, roads, driveways, parking facilities, playgrounds (if any), walks, screening and fencing.

c. Four copies of an architect's preliminary plans and four elevations together with a sketch of the principal and accessory buildings.

§ 5:2 The Planning Board may receive an Application for a Special Permit-Multiple Dwelling Conversion at any Regular Meeting.

§ 5:3 The Planning Board after receiving an Application for a Special Permit-Multiple Dwelling Conversion, may refer the said Application to the Village Attorney, Village Engineer and/or Planning Consultant for a report and recommendation thereon.

§ 5:4 The Planning Board shall as soon as practicable and in any event within sixty-two (62) days, give notice of a public hearing on the Application, by posting a notice thereof at the Village Hall and publishing the same at least twice in a local newspaper. Said hearing shall be held not less than five (5) days after the last such publication. The Village Planning Board shall give its decision on such Application within sixty-two (62) days after the close of the public hearing and shall file a copy thereof with the Village Clerk.

§ 5:5 The maximum number of dwelling units allowed in a building converted into a Multiple Dwelling shall be determined by dividing the total lot area by the minimum lot area for residential occupancy in the applicable District.

§ 5:6 After approval for conversion of a building into a Multiple Dwelling, the applicant shall register with the Village Building Inspector.

§ 6. Supplementary Regulations

§ 6:1 Off-Street Parking Facilities **[Amended by LL # 1 of 2008]**

COMMERCIAL DISTRICTS

a. In all districts except where specifically noted, for each principal building and structure constructed, off-street parking facilities shall be provided. Location of such facilities, ingress and egress shall be reviewed and approved by the Planning Board as part of site plan approval and determined by such board as being located to provide for the safety, welfare, convenience and best interests of the Village and that parking spaces shall be provided at the following minimum standard (usable floor area does not include basements or attics if used for storage):

1. Medical Office: one space per 100 square feet of usable floor area
2. Non-Medical Office: one space per 200 square feet of usable floor area.
3. Libraries, Reading Rooms: one space per 400 square feet of usable floor area.
4. Delis, bakeries or takeout food service without seating area: one space per 20 square feet of customer waiting area.
5. Research and development laboratories: one space per 200 square feet usable floor area, or one space per employee, whichever is greater.
6. Restaurants: one parking space per two seats and one space for each employee.
7. Boat Store/chandlery: one space per 400 square feet of usable floor area, or one space per employee, whichever is greater.
8. Museums: one space for each 400 square feet of display space open to the general public, and one for each employee or volunteer attendant.
9. Yacht clubs, marinas, boat yards, and boating docks: one parking space for each two boat slips or moorings, and one space for each employee.
10. Boat sales and service: one parking space shall be provided for every 400 square feet of sales area, and one for each employee.
11. Retail sale or rental of boating, fishing, diving, bathing, and marine supplies and equipment: parking shall be provided at a rate of one space per 400 square feet of floor area, plus one space for each employee.
12. Senior Care Facilities: one parking space per two living units plus one space for each employee.

§ 6:1 Off Street Parking Facilities (con't) **[Amended by LL # 1 of 2008]**

COMMERCIAL DISTRICTS

a. 13. Place of Assembly-Worship: One parking space per four seats, or one per 28 square feet of usable floor area of auditorium, whichever is greater. **LL # 1 of 2008**

14. Place of Assembly-Private Club: One parking space per three members. **LL # 1 of 2008**

15. Schools **LL # 1 of 2008**

a. Elementary, junior high/middle school: two parking spaces per three teachers and employees normally engaged in or about the building or grounds, plus one space for each 150 square feet of seating area, including aisles, in any auditorium.

b. Senior high school: two parking spaces per three teachers and employees normally engaged in or about the building or grounds plus one space for five students or one space for each 150 feet of seating area, including aisles, in any auditorium, gymnasium, or cafeteria intended to be used as an auditorium, whichever is greater.

c. Kindergartens, Nursery School, Day Care facilities: two parking spaces per three teachers and employees normally engaged in or about the building or grounds, plus one off-street loading space per eight pupils.

b. If parking is provided under a building, at the option of the Planning Board, the applicant may increase the FAR of the building proportionally to the number of spaces under the building by no more than 25%, provided that the following conditions are met:

1. This provision shall apply only in the OB or LO districts.

2. Such increase does not cause injury to other properties in the adjacent or in the immediate vicinity of the site.

3. Sufficient traffic safety and sight distances can be maintained for the comfort and safety of drivers and pedestrians on site.

4. The entrance to such underground parking shall not be located facing the public right of way.

5. The number of parking spaces provided shall meet or exceed standards established in Section 6(a) of this Zoning Local Law.

§ 6:1 Off Street Parking Facilities (con't) **[Amended by LL # 1 of 2008]**

RESIDENTIAL DISTRICTS

c. In a Residential District permitting professional offices, studios, places of assembly, music, dancing or art schools, doctors' and dentists' offices and Boarding and Rooming Houses, the off-street parking facilities shall be on the side or back yards of the lot with the use permitted and shall be as follows:

Professional, Doctors' and Dentists' Offices	Three Parking Spaces
Private schools for dancing, art and music, etc.	One Parking Space for each 8 students
Boarding and Rooming Houses	One Parking Space for each Rental Unit
Group Home	One space per five residents plus one per employee in the largest work shift. If residents are not allowed to own vehicles, 1 space per 600 square feet of gross floor area
Places of worship	One parking space per four seats, or one per 28 square feet of usable floor area of auditorium, whichever is greater
Private nonprofit clubs	One parking space per three members
Private Schools: Elementary, junior high/middle school	Two parking spaces per three teachers and employees normally engaged in or about the building or grounds, plus one space for each 150 square feet of seating area, including aisles, in any auditorium
Private Schools: Senior high school	Two parking spaces per three teachers and employees normally engaged in or about the building or grounds, plus one space for five students or one space for each 150 feet of seating area, including aisles, in any auditorium, gymnasium, or cafeteria intended to be used as an auditorium, whichever is the greater
Private Schools: Kindergartens, Nursery Schools, Day Care facilities	Two parking spaces per three teachers and employees normally engaged in or about the building or grounds, plus one off-street loading space per eight pupils

d. For buildings converted to Multiple Dwellings, the off-street parking facilities shall be not less than four parking spaces for each three dwelling units, provided, however, the Zoning Board of Appeals may determine and prescribe additional Parking facilities at a size and at the location as may be essential for the safety, general welfare, convenience and best interests of the Village.

§ 6:2 SIGNS: In residential Districts of the Village, signs are specifically prohibited, except as hereinafter provided:

a. In Residential Districts permitting Professional Offices, such permission shall include display of a small professional-type nameplate not exceeding 100 square inches in size.
b. In Residential Districts permitting private schools, music, dancing and art schools and studios, such permission may include the display of a small nameplate or sign not exceeding one square foot in size.
c. Churches and places of worship shall be permitted to display customary Church Bulletin Boards and nameplates.
d. In Residential and Commercial Districts, real estate signs advertising only the premises on which they are maintained, for sale, lease or rental, may be permitted, provided such signs shall be set back as far from the street line as required for the main front wall of the dwelling or building or structure, and provided such sign shall not exceed twelve square feet in area, and shall be set at least three feet above the ground.
e. In a Commercial District, a sign-board advertising only the business carried on in the building or structure, may be permitted, provided such sign-board shall not exceed twelve square feet in area, and shall be parallel to the face of the building or structure and not project more than two inches beyond the building or structure.
f. In a Commercial District, no electrical signs or sign-boards shall be permitted except with the prior approval of the Board of Trustees of the Village who may require and specify such regulations for use as may be in the best interests of the Village.
g. No outdoor advertising billboards, sign-boards or signs, other than as provided above, shall be permitted in the Village.

§ 6:3 WALLS AND FENCES: The yard requirements of this Ordinance shall not be deemed to prohibit any necessary retaining wall nor to prohibit any fence or wall, provided that in any Residential District such fence or wall shall not exceed six feet in height in any required yard, unless otherwise approved by the Board of Appeals.

§ 6:4 SEWER CONSTRUCTION: A property owner or developer who constructs or who contracts or arranges for the construction of one or more dwellings on any lot or lots in any of the Residential Districts in the Village of Upper Nyack, at the time of applying for zoning permits for the construction of any one or more of said dwellings, may be required by the Board of Trustees or the Zoning Board of Appeals to submit to the Board of Trustees, before The zoning permits will be issued, a written agreement that the said owner or developer will construct in accordance with approved Village specifications a sewage disposal system to service said dwelling(s) including the necessary sewer lines and sewer connections to the said dwellings and also to furnish an appropriate bond for such construction in an amount to be determined by the Board of Trustees. The Building Inspector shall not issue a Certificate of Occupancy upon the completion of any one of said dwellings until the Village Engineer has approved the construction of the sewage disposal system and the said sewer lines and connections.For purposes of determining whether more than one dwelling has been or is to be constructed under this section, the fact that the dwellings are not constructed at the time shall not be relevant or conclusive if said dwellings are constructed as part of a common plan or scheme to construct more than one dwelling.

§ 6:5. Tree Maintenance and Management Operations

[LL # 2 of 2004, Approved 2-12-04, Filed 2-17-04; Amended 5/20/2004 by LL #8 of 2004, Filed 6/7/04; Amended 3/27/06 by LL #1 of 2006, Filed 5/22/06; Amended 8/17/06 by L.L. # 7 of 2006, Filed 9/1/06]

A. Purpose

The Board of Trustees of the Village of Upper Nyack has determined that both the existing character of the community and the control of erosion are highly dependent on the wooded landscape and streetscape and hereby enacts the following legislation:

1. To control and regulate indiscriminate and excessive removal, cutting and destruction of Significant Trees in order to regulate and prevent conditions which result in increased surface runoff, soil erosion, and pollution of the protected Hudson River.
2. To comply with the requirements of the 2003 EPA Stormwater Phase II of the Clean Water Act by identifying trees as "green infrastructure" and including their protection as part of the Village's Stormwater Management Plan.
3. To preserve an important attribute of the Village, by encouraging owners of existing developed lands and developers of lands to reduce removal of canopy trees and mature trees when making improvements to real property.
4. To maintain the stability and value of real property by preserving existing Significant Trees and woodland aesthetics.
5. To ensure the continuation of the wooded character of the Village.

B. Definitions

DRIP LINE: A line on the ground surrounding the trunk of a tree that conforms to the widest extent of the tree's canopy.

EMERGENCY SITUATION: An immediate significant threat to life, health or property.

CANOPY COVER TREE: A tree which at maturity will achieve a canopy spread of forty or more feet in diameter.

CROWN THINNING: The selective pruning of branches throughout the canopy of a tree to reduce wind resistance, which may be considered as necessary forestry practice for the purpose of exemption from this ordinance.

SIGNIFICANT TREE: Any tree with a trunk diameter that equals or exceeds 16" at the height of 4.5' above the ground, known as the Diameter at Breast Height (DBH), with a sound trunk showing no extensive decay or hollow; with less than 20% radial trunk dieback; and no major insect or pathological problem; of such species as achieves a canopy spread of forty or more feet in diameter upon maturity.

TOPPING: The removal of a tree's leafy crown, creating stubs of the large vertical leader stems, which shall be considered as removal under this ordinance if performed on a Significant Tree.

§ 6:5. Tree Maintenance and Management Operations (con't)

C. Tree Maintenance and Management Operations

1. Prohibited Activities. With the exception of exemptions set forth in Section 3, no person shall do or cause to be done by others, either purposely, carelessly or negligently, any of the following acts upon private property within the Village of Upper Nyack:

   a. The destruction, removal or substantial injury of a Significant Tree without an approved tree cutting permit, through cutting, poisoning or changing the soil elevation surrounding the trunk and drip line in a manner to have an adverse affect on the health of the tree.
   b. The failure to prevent the destruction, removal or substantial injury of any Significant Tree designated to be preserved by the Planning Board in the Development Area of an approved subdivision plat and/or site plan during construction activities.

2. Tree Removal Permits. Except where an emergency situation exists, as outlined in Definitions above, an approved Significant Tree removal permit must be obtained from the Village Building Department prior to the removal of any Significant Tree. Application may be made by the property owner or agent, such as a licensed tree removal company. Exemptions from this ordinance, as outlined in Section 3 below, also require an approved permit.

3. Exemptions. Notwithstanding the restrictions of Section 1 above, the following activities shall be exempt from this ordinance:

   a. Removal of trees directed by municipal, county, state or federal authority pursuant to law.
   b. Removal of trees which appear to cause structural damage to buildings, foundations or retaining walls.
   c. The cutting, destruction or removal of a tree which endangers public safety and proves an imminent peril, based on the determination of the Village Forester or Building Inspector.
   d. The pruning and trimming of trees in a manner that is not harmful to the health of the tree.
   e. Removal of a tree or trees that is dead or dying, as certified by the Village Forester.
   f. Pruning or removal of trees within the right of way by utility companies for maintenance of utility wires or pipelines.

§ 6:5. Tree Maintenance and Management Operations (con't)

C. Tree Maintenance and Management Operations

4. Approval. A permit for the removal of a Significant Tree or Trees may be issued by the Building Inspector based on one or more of the following circumstances:
   a. The application qualifies for an exemption as outlined above.
   b. No more than three (3) Significant Trees are removed in a 2-year period.
   c. Where the location of an existing tree negatively impacts on an existing septic field or sewer line.
   d. Where the location or growth of the Significant Tree significantly inhibits the enjoyment of an existing pool, patio or deck.
   e. Upon the express finding by the Village Forester that the proposed Significant Tree removal will not result in or cause, increase or aggravate any or all of the following conditions: impaired growth or development of the remaining trees or shrubs on the property of the applicant or upon adjacent property, soil erosion, sedimentation or dust, drainage or sewerage problems, dangerous or hazardous conditions.

   Tree Removal Permits for any circumstances not found above require the approval of the Planning Board.
   In addition to any other requirements, the Building Inspector may request the advice and assistance of the Village Engineer or other consultants before approving a Significant Tree removal permit.

5. Planning Board Review Standards. For applications deemed by the Building Inspector as requiring Planning Board Review Standards, a permit for the cutting of a Significant Tree or Trees may be granted only for the following reasons and under the following terms and conditions:
   a. Where the location of an existing Significant Tree provides no alternative but to place a structure outside the permitted building setbacks.
   b. Where no other alternative exists for the placement of a building, building addition, structure, septic field or sewer line, driveway, deck, patio, lawn area, or garden area, but in the vicinity of an existing Significant Tree.
   c. Where the area proposed for Significant Tree removal is to be occupied by: a power, drainage, sewerage, or other utility line, easement or right of way, or where the area of tree removal is 20 ft. or less from either side or around the perimeter of any of the foregoing, whichever is applicable.
   d. Site Clearance of any wooded area where the removal of the Significant Tree or Trees that will not result in the reduction of tree canopy by more than 40%.
   e. Upon the express finding by the Village Forester that the proposed Significant Tree removal will not result in or cause, increase or aggravate any or all of the following conditions: impaired growth or development of the remaining trees or shrubs on the property of the applicant or upon adjacent property, soil erosion, sedimentation or dust, drainage or sewerage problems, dangerous or hazardous conditions.

§ 6:5. Tree Maintenance and Management Operations (con't)

f. Where the removal of the Significant Tree or Trees is deemed by the Planning Board to be necessary to achieve the greatest benefit to the Village, as outlined in Section A Purpose, above.

In addition to any other requirements, the Planning Board may request the advice and assistance of consultants or any departments and agencies of government that will or may become involved in the parcel of land by reason of the proposed tree removal.

The Planning Board shall have the power to affix reasonable conditions to the granting of the permit for the removal of Significant Trees. These conditions may include planting and maintenance of replacement trees at a ratio of up to two new trees for each significant tree removed. The Planning Board may also require a performance bond to be purchased guaranteeing the maintenance of said replacement trees for a period of up to 3 years.

6. Time Limits for Approval. Where the permit application is submitted as part of an allocation for major subdivision, minor subdivision or site plan approval, the time for approval shall be governed by the timing requirements applicable to major subdivision, minor subdivision or site plans.

Where an application is made for an exempt operation, the building inspector shall act on the application with all due speed. Failure to act within 30 days shall be deemed approval and thereafter, an exempt permit shall be issued, excepting these conditions:

a. An extension is consented to by the applicant.
b. Weather conditions after application make inspection for purposes of approval impossible.
c. Reasonable access to the site is not made available to the Building Inspector or Village Forester.

7. Protection of Trees. Whenever an application for tree removal is granted under the terms and conditions of this ordinance, the following protective measures shall be observed:

a. No material or temporary soil deposits shall be placed within the drip line of any existing tree to be preserved.
b. Except where engaged for tree removal, no equipment shall be operated within six (6) feet of the drip line of any tree protected in this ordinance nor shall such equipment be operated at any time in such manner as to break, tear, bruise, decorticate or otherwise injure any living or dormant tree.

§ 6:5. Tree Maintenance and Management Operations (con't)

D. Costs and Penalties

1. The application cost for a Significant Tree removal permit shall be $50.00
2. The penalty for violating this ordinance shall be no less than $150 and no more than $1000 per instance.
3. Removal, cutting or destruction of a significant tree without a completed and approved permit shall be deemed a violation of this ordinance. Removal of each significant tree shall be a separate violation. Where removal of a significant tree is performed after a permit is applied for, but before the permit is approved, penalties for restitution may be doubled upon conviction.
4. No company shall remove a significant tree in the Village of Upper Nyack without an approved permit. The owner of the company, as well as the owner of the property where the removal was performed, shall be in violation of this ordinance and shall be liable for penalties upon conviction.
5. Where removal, cutting or destruction of Significant Trees is performed without an approved and completed permit, no further action may be taken by the Planning Board on the lot or lots in contiguous ownership on which occurred any violation of this local law for the period of one (1) year.
6. No certificate of occupancy shall be issued for new construction on the lot or lots in contiguous ownership on which occurred any violation of this local law unless provisions for restitution have been complied with to the satisfaction of the Planning Board.

Permit fees and penalties shall be used for the payment of the Village Forester and for planting of trees on Village property and rights of way.

E. Suppression of the Village Law

This Local Law is enacted pursuant to the authority of Section 10 (1)(ii)(3) of the Municipal Home Rule Law authorizing villages to adopt local laws which may amend or supersede any provision of the Village law in relation to the property, affairs of government of the Village or in relation to any other enumerated subject matters in such Section 10.

F. Separability

Should any section, sentence or provision of this local law be determined by any court of competent jurisdiction to be unconstitutional or invalid in any way, such determination shall not affect the validity of this local law as a whole or any part thereof other than the part expressly so determined to be unconstitutional or invalid.

G. Effective Date

This local law shall be effective immediately upon filing with the Secretary of State.

§ 6:6. Slope Formula

Whereas much of the undeveloped land in the Village includes steep slopes, often characterized by shallow soils over bedrock, and

Whereas the cutting and filling operations necessary to build on these slopes often destroys the vegetative cover and disrupts the established natural drainage pattern, leading to erosion and damage to downhill properties, and

Whereas the Village of Upper Nyack is listed as an "Automatically Designated Urbanized Area" under Phase II of the Stormwater Management and Erosion and Sediment Control (SPDES) and, as such, must develop, implement and enforce a stormwater management program, and

Whereas part of that stormwater management program includes runoff control during and after construction, and

Whereas reduction of development density on steep slopes is one proven means to reduce runoff and erosion and to assure the safety and well-being of Village residents,

The Zoning Ordinance of the Village shall be amended to use the following slope/land credit formula to determine lot size and lot coverage.

1. Purpose: In order to limit the development in areas with severe environmental limitations, the following requirements shall apply in all zoning districts.

2. Land Under Water (applicable prior to development). Not more than fifty (50) percent of the land area of that portion of a parcel may be counted as part of any minimum lot area if subject to the following: ponds, wetlands; that portion of any stream and its upland area designated on the Official Map; within the Federal Emergency Management Agency designated by the New York State DEC or designated on the Official Map. Land under the Hudson, beyond the high tide line, shall not be included in any lot area calculations.

3. Steep Slopes (applicable prior to development).

    a. Not more than fifty (50) percent of the land area of that portion of each lot with an average gradient of twenty percent (20%) or more, extending over any horizontal length of at least fifty (50') and extending over a horizontal width of at least fifty feet (50') may be counted as part of any minimum lot area.
    b. No construction [or other disturbance] shall be permitted on that portion of a parcel with a slope in excess of forty (40) percent.
    c. No portion of the land area of that portion of a parcel with a slope in excess of fifty (50) percent may be counted as part of the minimum lot area of a parcel.

§ 6:6. Slope Formula (con't)

4. Rock Outcrops – applicable prior to development.

    a. Not more than fifty (50) percent of the area of that portion of a parcel with rock outcrops in excess of fifty (50) square feet may be counted as part of the minimum lot area of a parcel.

5. Calculations for Land with Multiple Constraints. Where any one area of land is considered environmentally sensitive for more than one reason, no additional discount from area calculation shall be taken on such basis, and the lands would continue to be attributed to minimum lot area at the rate of fifty percent (50%) of their gross land area.

6. Applicability: This provision shall apply to all lots created after the filing date (the effective date of the Local Law), including subdivisions and re-subdivisions, and shall apply to all site plans approved after the effective date, including site plan amendments or expansions, except that this law shall not apply to lots on a subdivision map which has received preliminary subdivision approval by the Village Planning Board on or before the filing date. **Adopted 12/16/2004. Local Law # 14 of 2004. Filed 12/27/2004.**

§ 6:7. Flag Lots

§ 6:7. 1 Definition:

a. **FLAG LOT**: A lot not meeting minimum street frontage requirements where access to the public street is by narrow, private right-of-way driveway.

b. Flag Lots are effectively prohibited by Local Law #9 of 2004: Minimum Roadway Standards, Section III, Para. 2: "All lots hereafter created in the Village by subdivision shall be served by and have frontage on a road in conformance with these standards."

§ 6:7. 2 Findings:

a. Whereas, if not properly regulated, flag lots can have a serious impact on land development, property values, drainage, traffic, aesthetics, emergency access and fire protection, and the overall character of a neighborhood.

b. Whereas the practice of subdividing land into flag lots has been used to avoid construction of public streets; and

c. Whereas often the resulting development is poorly configured and is served by a common driveway that is not built to withstand use by multiple homeowners; and

d. Whereas flag lots are often served by driveways that cross, impede or otherwise interfere with drainage features; and,

e. Whereas flag lot driveways can exceed standards for width, slope and curvature and therefore impede access and egress by emergency vehicles.

§ 6:7. 3 Therefore, the use of flag lots as a means of access in lieu of street frontage for a subdivision may be permitted only by appeal to the Zoning Board of Appeals and, if permitted, shall not exceed any of the following standards which constitute the maximum relief that the Zoning Board of Appeals may grant:

a. No part of the "flagpole" portion of the lot shall be less than twenty-five (25) feet in width, except in cases where an existing structure and its required side yard cannot be accommodated, then the width shall not be less than fifteen (15) feet in width. In every case, the "flagpole" shall be suitable for ingress and egress, including turn-around, by emergency vehicles.

b. The frontage of the flag lot on a public street shall be at least fifty (50) feet.

c. The natural grade of the "flagpole" shall be a maximum of eighteen (18) percent.

d. The "flagpole" shall be parallel to the closest existing lot line.

§ 6:7. Flag Lots (con't)

§ 6:7.3 e. The "flagpole" shall not cross a live stream, ravine, drainage ditch or swale, or similar topographic feature without provision of an adequate structure or fill and culvert to carry residential traffic according to standards established by Local Law #9 of 2004 (Minimum Roadway Standards).

f. The use of flag lots as a means of access for a subdivision shall be subject to the following conditions:

1. No more than one parcel or lot shall be permitted to the rear of another parcel or lot which fronts on a Village street. Both parcels or lots shall meet or exceed the access, lot areas and width requirements of this Ordinance.

2. A flag lot cannot be further subdivided.

3. The "flagpole" portion of the lot that extends to the street shall not be included in the calculation of the minimum lot area.

4. Only one single-family detached dwelling shall be permitted for each flag lot.

5. The minimum lot area of a flag lot, exclusive of the narrow portion of the lot used for access, shall be one acre in size, regardless of the zone in which it is situated.

6. The "flagpole" portion of the lot shall not be considered in determining required yard setbacks.

7. The front yard setback requirements shall apply to all yards of a flag lot.

8. The flag lot driveway shall be paved for the full depth of the front lot or parcel and shall be landscaped, drained and screened in accordance with the direction of the Planning Board and/or Architectural Review Board.

9. The flagpole strip shall be conveyed with the ownership of the rear lot or parcel and shall be considered a permanent part of that lot or parcel. No re-division or property line change or adjustment shall be allowed to alter the status of the flagpole access unless other access, meeting all the requirements of Village Ordinances, is first provided.

10. Two adjoining flag lot divisions shall not be allowed. Where one flag lot is preexisting, the adjoining lot or parcel shall not be divided into a flag lot.

11. A flag lot subdivision shall not be approved which would create a flagpole that would be generally parallel to a public or private road, unless the flagpole is separated from the road by not less than 275 feet. This standard may be modified where unique topographic conditions would effectively prevent access from the proposed lot(s) or parcel(s) to the existing private or public road.

§ 6:7. 3 Flag Lots (con't)

12. Access to the rear lot or parcel shall be by way of the flagpole portion of that lot or parcel as recorded.

13. A parcel or lot shall not be provided with more than one flagpole in anticipation of future land division. Where future land divisions are anticipated, a subdivision plan shall be submitted.

14. Maintenance of the flag lot driveway shall be the responsibility of the owner, not the Village.

15. Location of utilities in the flagpole segment shall be mapped on the site.

Effective Date: This Local Law shall take effect immediately upon its filing with the Secretary of State. **Adopted 12/16/2004. Local Law # 14 of 2004. Filed 12/27/2004. Amended 7-16-2015, LL# 6 of 2015, Filed 8-4-15.**

§ 6.8 Sheds

A shed may be constructed upon issuance of a Zoning Permit by the Building Inspector, subject to the following:

a. Only one free standing shed accessory to the main residence shall be permitted on a lot.

b. The area of the shed shall not exceed 120 square feet.

c. The height of the shed shall not exceed 12 feet above adjacent grade.

d. The roof of the shed shall be sloped with a minimum pitch of 4 on 12.

e. The shed shall not be constructed within the required Front Yard Setback

f. The Shed may be constructed within the required Side and Rear Yard Setbacks but must be set back a minimum of 5 feet from the Side and Rear Property lines.

g. The Zoning Permit application shall include a marked up property survey indicating the location of the proposed shed

The Zoning Permit application for the construction of a shed shall not be subject to a review and approval from either the Planning or Architectural Review Boards as long as the above conditions are met.

Adopted 1-15-15, LL # 2 of 2015, Filed 1-27-15

§ 7. Nonconforming Use

§ 7:1 The lawful use of any building or land existing at the time of the enactment of this Ordinance may be continued although such use does not conform with the provisions of this Ordinance, but subject to the following regulations:

§ 7:2 UNSAFE STRUCTURES: Any structure or portion thereof declared unsafe by a proper authority may be restored to a safe condition.

§ 7:3 ALTERATIONS: a building devoted to a nonconforming use may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50 percent of the current assessed value of the building unless said building is changed to a conforming use.

§ 7:4 CONSTRUCTION APPROVED PRIOR TO ADOPTION OF OR AMENDMENT TO ORDINANCE: Nothing herein contained shall require any change in plans, construction or designated use of a building for which a Building Permit has been heretofore issued and the construction of which shall have been diligently prosecuted within three months of the date of such permit, and the ground story framework of which, including the second tier of beams, shall have been completed within six months of the date of the Permit, and which entire building shall be completed according to such plans as filed within one year from date of this Ordinance.

§ 7:5 RESTORATION: A building damaged or destroyed by fire or other causes may be rebuilt within the limits of the original footprint (front, rear & side yards and building height) that existed prior to the damage.

§ 7:6 DISCONTINUANCE: Whenever a nonconforming use has been discontinued for a period of six months, such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this Ordinance.

§ 7:7 CHANGES: Once changed to a conforming use no building or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to a use of the same or higher classification, and such use thereafter shall not be changed to a lower classification.

§ 7:8 DISPLACEMENT: No nonconforming use shall be extended to displace a conforming use.

§ 7:9 CESSATION: Notwithstanding any other provisions of this Ordinance, any automobile wrecking yard or other junkyard in existence in any Residential District at the date of enactment of this Ordinance shall, at the expiration of three years from such date, become a prohibited and unlawful use and shall be discontinued.

§ 7:10 DISTRICT CHANGES: Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein.

§ 8. Amendment of Zoning Ordinance

§ 8:1 PROCEDURE: This Zoning Ordinance may be amended, supplemented, changed or repealed by a majority vote of the Board of Trustees of the Village of Upper Nyack at any Regular Meeting or Special Meeting called for such purpose, and provided for in Chapter VI-A of the Village Law of New York.

ARTICLE IV

ESTABLISHMENT OF ZONING DISTRICTS

§ 9. Establishment of Zoning Districts

§ 9:1 CLASSIFICATION OF DISTRICTS: For the purpose of encouraging the most appropriate use of land throughout the Village of Upper Nyack as provided in this Ordinance, the Village of Upper Nyack is hereby divided into the following districts:

1.	Residence	R-1	District	Defined in Section 10
2.	Residence	R-2	District	Defined in Section 11
3.	Residence	R-3	District	Defined in Section 12
4.	Residence	R-4	District	Defined in Section 13
5.	Residence	R-5	District	Defined in Section 14
6.	Marine Business	MB	District	Defined in Section 15.1
7.	Village Center	VC	District	Defined in Section 15.2
8.	Office Business	OB	District	Defined in Section 15.3
9.	Laboratory Office	LO	District	Defined in Section 15.4

§ 9:2 ZONE MAP: The above Districts are bounded and defined as shown on a map entitled "Zone Map of the Village of Upper Nyack, New York," which accompanies this Ordinance and which with all explanatory matter thereon is hereby made a part of this Ordinance.

§ 9:3 BOUNDARIES: The location of the District boundaries as shown on the Zone Map shall be interpreted as follows:

a. These District boundary lines are intended to follow the property lines as they existed at the time of the passage of this Zoning Ordinance, or at the time of an amendment of the Zone Map. Where so approximately indicated, lot lines shall be construed to be the boundary line.
b. Where so approximately indicated, street lines shall be construed to be the boundary line.
c. District boundaries shall be determined where so approximately indicated by the distances given on the Zone Map.

§ 10. Residence R-1 District [Amended 5/15/08 LL # 1 of 2008, filed 6/11/08]

§ 10:1 In a Residence R-1 District, no principal building with its accessories shall be erected on a lot of an area of less than forty thousand square feet.

§ 10:2 In a Residence R-1 District, no building or other structure shall be erected, used or occupied, nor the premises used, in whole or in part, for any purpose except the following with their usual accessories:

a. One-family detached dwellings (one per lot)
b. Customary incidental home occupation
c. Public parks and playgrounds
d. By special permit only (see Art. IV, 15:8): Places of assembly. A place of assembly, worship may include co-located facilities such as Day Care, School, Dormitory, Cemetery or Dwelling Units for faculty and graduate students and their families, caretakers, other professionals and staff, etc. All co-located facilities must conform to applicable zoning regulations. **LL #1 of 2008**

§ 10:3 Notwithstanding §10:2 (d) above, no accessory building constructed after the adoption of This Ordinance in a Residence R-1 District shall be used for a dwelling unit. **LL # 1 of 2008**

§ 10:4 No part of any building, principal or accessory, shall be less than thirty-five feet distant from the front street line, nor less than thirty feet distant from any side or rear lot line. (see Section 3:6 for corner lots)

§ 10:5 No interior lot shall have a street frontage of less than one hundred fifty feet, and no corner lot shall have a frontage of less than one hundred fifty feet on each street.

§ 10:6 No part of any structure shall be over thirty-five feet in height.
[See details in Bulk Table 19:2]

§ 11. Residence R-2 District [Amended 5/15/08 LL # 1 of 2008, filed 6/11/08]

§ 11:1 In a Residence R-2 District, no principal building with its accessories shall be erected on a lot of an area of less than thirty thousand square feet.

§ 11:2 In a Residence R-2 District, no building or other structure shall be erected, used or occupied, nor the premises used, in whole or in part, for any purpose except the following with their usual and customary accessories:

a. One-family detached dwellings (one per lot)
b. Customary incidental home occupation
c. Public parks and playgrounds
d. By special permit only (see Art. IV, 15:8): Places of assembly. Note: A place of assembly, worship may include co-located facilities that may require additional approval such as Day Care, School, Dormitory, Cemetery, or Dwelling Units for faculty and graduate students and their families, caretakers, other professionals and staff, etc. All co-located facilities must conform to applicable zoning regulations.
LL #1 of 2008

§ 11:3 Notwithstanding §11:2 (d) above, no accessory building constructed after the adoption of This Ordinance in a Residence R-2 District shall be used for a dwelling unit. **LL # 1 of 2008**

§ 11:4 No part of any building, principal or accessory, shall be less than thirty-five feet distant from the front street line, nor less than twenty-five feet distant from any side or rear lot line. (see Section 3:6 for corner lots)

§ 11:5 No interior lot shall have a street frontage of less than one hundred feet, and no corner lot shall have a frontage of less than one hundred feet on each street.

§ 11:6 In a Residence R-2 District, all the provisions, requirements and restrictions applicable to Dwellings in Residence R-1 District as provided in of Section 10 above, shall apply.

§ 11:7 No part of any structure shall be over thirty-five feet in height.
[See details in Bulk Table 19:2]

§ 12. Residence R-3 District [Amended 5/15/08 LL # 1 of 2008, filed 6/11/08]

§ 12:1 In a Residence R-3 District, no principal building with its accessories shall be erected on a lot of an area of less than twenty thousand square feet.

§ 12:2 In a Residence R-3 District, no building or other structure shall be erected, used or occupied, nor the premises used, in whole or in part, for any purpose other than the following, with their usual accessories:

a. One-family detached dwellings (one per lot)
b. Customary incidental home occupation
c. Public parks and playgrounds
d. By special permit only (see Art. IV, 15:8): Places of assembly. A place of assembly, worship may include co-located facilities such as Day Care, School, Dormitory, Cemetery or Dwelling Units for faculty and graduate students and their families, caretakers, other professionals and staff, etc. All co-located facilities must conform to applicable zoning regulations. **LL #1 of 2008**

§ 12:3 Notwithstanding §12:2 (d) above, no accessory building constructed after the adoption of this Ordinance in a Residence R-3 District shall be used for a dwelling unit. **LL #1 of 2008**

§ 12:4 No part of any building, principal or accessory, shall be less than thirty-five feet distant from the front street line, nor less than twenty- five feet distant from any side or rear lot line. (see Section 3:6 for corner lots)

§ 12:5 No interior lot shall have a street frontage of less than one hundred feet, and no corner lot shall have a frontage of less than one hundred feet on each street.

§ 12:6 No part of any structure shall be over thirty-five feet in height.
[See details in Bulk Table 19:2]

§ 13. Residence R-4 District

§ 13:1 In a Residence R-4 District, no principal building with its accessories shall be erected on a lot of an area of less than ten thousand square feet.

§ 13:2 In a Residence R-4 District, no building or other structure shall be erected, used or occupied, nor the premises used, in whole or in part, for any purpose other than those provided in 12:2 of Section 12 for Residence R-3 District. (see Section 3:6 for corner lots)

§ 13.3 No part of any building, principal or accessory, shall be less than thirty-five feet distant from the front street line, nor less than twenty five feet distant from any side or rear lot line. (see Section 13:4 for corner lots)

§ 13:4 No interior lot shall have a street frontage of less than ninety feet, and no corner lot shall have a frontage of less than ninety feet on each street.

§ 13:5 No part of any structure shall be over thirty-five feet in height.
[See details in Bulk Table 19:2]

§ 14 Residence R-5 District

§ 14:1 In a Residence R-5 District, no principal building, with its accessories shall be erected on a lot of an area of less than seven thousand five hundred square feet.

§ 14:2 In a Residence R-5 District, no building or other structure shall be erected, used or occupied, nor the premises used, in whole or in part, for any purpose other than those provided in 12:2 of Section 12 above for Residence R-3 District.

§ 14:3 No interior lot shall have a street frontage of less than seventy-five feet, and no corner lot shall have a frontage of less than seventy-five feet on each street.

§ 14:4 No part of any structure shall be over thirty-five feet in height.
[See details in Bulk Table 19:2]

§ 15. Commercial Districts [LL # 4 of 2003, Adopted 5-15-03, Filed 5-21-03]

§ 15:1 Marine Business (MB) District

§ 15:1 (a) Purposes

The purpose of the Marine Business (MB) district is to encourage a range of waterfront related uses within those portions of Upper Nyack that have traditionally been oriented toward marine and related activities in a setting that will provide limited public access.

§ 15:1 (b) Special Permit Required for Primary Uses

In a Marine Business (MB) District, no building or other structure, either temporary or permanent, shall be erected, used or occupied, nor the premises used, in whole or in part, for any purpose except for the following with their usual accessories as described below, and only by Special Permit, as provided for in Section 15:8. All pre-existing uses permitted by special permit at the date of adoption of this local zoning law revision shall be considered to be legally operating special permit uses and shall not be required to apply for such permit for the continuous duration of such use.

1. Yacht clubs and marinas, subject to the following conditions:

    a. A marina must have a waste pump-out facility.
    b. Boat ramps shall be available for the convenience of those with boats docked or moored at the facility and shall not be open to the general public.
    c. A no-wake zone with a speed restriction of 5 miles an hour or less shall be established from 500 feet to the shoreline.
    d. Outdoor storage shall be permitted only for boats and boat trailers.

2. Docks, slips, piers, moorings, and wharves for yachts and pleasure boats, mooring launch services or for vessels engaged in fishery or shell fishery, subject to the following conditions:

    a. Boat ramps shall be available for the convenience of those with boats docked or moored at the facility and shall not be open to the general public.
    b. Mooring launch services shall be limited to no more than 12 passengers per trip.
    c. A no-wake zone with a speed restriction of 5 miles an hour or less shall be established from 500 feet to the shoreline.

§ 15:1 (b) Special Permit Required for Primary Uses (con't)

3. Yard for building, storing, repairing, selling or servicing boats subject to the following conditions:

    a. Adequate lanes must be provided to allow access throughout the yard for emergency equipment.
    b. Outdoor storage may be permitted only for boats and boat trailers.
    c. To the greatest extent possible, buffers shall be provided to screen noise and improve aesthetic views from adjacent residential properties.
    d. Heavy or noise producing equipment, which in the Planning Board's opinion will create a nuisance to neighboring residences, may be restricted to certain days and hours as specified by the Planning Board.

4. Facilities for recreational water sports that are primarily wind and/or human powered, kayak and canoe rental, sailing schools and similar uses, but excluding personal watercraft and specialty prop-craft, as defined in this Zoning Local Law.

5. Boat and marine engine and equipment sales and display, whether business is conducted indoors or outdoors.

6. Offices.

7. Business for the rental and charter of boats subject to the following conditions:

    a. Boats for charter shall not exceed the capacity of more than 12 passengers, except by special permit.
    b. Off-street parking shall be provided at a rate of one space per two people for the maximum number of passengers that can occupy all boats for rent or charter within such business.

8. Retail sale or rental of boating, fishing, diving, bathing, and marine supplies and equipment.

9. Sail loft or a ship's chandlery.

10. Boat store or chandlery primarily used by patrons of marinas, boat docks or yacht clubs.

§ 15:1 (c) Accessory Uses

The following accessory uses shall be permitted in the Marine Business (MB) district. No accessory use shall be permitted without a primary use. All ancillary uses shall be customarily incidental or accessory to the principal uses and subject to review and approval by the Planning Board. Addition of an accessory use to a property after a Special Permit has been approved will require approval as a modification of said valid Special Permit.

1. Off-street parking.
2. Office space and office storage.
3. Public restrooms, including showers.
4. Marine related museum or exhibition space.
5. Facilities for dispensing fuel suitable for boat motors.
6. Enclosed storage areas.
7. Seasonal storage of boats, cradles and boat trailers

§ 15:1 (d) Bulk Regulations

For all uses within the Marine Business (MB) District the following bulk regulations shall apply:

1. Required yard: No part of any building, principal or accessory, shall be located less than 35 feet from any front lot line or 15 feet from any side lot line.
2. Setbacks: No part of any building, principal or accessory, shall be less than 35 feet distant from the front lot line. No building shall be located less than 15 feet from any side or rear lot line.
3. Lots shall be a minimum of 40,000 square feet.
4. Lots shall have a minimum street frontage of 50 feet.
5. No part of any structure shall exceed 35 feet in height.
6. Development coverage shall not exceed 90% for all structures including docks and gravel parking. Building coverage shall not exceed 30%.

§ 15:1 (e) Additional Requirements

1. Public access encouraged: When practical, pedestrian-oriented public access to the water may be encouraged and provided for benefit of local residents. A combination of walkways, dedicated public piers, or other means of allowing the general public to access the water shall be addressed in plans presented before the Planning Board and shall be considered as part of the Special Permit requirements.

2. Parking waiver permitted: At the option of the Planning Board, a parking waiver may be permitted for up to 50% of the parking requirements for uses within this zone subject to the following conditions:

    a. The applicant can demonstrate to the Planning Board that adequate parking exists after the waiver has been granted. Agreements to share parking with neighboring uses may be used to support the applicant's position, provided that it can be demonstrated that during peak usage of the parking, adequate parking still exists.

    b. Such parking waiver shall not be injurious to other properties, and shall not require patrons of such permitted businesses within the district to park along public streets.

3. Review by the Architectural Review Board required: In order to further the Village of Upper Nyack's goal of retention, preservation and restoration of the buildings in this district, the applicant shall be required to submit drawings that show proposed changes to the building, including signage. Those designs that maintain existing architectural features will be preferred. Re-use of existing buildings shall be strongly encouraged.

4. For all buildings 50 years or older, demolition approval is required in accordance with Section 15:7.

§ 15:2 Village Center (VC) District **[Amended 5/15/08 LL #1 of 2008, Filed 6-11-08]**

§ 15:2 (a) Purposes

The purpose of the Village Center (VC) district is to provide for the continued use and protection of the older commercial buildings near the Village Hall and permit uses that are pedestrian oriented and for the convenience of local residents. Businesses in this district shall be characterized as able to function with a minimum amount of vehicular traffic and disturbance to adjacent residential uses. Additionally, design review and approval will be conducted to insure that changes to buildings, additions, or new buildings will be compatible with the existing setting created by the structures in this area.

§ 15:2 (b) Special Permit Required for Primary Uses

In the Village Center District, no building or other structure either temporary or permanent shall be erected, used or occupied, nor the premises used, in whole or in part for any purpose except for the following with their usual accessories as described below, and only by Special Permit, as provided for in Section 15:8. All pre-existing uses permitted by special permit at the date of adoption of this local zoning law revision shall be considered to be legally operating special permit uses and shall not be required to apply for such permit for the continuous duration of such use.

1. Food shops, including the sale of wine, beer, and alcoholic beverages not intended for on-site consumption.
2. Delis, bakeries, or take-out food service.
3. Apparel sales and tailoring.
4. Jewelry sales and repair.
5. Shoe sales and repair.
6. Antique stores.
7. Craft stores.
8. Card shops.
9. Flower shops.
10. Professional offices, not including medical offices.
11. Bookstores or reading rooms.
12. Artists studios and galleries.
13. Places of Assembly. **LL #1 of 2008**

§ 15:2 (c) Accessory Uses

No accessory use shall be permitted without a primary use. All ancillary uses shall be customarily incidental or accessory to the principal use and subject to review and approval. Addition of an accessory use to a property after a special permit has been approved will require approval as a modification of such valid special permit. Such valid accessory uses include apartment dwellings over retail areas.

§ 15:2 (d) Bulk Regulations

1. Building setbacks and required yards: In order to preserve the existing streetscape, new buildings shall follow the existing pattern established by older buildings within the district and shall be approved during the special permit review process.

2. Lots shall have a minimum size of 4,000 square feet.

3. Lots shall have a minimum frontage of 30 feet.

§ 15:2 (e) Additional Requirements

1. Off-street parking: Off-street parking shall be provided when possible. However, at the option of the Planning Board, parking requirements may be waived. Parking may be provided on a separate lot, provided that parking is no further than 500 feet walking distance from the proposed business under special permit review. Additionally, the applicant may utilize parking from an owner other than the applicant if it can be established that the owner of such parking will have adequate parking for all proposed users of his/her lot, and the applicant can obtain a lease allowing the use of the parking as long as the applicant is in business on that site. At the option of the Planning Board during the issuance of the special permit, available on-street and off-street parking will be evaluated for the entire district before issuance of a special permit to determine compatibility with the proposed use and existing business in terms of parking and circulation.

2. Review by the Architectural Review Board required: In order to further the Village of Upper Nyack's goal of retention, preservation and restoration of the buildings in this district, the applicant shall be required to submit drawings that show proposed changes to the building, including signage. Those designs that maintain existing architectural features will be preferred. Re-use of existing buildings shall be strongly encouraged.

3. For all buildings 50 years or older, demolition approval is required in accordance with Section 15:7.

§ 15:3 Office Business (OB) District **[Amended by LL # 2 of 2006, filed 6/19/06 LL #1 of 2008, filed 6/11/08]**

§ 15:3 (a) Purposes

The purpose of the Office Business (OB) District is to allow a variety of office uses, while providing standards that allow for safe and efficient auto accessibility along the major connecting corridors in Upper Nyack.

§ 15:3 (b) Permitted Uses

In the Office Business (OB) District, no building or other structure, either temporary or permanent, shall be erected, used or occupied, nor the premises used, in whole or in part for any purpose except for the following with their usual accessories as described below:

1. Professional and general office buildings.
2. Medical clinics and doctors and dentists offices.

§ 15:3 (c) Uses Permitted by Special Permit

In the Office Business (OB) District, no building or other structure shall be erected, used or occupied, nor the premises used, in whole or in part for any purpose except for the following with their usual accessories as described below, and only by Special Permit, as provided for in Section 15:8. All pre-existing uses permitted by special permit at the date of adoption of this local zoning law revision shall be considered to be legally operating special permit uses and shall not be required to apply for such permit for the continuous duration of such use.

1. Private colleges, learning centers and schools, not including those with residential facilities. **LL #1 of 2008**
2. Restaurants.
3. Places of assembly, not including those with residential facilities. **LL #1 of 2008**
4. Food Shops, including the sale of wine, beer, and alcoholic beverages not intended for on-site consumption.
5. Delis, bakeries, or take-out food service. If seating is provided on site for such use, then the deli, bakery or take-out food service shall also provide parking in accordance with the restaurant use for those areas that provide seating.
6. Apparel sales and tailoring.
7. Jewelry sales and repair.
8. Shoe sales and repair.
9. Antique stores.
10. Craft stores.
11. Card shops.
12. Flower shops.

§ 15:3 (c) Uses Permitted by Special Permit (con't)

13. Bookstores or reading rooms.
14. Artists studios and galleries.
15. Service Business, appropriate to support business uses found in the OB district.
16. Full Service Banks.
17. Senior Care Facility, subject to the following conditions:
    a. All proposed facilities must have access on 9W.
    b. The following additional Bulk regulations. For Bulk regulations that are duplicated in §15:3 (d), the higher standard shall prevail:
        1. Minimum Lot Area: 10 acres
        2. Minimum Lot Depth: 300 feet
        3. Minimum frontage on a state highway – 600 feet
        4. Minimum Side Yard – 75 feet
        5. Minimum Rear Yard – 75 feet
        6. Maximum impervious coverage- 55 percent.
        7. Maximum density – 12 units per acre.
        8. Minimum buffer between other residential uses (See §15:5)

18. Single Family Residences, subject to the following conditions:
    a. Applicants must attend an informal meeting with the Planning Board for a preliminary review to discuss the general intent of the proposal, and to provide an early opportunity for Board members to identify subjects or particular areas of interest or concern, such as drainage, buffering from nearby commercial uses, access and egress, wetlands, steep slopes, viewscapes or others deemed important by the Board.
        1. Applicants must submit two plans at this time. Applicants must submit an existing conditions plan that identifies all relevant environmental features including, but not necessarily limited to, topographic features at two foot contour intervals, wetlands, the Long Path, relevant features on adjacent properties, significant trees (as defined in §6:5 of the Village Code) and any additional information that Planning Board may consider necessary for preliminary review. Applicants must also submit a conceptual sketch plan that identifies the approximate location of proposed buildings, driveways, proposed site design features, and any additional information that Planning Board may consider necessary for a preliminary review.
        2. If existing structures on the property are to remain, a drawing shall be prepared for the preliminary review showing the development and landscaped features to remain, including access and circulation, separation and buffering between uses, and any other information the Planning Board may consider necessary for a preliminary submission.

§ 15:3 (c) Uses Permitted by Special Permit (con't)

18. Single Family Residences, subject to the following conditions:

b. For parcels less than two (2) acres in size, the bulk regulations of the adjacent residential zone will apply. Therefore those OB properties generally between Birchwood Avenue and the south corner of Route 9W and Glenbrook Road would be subject to R-5 regulations. Properties located from the south corner of Route 9W and Glenbrook Road north to Christian Herald/Old Mountain Road, R-4 bulk regulations would apply.

c. For the four parcels larger than two (2) acres in size: Temple Beth Torah, Alliance Theological Seminary, the Nyack High School, and an undeveloped parcel opposite Temple Beth Torah, the Planning Board will establish individual bulk requirements and overall density for these properties based on:

1. Elements of neighboring residential development.
2. The ability of existing infrastructure elements to carry the increased load.
3. Protection of natural and environmental features, including wetlands, site drainage features, and others specified by the Planning Board.
4. Visual Impact and viewscapes.
5. Proximity of dwellings to Route 9W, or other adjacent commercial uses, with respect to air quality, noise, building height and community impact.
6. Any additional information that Planning Board may consider relevant to the proposed site.

The Planning Board is not bound to select or impose a single density for the site, but may employ a mix of densities, none of which may be more dense than the most dense contiguous residential zone or less dense than the least dense contiguous residential zone.

d. Because the site will not be occupied by a single commercial tenant fully accountable for compliance with the requirements established in the process of approving the commercial site plan, the Planning Board is given wide discretion in setting specifications for residential use by a number of residential tenants, none of whom has overall responsibility for site-wide compliance. Therefore, the Planning Board may establish additional requirements, such as, but not limited to:

1. Yard dimensions modified to relate to adjoining yards along residential perimeters of the site, or to accommodate and prevent interference with special features such as drainage areas, wetlands, viewscapes, commercial buffer zones or other factors of concern to the Planning Board.

§ 15:3 (c) Uses Permitted by Special Permit (con't)

2. Proximity of dwellings to Route 9W, or other adjacent commercial uses, with respect to air quality, noise, building height and community impact.
3. Protection of natural and environmental features, including wetlands, site drainage features, and others specified by the Planning Board.
4. All provisions of § 6:6, Slope Formula, shall apply to properties for which a residential special permit is requested.
5. Visual Impact.
6. Selection of a stormwater management concept considering the amount of land disturbance, appearance, environmental impact, and responsibility for maintenance and management.

e. Once the Applicant's plan has been modified to meet the general specifications set during the preliminary review process outlined above, the Planning Board may issue a special permit for residential use. The residential special permit will lapse unless a complete application for subdivision approval or site plan approval is submitted to the Planning Board within one year of issuance of the special permit unless extended by application by the Planning Board for an additional six month period.

f. As part of the granting of a residential special permit, the applicant/owner shall file a restrictive covenant and shall include restrictive language incorporating all agreed upon special permit conditions into the filed plat map and final site plan.

g. In connection with the granting of a residential special permit, the Planning Board, at their discretion, may apply Article VII of the Zoning Law (Cluster Development).

1. Following the granting of a residential special permit, a subdivision and or site plan application shall be made, accompanied by such additional information as may be determined by the Planning Board to carry out its review.

h. Once final site plan approval is granted or a final plat is filed, the property may not return to any OB use (including those permitted by other special permits).

§ 15:3 (d) Bulk Regulations

1. Required yard: No part of any building, principal or accessory, nor parking areas or structures with exception of an access driveway, perimeter fencing or utility structures shall be located less than 20 feet from any front lot line or 15 feet from any side lot line.
2. Setbacks: No part of any building, principal or accessory, shall be less than 25 (twenty-five) feet from front lot line. No building shall be located less than 15 feet from any side or rear lot line.
3. Lots shall be a minimum of 25,000 square feet in area.
4. Lots shall have a minimum street frontage of 100 feet.
5. Maximum height at adjacent grade that abuts the exterior wall of the building and extending for a distance of 10 feet from the exterior wall is 35 feet.
6. A floor area ratio no greater than .5 shall be maintained.
7. The dimensions of the footprint of any proposed structure shall not exceed the perimeter of a hypothetical square with sides of 150 feet.
8. Minimum distance between buildings shall be at least the height of the building or 35 feet, whichever is more.
9. Impervious surface shall be limited to 80%.
10. Review by the Architectural Review Board required: The applicant shall be required to submit drawings that show proposed building or proposed changes to the building, including signage.
11. For all buildings 50 years or older, demolition approval is required in accordance with §15:7.

§ 15:4 Laboratory Office (LO) District

§ 15:4 (a) Purposes

The purpose of the Laboratory Office (LO) District is primarily to allow a variety of office uses, while providing standards that allow for safe and efficient auto accessibility along the major connecting corridors in Upper Nyack. This zoning area provides for larger parcel users including medical laboratories.

§ 15:4 (b) Permitted Uses

In the Laboratory Office (LO) District, no building or structure either temporary or permanent shall be erected, used or occupied, nor the premises used, in whole or in part for any purpose except for the following with their usual accessories as described below:

1. Professional and general office buildings, excluding banks.
2. Medical laboratories, clinics and doctors and dentists offices.

§ 15:4 (c) Bulk Regulations

1. Required yard: No part of any building, principal or accessory, nor parking areas or structures with exception of an access driveway or perimeter fencing shall be located less than 20 feet from any front lot line or 15 feet from any side lot line. All applicants shall be required to provide parking behind or on one site of the building if feasible.
2. Setbacks: No part of any building, principal or accessory, shall be less than 25 (twenty-five) feet from the front lot line. No building shall be located less than 15 feet from any side or rear lot line.
3. Lots shall be a minimum of 50,000 square feet.
4. Lots shall have a minimum street frontage of 150 feet.
5. A Floor Area Ratio of no greater than .5 shall be maintained.
6. All buildings shall be limited to no more than 20,000 square feet of usable floor space.
7. The dimensions of the footprint of any proposed structure shall not exceed the perimeter of a hypothetical square with sides of 150 feet.
8. Minimum distance between buildings shall be at least the height of the building or 35 feet whichever is more.
9. Maximum height at adjacent grade that abuts the exterior wall of the building and extending for a distance of 10 feet from the exterior wall is 35 feet.
10. Impervious surface shall be limited to 80%.
11. Review by the Architectural Review Board required: The applicant shall be required to submit drawings that show proposed building or proposed changes to the building, including signage.
12. For all buildings 50 years or older, demolition approval is required in accordance with Section 15:7.

§ 15:5 Buffering Required

Whenever a commercial use in the Office Business (OB) or Laboratory Office (LO) District abuts a residential district, there shall be a minimum buffer area of 75 feet required. Such buffer area shall be reasonably landscaped and maintained in harmony with the landscaping or natural growths in the neighborhood. Drainage structures may be permitted in the buffer area at the Board's discretion. The following types of uses shall not be allowed in a "buffer area":

1. Buildings or above ground structures
2. Vehicle overhangs, driveways (except for access) or loading areas.
3. Parking areas or reserved parking areas.
4. Signs or lighting fixtures.
5. Solid waste receptacles.
6. Other structures or uses not permitted by the Planning Board.

§ 15:6 Landscaping Required

All business within the Office Business (OB) and Laboratory Office (LO) District shall be subject to the following minimum requirements for landscaping:

§ 15:6 (a) Screening of Service Courts, Storage areas and Loading docks: All areas used for service, loading and unloading activities shall be screened along the entire rear lot line and side lot lines to the following minimum standards:

1. The width of the screening area shall be a minimum of 10 feet. Screening shall consist of walls, hedges, fences, vegetation, or an acceptable combination of these elements, provided that the screening must be at least 6 feet in height at the time of planting.
2. Vegetation used for screening shall have a minimum opacity of 75 percent at all times within two years of planting.

§ 15:6 (b) Screening of Trash Receptacles

1. Trash containers shall be screened on all sides and on three sides by walls, fences, or natural vegetation or an acceptable combination of these elements.
2. The height of such screening shall be at least 6 feet. The maximum height of wall and fences shall not exceed 10 feet. Vegetation shall have a minimum opacity of 75% at all times within two years of planting. The use of evergreen vegetation is encouraged. Vegetation shall be a variety that will attain six feet in height within 2 years of planting.

§ 15:6 (c) Planting Strip for Parking Lots and Roadways. For those areas of a parcel abutting Route 9W, a planting strip of 10 feet shall be maintained along the entire length of Route 9W with the following minimum requirements:

1. For each 100 lineal feet or fraction thereof, there shall be four 2 inch-caliper deciduous shade trees, and at least 2 evergreen trees of at least 4 feet in height when initially planted. Trees will be informally dispersed with informal plantings of shrubs, ground covers and flowers.
2. If the planting strip abuts a parking lot or driveway, then a 4-foot hedge or informal plantings of shrubs (evergreen or deciduous) which will provide 50 percent opacity within 2 years of planting shall be required at the perimeter of the parking lot or driveway, but must not interfere with sight lines for drivers accessing Route 9W.
3. Along side and rear lot lines not abutting Route 9W, parking lot perimeter screening shall have the following minimum requirements: A minimum of 10 feet shall be required along a perimeter of a parking area (along side lot lines) Within this landscaped strip, there shall be two 2-inch caliper deciduous shade trees per 100 lineal feet (or fraction thereof of perimeter parking area.) There shall also be a 4 foot solid hedge, or informal planting of shrubs (evergreen or deciduous) which will provide 50 percent opacity within 2 years of planting.

§ 15:6 (d) Interior Parking and Landscaping: Landscaping within parking areas, whether ground cover or upright planting material, is necessary not only to reduce the generation of heat and water runoff, but to visually break up the expanse of paved areas. The use of parking islands or peninsulas strategically placed throughout the parking lot is required to landscape parking lot interiors. The use of shade trees in these landscaped areas is encouraged. Any open parking areas containing more than 6,000 square feet of area or 15 or more parking spaces shall provide the following interior landscaping in addition to the required perimeter screening:

1. Parking in the front yard shall be discouraged. All applicants shall be encouraged to provide parking behind or on one side of the building, if feasible.
2. If a parking area abuts a residential use, the perimeter screening shall effectively conceal vehicles and block headlight glare within parking areas from adjoining property (along side and rear lot lines) with the selective use of plant, mounding or fence material for visual separation.
3. An area equal to 5% of the total area devoted to parking spaces and parking lanes shall be landscaped and permeable, within the parking area.
4. Whenever possible, large parking areas of 30,000 square feet or larger shall be designed so as to break up their visual expanse and create the appearance of smaller parking lots. This distinction or separation can be achieved by interspersing yard space and building in strategic areas and by taking advantage of natural features such as slope, existing woodland or vegetation, drainage courses and retention areas.
5. Landscaping in parking areas shall be dispersed throughout in the form of peninsulas or islands. The minimum island or peninsula size shall be 180 square feet with a minimum two foot distance between all trees or shrubs and the edge of pavement where vehicles overhang and should have a minimum width of 8 feet. Islands shall typically be located every 10 to 12 parking spaces, and may be curbed.
6. The required planting materials for the interior of parking areas shall be one deciduous tree for every 3,000 square feet. Where sight distance or maneuvering conflicts exist, trees shall have a clear trunk of at least 5 feet above the ground, and the remaining required landscape areas shall be planted with shrubs or ground cover not to exceed two feet in height.

§ 15:6 (e) Screening of Exterior Mechanical Equipment Required: Exterior Components of plumbing, processing, heating, cooling, and ventilating systems (included but not limited to piping, tanks, stacks, collectors, heating, cooling, and ventilating-equipment fans, blowers, ductwork, vents, louvers, meters, compressors, motors, incinerators, ovens, etc.) shall not be directly visible at the ground level. Any landscaping or structural means employed to screen exterior components of plumbing, processing, heating, cooling and ventilating systems from direct view shall appear as integrated parts of the buildings and shall be constructed of complementary and durable materials and finished in a texture and color scheme complementary to the overall architectural design. Any exterior components of plumbing, processing, heating, cooling and ventilating systems and their screening devices which will be visible from upper floors and from adjacent buildings shall be kept to a visible minimum shall be installed in a neat and compact fashion and shall be painted such a color as to allow their blending with their visual backgrounds.

§ 15:6 (f) Plant material specifications: The following sections include specifications for plant materials. Alternatives to these materials that can be shown to meet both the intent and requirements of these regulations may be approved as part of a site plan:

1. Shrubs: shrubs shall be at least 24 inches average height and spread at the time of planting and, where required for screening, shall form a continuous, year-round, solid visual screen within five years of planting.
2. Ground Cover and Grass: Ground Cover shall be planted at a minimum of 8 inches on center and shall be planted in such a manner to present a finished appearance and 75 % coverage after one complete growing season. If approved as part of a Site Plan, ground cover may also consist of rocks, pebbles, woodchips and other material. Grass shall be planted in species normally grown as permanent lawns.
3. Prohibited Tree Species: Within any required landscaping, the following tree species may not be used: Box Elder, Black Walnut, Mountain Ash, Hickory, Tree of Heaven, Poplar, Siberian Elm, Mulberry, Catalpa, Willow, and Black Locust. In addition to the specific species listed herein, trees which produce nuts, seeds or fruit that can create a hazard to pedestrians or vehicles shall not be planted in such a manner that the natural dripline of an average adult tree of the species planted will be any closer than three feet of a pedestrian walkway or parking lot.

§ 15:6 (g) Maintenance and Replacement Requirements: The owner shall be responsible for maintaining all landscaping in good condition to present a healthy, neat and orderly appearance. This should be accomplished by the following standards:

1. All plant growth in landscaped areas shall be controlled by pruning, trimming or other suitable methods so that plant materials do not interfere with public utilities, restrict pedestrian or vehicular access, or otherwise constitute a traffic hazard.
2. All planted areas shall be maintained in a relatively weed-free condition, clear of undesirable undergrowth and free from refuse and debris.
3. Replacement plants shall conform to the standards that govern original installation. Dead or unhealthy plants shall be replaced within the next planting season.
4. Representatives of the Village shall have the authority to inspect landscaping and check it against the approved plan or file.

§ 15:6 (h) Special Exceptions: The Village shall recognize that, in some cases, the landscaping requirements may be difficult or impractical to meet due to specific site characteristics. In these cases an alternate landscaping plan may be approved by the Planning Board as part of the site plan review process.

§ 15:7 Demolition Approval Required by the Planning Board for all Buildings 50 Years Old or Older

1. All applications for demolition within the districts shall require approval by the Planning Board. The Planning Board shall be required to hold a public hearing specifically to address the proposed demolition, in order to obtain public input and to solicit alternate viable proposals that will provide for the adaptive reuse of the building. The applicant shall be required to send written notice to all owners within 1,000 feet of the property in advance of the public hearing. Additionally, the Planning Board may require the applicant to explore other alternatives that include reuse of the building and compel the applicant to modify the plans to prevent demolition of the building. If the applicant still wishes to pursue demolition of the building he/she must prove the existence of a hardship with respect to a proposed demolition. In order to prove the existence of hardship with respect to a proposed demolition, an applicant shall establish that:

    a. The property is incapable of earning a reasonable return, demonstrated by dollars and cents proof certified by an independent financial professional regardless of whether that return represents the most profitable return possible; and
    b. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return, regardless of whether that return represents the most profitable return possible; and
    c. Demonstrated documented efforts to find a purchaser interested in acquiring the property and preserving it have failed.
    d. The applicant shall provide evidence that the applicant has consulted in good faith with the Board, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in the preservation of the property and compatibility with the established design criteria.

2. Demolition by neglect shall be subject to fines. All buildings within this district shall be reasonably maintained, in order to prevent the deterioration of the building that would cause the building to be demolished as a safety hazard. If the Building Inspector finds that the building is not maintained to prevent its demolition, the Village of Upper Nyack may impose a fine in accordance to the adopted schedule of fees for the Village of Upper Nyack until such repair is made. **LL #4 of 2003**

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

Uses requiring a special permit are specified in various sections of the Zoning Ordinance. The special permit uses for which conformance to additional standards is required by this Ordinance are deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of the Zoning Ordinance. All such uses are declared to possess unique and special characteristics and each specific use shall be considered as an individual case.

§ 15:81 Planning Board Approval

The Planning Board shall be the approving agency for all special permit uses, unless another board is specified.

§ 15:82 Informal Application

Applicants shall submit a preliminary, informal application for discussion with the Planning Board prior to formal submission of a complete and detailed special permit application. The informal application must include a schematic plan showing the general layout of the property and the proposed use and a brief narrative of the proposed use. The narrative shall include, but not be limited to, the approximate square footage, height and location of proposed use, the approximate impervious coverage, how the parking requirements will be met, and whether any zoning variances will be needed. The schematic plan and the brief narrative shall be submitted to the Planning Board not less than four weeks prior to the date of the Board meeting at which it is to be considered.

At the Planning Board meeting, the Board shall review the schematic plan and may schedule a field inspection of the site. The Board shall provide the applicant with comments and suggestions regarding the proposed use. Such comments will be of an advisory nature and will not guarantee the issuance of a special permit, which can only be done through the review and approval of the formal application, as set forth below.

§ 15:83 Formal Application

§ 15:83.1 Submission:

Formal application for a special permit shall be made in 8 copies to the Planning Board at least four weeks prior to the Planning Board meeting at which the special permit plan is to be officially reviewed. The formal application shall include the following items:

a. The name and address of the person, firm or corporation for whom the use is intended, and the name and address of the property owner. If the applicant or owner is a firm, partnership, Limited Liability Company, corporation or other entity that is not a natural person, the full name and residence of the firm or of the principal officers or managers. If applicable, the names of all owners with more than 10% equity in the corporation shall be provided.

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

§ 15:83.1 Submission: (con't)

b. a written statement describing the nature of the proposed use and how it will serve to implement the purposes of the Zoning Ordinance and the period of time for which the permit is requested.
c. Eight copies of a site plan with the information required by Local Law #1 of 1976.
d. Completed affidavit indicating the owner's consent.
e. Long Environmental Assessment Form.
f. application fee: a certified check payable to the "Village of Upper Nyack" on accordance with the Village of Upper Nyack Fee Schedule.

§ 15:83.2 Referrals:

a. The Planning Board shall refer copies of the special permit application to the Building Inspector, Zoning Inspector and Village Engineer and to other Village agencies or officials as it deems appropriate, all of whom shall inspect the premises and report their findings to the Board in writing within 45 days of the date of forwarding. In addition, the Board shall refer copies to the following agencies for information, review and comment regarding facilities under their jurisdiction, and to any other County, State, or Federal agency with jurisdiction:
    1. Rockland County Drainage Agency
    2. New York State Department of Transportation;
    3. Orangetown Sewer District;
    4. New York State Department of Environmental Conservation
b. The Planning Board shall refer to the Rockland County Planning Board for its recommendation all matters within the provisions of Article 12B, Section 239-1, m, and n of the General Municipal Law which includes real property lying within 500 feet of the boundary of any city, village, or town, or from the boundary of any existing or proposed County or State park or other recreation area, or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road, highway or from 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 from the existing or proposed boundary of any County or State owned land on which a public building or institution is situated, and any special permit affecting such use or property within a distance of 500 feet. The Rockland County Planning Board shall render its decision within 30 days of referral or within an extended period if agreed upon. If the Rockland County Planning Board fails to report within such period of 30 days or such longer period as has been agreed upon by it and the Planning Board, the Planning Board may act without such report. If the Rockland County Planning Board disapproves the proposal, or recommends modification thereof, the Planning Board shall not act contrary to such approval or recommendation except by a vote of a majority plus one of all members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action. Within 7 days after final action by the Planning Board, a report of the final action shall be filed with the County Planning Board.

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

§ 15:83.3 Public Hearing:
The Planning Board shall hold a public hearing on the special permit application within 62 days of the date of receipt of a complete submission. No special permit may be approved by the Planning Board unless due notice of the nature of such application is published once in the official newspaper not less than 5 days prior to the hearing by the board of such application and like notice is given by certified mail to all property owners within 200 feet of the subject property and the property is posted with notice of the application for at least 5 days prior to the hearing.

§ 15:83.4 Planning Board Decision:
The Planning Board shall approve, approve with modifications, or disapprove the special permit within 62 days of the close of the hearing. Planning Board approval, approval with modifications, or disapproval shall be in written form and shall include specific findings. The decision of the Planning Board shall be filed in the office of the Village Clerk within 5 business days after the day such decision is rendered, and a copy thereof shall be mailed to the applicant forthwith.

§ 15:83.5 Site Plan Application:
Site Plan approval under Local Law # 1 of 1976 is required for all special permit use permits. At the Planning Board's discretion, special use permit and site plan approval procedures may run concurrently, but no building permit or certificate of occupancy shall be issued until a special permit is granted.

§ 15:83.6 Extensions of Time Periods:
If necessary, the time periods referenced in 15:83.4 may be extended with the applicant's consent.

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

§ 15:84 General Standards

All special permit uses shall comply with the following standards, in addition to the site plan standards of Local Law # 1 of 1976. The Planning Board shall attach such additional conditions and safeguards to any special permit as are, in its opinion, necessary to insure initial and continual conformance to all applicable standards and requirements. All special permits shall be conditioned on the issuance of a Certificate of Occupancy.

§ 15:84.1 Standards:

The location and size of the special permit use, the nature and intensity of the operations, the size of the site and the location of the site with respect to streets giving access to it are such that it will be in harmony with appropriate and orderly development of the area in which it is located.

§ 15:84.2 The location, nature and height of structures, buildings, walls and fences and the nature and extent of existing or proposed plantings on the site are such that the special permit use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

§ 15:84.3 Operations in connection with any special permit use shall not be more objectionable to nearby properties by reason of noise, traffic, fumes, vibration or other characteristics than would be the operations of permitted uses not requiring a special permit.

§ 15:84.4 Parking and loading areas will be of adequate size for the particular special permit use, properly located and suitably screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve convenience and safety.

§ 15:84.5 No portion of any land under water shall be counted toward the minimum lot area. Not more than one-fourth of any land which is defined as wetlands on the Official Map or which is within a 100-year frequency flood plain or within utility or drainage easements or rights-of-way, shall be counted toward the minimum lot area.

§ 15:84.6 The Slope Formula in the Zoning Ordinance Article III, Sec. 9 (LL # 14 of 2004) shall apply to all special permit uses.

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

§ 15:85 Expiration, Temporary Permits, Inspection and Change

§ 15:85.1 A special use permit shall be deemed to authorize only the particular use or uses specified in the permit and shall expire if any of the following conditions are met:

a. The use ceases for more than 6 consecutive months; or
b. If construction has not been substantially completed within one year from the date of issue (or as otherwise extended by the Planning Board); or
c. If all required improvements, conditions and standards made part of the special permit are not maintained throughout the duration of the special permit use.

§ 15:85.2 For all special permits, the Planning Board may issue a special permit for a specific period of time but in no event may the term be greater than five years. Upon expiration of the special permit, the applicant has the obligation to reapply to the Planning Board, and/or other approving agencies, for a renewal of the special permit.

a. As part of a renewal application, the applicant shall certify, under penalty of perjury, that:
    1. There has been no change in use of the premises since the original special permit was granted and that no change or increase in intensity of use is proposed, or
    2. Describe what changes the applicant is requesting as part of the special permit application.
b. If no changes are proposed, the Planning Board may waive any applicable public hearings. If changes are proposed, the applicant shall follow the procedures set forth in Article IV for approval of a special permit.

§ 15:85.3 In connection with issuance of a special permit, the Planning Board may establish a schedule of inspection by the Building Inspector of a special permit use to determine continued compliance with this Ordinance.

§ 15:85.4 Any change in use, ownership or reduction in lot size requires an amendment to the special permit, following the application and review requirements of Article IV.

§ 15:86 Existing Violations

No special permit application shall be considered for a use on a property where the Building Inspector or Code Inspector has found a violation of this Ordinance, and where such violation has not been corrected. All penalties and fees shall be paid in full prior to consideration of the special permit application.

§ 15:87 Fees

Application for a special use permit shall be accompanied by a fee as listed in the fee schedule adopted by the Board of Trustees.

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

§ 15:88 Individual Standards and Requirements for Special Permit Uses

The following individual standards and requirements are hereby established for special permit uses. They must be met before issuance of a special permit in addition to all other requirements of the Zoning Ordinance.

§ 15:88.1 Private Membership Clubs:

a. To qualify for use as a private membership club, a lot must have a minimum area adequate to meet parking and buffering requirements and must have frontage of not less than 200 feet on and practical access to a mapped Street.
b. In Residential Districts, all buildings, structures and recreational facilities shall be set back from adjacent residential lot lines at least twice the minimum yard requirement for residential buildings in said district, but no less than 50 feet, except that the Planning Board may permit a reduction of this additional setback requirement where, because of topography, the installation of additional buffer landscaping or fencing, or the particular nature of the use, any potential adverse external effect of such use will be minimized. Buildings and structures shall meet the requirements listed in Section 19 of the Zoning Ordinance for the district in which they are located.
c. No private membership club shall be operated so as to create a nuisance to surrounding properties. The Planning Board shall attach such conditions to the permit and may require such fencing and/or equivalent landscaping or such other facilities as are required to protect neighbors from excessive light or noise, or stray balls or other nuisances and hazards, which would be inherent in the operation of the club. No use of a club house or club site shall involve the discharge of firearms, bow and arrow, or any other dangerous weapons.
d. The Planning Board may reduce the parking requirements with respect to the number of members or family memberships in any case where the maximum anticipated number of cars at the club, because of its particular type, location, hours of operation, capacity of club facilities or other reason, would be less than the requirements of the Zoning Ordinance, but not less than one space for each three memberships, provided that the club facilities are so laid out that there are lawn areas or other spaces of ample size that could accommodate temporary overflow parking equivalent to the amount of reduction of the requirements.
e. The requirements of the Zoning Ordinance shall not be construed to prevent the utilization or rental of such club, or parts thereof, for benefits or performances for a recognized charity, or for meetings of other organizations.
f. In issuing a special permit for a private club, the Planning Board shall specify the specific use or purpose of the club and the maximum number of members, seating capacity or facility capacity for which the approval is given.

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

§ 15:88.2 Day Care Centers/Nursery School/Day Camps:

a. Such use shall comply with all licensing, site area and dimensional requirements for such establishments by the New York State Department of Social Services.
b. If located in a Residential District, the minimum lot area and all yard setbacks for such use shall be equal to twice those required in the district. All other requirements of Section 19 of the Zoning Ordinance shall be met.
c. If located in a Residential District, such use shall have frontage of at least 100 feet on and practical access to a mapped Street.
d. A buffer area of at least 20 feet in width, containing evergreen landscaping and/or fencing as, in the judgment of the Planning Board, will be adequate to screen the use from the neighboring residential area, may be required along all adjoining residential property boundaries or across the street from residential properties, except where driveway access is required.
e. No Day Care Center/Nursery School/Day Camp shall be operated so as to create a nuisance to surrounding properties. The Planning board shall attach such conditions to the permit as it deems necessary to protect surrounding properties.

§ 15:88.3 Group Family Day Care Homes:

a. Such use shall comply with all licensing, site area and dimensional requirements established for such establishments by the New York State Department of Social Services.
b. The lot proposed for such use shall comply with all dimensional requirements of Section 19 in the Zoning Ordinance.
c. If located in a Residential District, such use shall have frontage of at least 100 feet on and practical access to a mapped Street.
d. Compliance with the New York State Uniform Fire Prevention and Building Code.

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

§ 15:88.4 Places of Assembly, Worship:

a. A Place of Assembly, Worship requires a special use permit issued by the Planning Board. In granting a special use permit, the Planning Board must ensure the following requirements are met:
    1. The proposed structure meets all of the State requirements for a place of assembly including but not limited to New York State Uniform Fire Prevention and Building Code Standards.
    2. In Residential districts, such use shall be located on a lot which contains at least three acres. In every District, all buildings, structures and recreational facilities shall be set back from adjacent residential lot lines at least twice the minimum yard requirement for main buildings in such District or a minimum of 50 feet, subject to adjustment if the maximum height is exceeded. Belfries, steeples, bell towers or other symbolic or emblematic religious or institutional icons shall be exempt from the height requirement, but in no case shall any part of any structure exceed 50 feet in height. Buildings and structures shall meet all other requirements of Section 19:1 Table of Dimensional Requirements for the Zoning District in which they are located.
    3. Such use shall have frontage on and practical access to a mapped Street.
b. In addition to the requirements for site plan submission, a floor plan of any existing or proposed building or structure shall be submitted together with the maximum occupancy requested for each building, structure or facility.
c. The Planning Board may impose such restrictions and regulations which would avoid or minimize traffic hazards, impairment of the use, enjoyment, or value of property in the surrounding area, as well as deterioration of the appearance of the surrounding area.
d. The Planning Board may reduce the parking requirements with respect to the number of seats in any case where the maximum anticipated number of cars at the site, because of the particular type, location, hours of services, or other reason, would be less than the requirements of this Ordinance, but not less than one space for each three seats, provided that the facilities are so laid out that there are lawn areas or other spaces of ample size that could accommodate temporary overflow parking equivalent to the amount of reduction of the requirements.

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

§ 15:88.5 Cemeteries:

a. A Cemetery is permitted as a special permit use by the Planning Board provided it finds:
   1. The use meets all State and County requirements for a cemetery.
   2. The lot on which such use is located shall have a minimum area of 20 acres and must have frontage on and practical access to a mapped Street.
   3. All buildings and structures on the property are limited to a structure height of 20 feet.
   4. All grave sites, walls, building or structures are located at least 50 feet from all property lines.
   5. All buildings and structures on the property must be approved by the Upper Nyack Architectural Review Board pursuant to Article VI of the Zoning Ordinance of the Village of Upper Nyack

b. The Planning Board may impose such restrictions and regulations which would avoid or minimize traffic hazards, impairment of the use, enjoyment, or value of property in the surrounding area, as well as deterioration of the appearance of the surrounding area.

§ 15:88.6 Schools:

a. To qualify for use for a school, a lot must meet all requirements set forth in the Zoning Ordinance for the zone or district in which the lot is situated.
b. Such use shall have a minimum frontage of 300 feet on and practical access to a mapped Street. Such use shall be designed so that all vehicular ingress and egress shall be from a mapped Street.
c. Buildings and structures shall meet all other requirements of Bulk Table of Dimensional Requirements for the District in which they are located.
d. The sources of exterior lighting shall be so shielded that they are not visible beyond the boundaries of the lot on which they are located.
e. No illuminated outdoor recreation facilities shall be permitted.
f. No illuminated signs shall be permitted.
g. No outdoor public address systems shall be permitted except those which are required by State law.
h. Such school shall comply with all licensing, site area, dimensional and other requirements established for such school by the New York State Department of Education and all applicable building and fire prevention codes.
i. In addition to the requirements for site plan submission, a floor plan of any existing or proposed building or structure shall be submitted together with the maximum occupancy requested for each building, structure or facility.
j. The Planning Board may impose such restrictions and regulations which would avoid or minimize traffic hazards, impairment of the use, enjoyment, or value of property in the surrounding area, as well as deterioration of the appearance of the surrounding area.

§ 15:8 Uses Requiring a Special Permit [Amended 5/15/08 by LL # 1 of 2008, Filed 6/11/08]

§ 15:88.6 Schools: (con't)

k. The special permit shall specify, as a condition thereof, the maximum number of pupils authorized to be enrolled in a school on the lot. The approved site plan also shall specify the maximum number of pupils permitted to be enrolled in the school, based upon the maximum design capacity of the proposed buildings with reference to the criteria set forth in the applicable fire prevention and building code, which number in any event may not exceed the maximum number of students allowed as a condition of the special permit.

l. Schools which contain a dormitory shall comply with the following additional requirements:

1. A dormitory shall be permitted only where it is incidental and accessory to the principal use of the lot as a school. Dormitory building(s) shall be used only while the school is in session.
2. The special permit shall specify, as a condition thereof, the maximum number of persons authorized to reside on the lot. The approved site plan also shall specify the maximum number of persons permitted to reside in the dormitory, based upon the maximum design capacity of the proposed dormitory with reference to the criteria set forth in the applicable fire prevention and building codes which number in any event may not exceed the maximum number of persons allowed to reside on the lot as a condition of the special permit.
3. The applicant shall be required to demonstrate to the satisfaction of the Planning Board that adequate non-student adult supervision of the resident students will be provided, taking into consideration the number and age of the students, the physical arrangement of the dormitory, and other relevant factors. In no case shall the ratio of non-student adult supervisors to resident students be less than 1:15 nor more than 1:10. In each building where students are residing, at least one non-student adult supervisor shall be present.
4. No cooking shall be allowed in a dormitory.
5. A written statement submitted by the applicant shall include, in addition to other information which may be required, information regarding student residency restrictions and policies, security (i.e., fencing, lighting, supervision, etc.), minimum floor area of living area per student, emergency services, student health care, quiet hours, visitation policies, and resident student and staff transportation.

§ 15:89 General Standards and Requirements for Places of Assembly in Residential Zones

a. The facility shall be located with frontage on a mapped Street.
b. Buildings shall maintain a minimum setback of 20 feet from all property lines, unless the individual standards listed in § 15:88 are greater.
c. The maximum lot coverage of structures shall not exceed 35 percent of the lot area; total impervious surfaces shall not exceed 75 percent of the lot area.
d. No more than two large vehicles (vans or buses) may be parked overnight on-site at any time.

ARTICLE V

ADMINISTRATION OF ZONING

§ 16. Enforcement

Enforcement: This Zoning Ordinance shall be enforced by a Village Zoning Inspector and a Building Inspector who shall be appointed annually for a term of one year by the Board of Trustees. This Ordinance may also be enforced by direct action of the Village Board of Trustees.

§ 16:1 It shall be unlawful for any person to alter, enlarge, change structurally, convert, create, build or erect in whole or in part any building or other structure, or to change the permitted land use, without first obtaining from the Building Inspector and the Zoning Inspector the permits provided for by this §16.

§ 16:2 The Village Zoning Inspector shall receive all applications for Zoning Permits. Within a reasonable time he shall issue or deny a Zoning Permit. A denial of a permit shall be made in writing on a proper form, stating the reasons thereof and the Section of the Ordinance that would be violated.

§ 16:3 Fees: Each application for a Zoning Permit, submitted to the Zoning Inspector, shall be accompanied by the payment of the appropriate fee hereinafter designated. **See § 16:66 Standard Schedule of Fees.**

§ 16:4 No structure (except a municipally owned structure) shall be erected, added to, or structurally altered in the Village to an amount costing in excess of five hundred dollars ($500.00) until there has been filed with the Zoning Inspector a plan in quadruplicate, drawn to scale showing the actual dimensions of the lot to be built upon, the existing contours thereof at five-foot intervals, the exact size and location on the lot of the buildings or structures and accessory buildings already existing thereon and to be erected, each properly indicated, and such other information as may be necessary to determine and provide for the enforcement of this Ordinance. For structures or alterations involving less than five hundred dollars ($500.00), a simple, clear description of the location on and identification of the lot shall suffice.

§ 16:5 Every Zoning or Building Permit as required by this Section 16 for the erection of any structure shall expire by limitation one year from the date of its issuance. If construction thereunder has been commenced but has not been completed within that period, a new Permit good for six months may be granted by the Building Inspector upon payment of a fee of one hundred ($100.00). Further extensions at the rate of one hundred dollars ($100.00) per six months may be granted until completion of the building or removal of the uncompleted structure. **LL # 1 of 2001**

§ 16:6 The duties and powers of the Zoning and Building Inspectors, and the procedure for administration of this Section 16 are as follows:

§ 16:61 Duties and Powers of a Building Inspector

a. Except as otherwise specifically provided by law, ordinance or regulation, or except as herein otherwise provided, the Building Inspector shall administer and enforce all of the provisions of laws, ordinances and regulations applicable to the construction, alteration, repair, removal and demolition of buildings and structures, and the installation and use of materials and equipment therein, and the location, use, occupancy and maintenance thereof and the use and occupancy of land.

b. He shall receive applications and issue permits for the erection, alteration, removal and demolition of buildings or structures or parts thereof and shall examine the premises for which such applications have been received or such permits have been issued for the purpose of insuring compliance with laws, ordinances and regulations governing building construction.

c. He shall issue all appropriate notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during construction and to ensure compliance during the entire course of construction with the requirements of such laws, ordinances or regulations. He shall make all inspections which are necessary or proper for the carrying out of his duties.

d. The Building Inspector, Assistant Building Inspector or any employee in the office of the Building Inspector shall not engage in any activity inconsistent with his duties or with the interest of the Village of Upper Nyack.

§ 16:62 Department Records and Reports

a. The Building Inspector shall keep permanent official records of all transactions and activities conducted by him, including all applications received, permits and certificates issued, fees charged and collected, inspection reports and notices and orders issued. All such records shall be public records open to public inspection during business hours.

b. The Building Inspector shall monthly submit to the Village Board of Trustees written report and summary of all business conducted by his office, including permits and certificates issued, fees collected, orders and notices promulgated, inspections and tests made and appeals or litigation pending.

§ 16:63 Application for Building Permit

a. No person, firm or corporation shall commence the erection, construction, enlargement, alteration, removal, improvement, demolition, conversion or change in the nature of the occupancy of any building or structure or cause the same to be done without first obtaining a separate Zoning Permit from the Zoning Inspector and a Building Permit from the Building Inspector for each such building or structure; except that no Building Permit shall be required for the performance of ordinary repairs which are not structural in nature.

b. Application for a Building Permit shall be made to the Building Inspector on forms provided by him and shall contain the following information:
   1. A description of the land on which the proposed work is to be done;
   2. A statement of the use or occupancy of all parts of the land and of the building or structure;
   3. The valuation of the proposed work;
   4. The full name and address of the owner and of the applicant, and the names and addresses of their responsible officers, if any of them are corporations;
   5. A brief description of the nature of the proposed work;
   6. A duplicate set of plans and specifications as set forth in subdivision (c) of this section; and
   7. Such other information as may reasonably be required by the Building Inspector to establish compliance of the proposed work with the requirements of the applicable building laws, ordinances and regulations.

   Applications shall be made by the owner or lessee, or agent of either, or by the architect, engineer or builder employed in connection with the proposed work. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner or applicant that the proposed work is authorized by the owner and that the applicant is authorized to make such application.

c. Each application for a Building Permit shall be accompanied by duplicate copies of plans and specifications, including a plot plan, drawn to scale, showing the location and size of all proposed new construction and all existing structures on the site, the nature and character of the work to be performed and the materials to be incorporated, distance from lot lines, the relationship of structures on adjoining property, widths and grades of adjoining streets, walks and alleys, and where required by the Building Inspector, details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data. Plans and specifications shall bear the signature of the person responsible for the design and drawings.

§ 16:63 Application for Building Permit (con't)

d. Amendments to the application or to the plans and specifications accompanying the same, may be filed at any time prior to the completion of the work, subject to the approval of the Building Inspector.

Village of Upper Nyack **Local Law # 1 of 1975** FLOOD CONTROL **[Dated 5/15/75]**

Local Law Entitled: "Flood Control. A Local Law Amending the Zoning Ordinance of the Village of Upper Nyack, Rockland County, New York, adopted Jan. 18, 1962, as amended thereafter with reference to Article 5, Section 16, Subsection 16:63."

That the Village Zoning Ordinance above referred to, be amended as follows:
That Section 16:63 be amended by adding thereto three additional subparagraphs to be designated 16:63; (e), (f), and (g) as follows:

e. That the Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has a flood hazard, any proposed new construction or substantial improvement (including prefabricated homes) must (i) be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, (ii) use construction materials and utility equipment that are resistant to flood damage, and (iii) use construction methods and practices that will minimize flood damage; and

f. That the Building Inspector shall review subdivision proposals and other proposed new developments to assure that (i) all such proposals are consistent with the need to minimize flood damage, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided so as to reduce exposure to flood hazards; and

g. That the Building Inspector shall require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

§ 16:64 Issuance of Zoning and Building Permits

a. No Building Permit shall be issued until a Zoning Permit shall first be issued by the Village Zoning Inspector after inspection of the building plans and land use and compliance with the Zoning Regulations.

b. The Zoning Inspector or Assistant Zoning Inspector shall be responsible for making the on-site inspection for compliance with the zoning requirements, and shall maintain a record of inspections, noting any zoning variations, and shall report monthly to the Board of Trustees.

c. The Building Inspector or Assistant Building Inspector shall examine or cause to be examined all applications for permits and the plans, specifications and documents filed therewith. He shall approve or disapprove the application within a reasonable time. Upon approval of the application and upon receipt of the fees therefore, he shall issue a Building Permit to the applicant upon the form prescribed by him and shall affix his signature or cause his signature to be affixed thereto. Upon approval of the application, both sets of plans and specifications shall be endorsed with the word "Approved." One set of such approved plans and specifications shall be retained in the files of the Building Inspector and the other set shall be returned to the applicant together with the Building Permit, and shall be kept at the building site open to inspection by the Building Inspector or his authorized representative at all reasonable times. If the application together with plans, specifications and other documents filed therewith describes proposed work which does not conform to all the requirements of the applicable building regulations, the building official shall return the plans and specifications to the applicant.

§ 16:65 Performance of Work Under Building and Zoning Permits

Zoning and Building Permits shall be effective to authorize the commencing of and proceeding with the construction work in accordance with the application, plans and specifications on which it is based for a period of twelve months after the date of its issuance. Permits may be renewed as provided in 16:5 above.

§ 16:66 Standard Schedule of Fees [Amended by L.L. # 2 of 1977, Filed 6-29-77; LL # 1 of 1981; LL # 1 of 1992; LL #1 of 2001, L.L. # 6 of 2006, Filed 9/1/06; L.L. # 5 of 2007, Filed 10-22-2007; LL #1 of 2008, Filed 6/11/08; LL # 4 of 2011, Filed 12-28-11, LL # 3 of 2012, Filed 9-21-12]

A. Payment for Village Technical Consultant Services

The Village, Zoning Board of Appeals, Planning Board or Architectural Review Board in the review of any application or petition described above may refer such application or petition presented to such engineering, planning, technical or environmental consultant as such Board shall deem reasonably necessary to enable it to review such application as required by law. The charges made by such consultants shall be in accord with charges usually made for such services in the metropolitan New York region or pursuant to an existing contractual agreement between the Village and such consultant.

If the Board requires technical services to be provided to it to assist the Board in making its decision, the Board shall require the property owner to provide a sum of money to be placed in escrow with the Treasurer of the Village of Upper Nyack to pay for said services. The technical professional must provide an estimate of the cost of the service to be provided prior to entering into an agreement with the Village. The property owner shall place into escrow an amount to be determined by the Treasurer of the Village, which escrow funds are to be used to cover the amount of the technical services to be provided to the Board. The Village will not be obligated to pay for technical services and the Village will not enter into any agreement to pay for such service until such funds have been deposited with the Village Treasurer. The Board shall request an estimate from the technical service provider in advance and shall notify the property owner of the amount to be deposited in escrow with the Village Treasurer. After the funds are deposited, the Treasurer will notify the Board that the funds are available and they may enter into an agreement with the technical service provider. In the event an application is required to be reviewed by the Village Board, and any other Board, then in such event and to the extent applicable, both Boards shall use the same consultants who shall in such case prepare one report providing the data, information and recommendations requested by both Boards. In all instances, duplications of consultants' reports shall be avoided whenever possible in order to minimize the cost of such consultants' reports to the applicant. **LL # 4 of 2011**

B. Refunds

All petitions for refunds shall be made to the Village Board. Refunds of fees will be allowed in proportion to the status of the application and any funds expended in the processing of such applications. In no case shall more than one-half (50%) of the fee be refundable. Where applications are submitted which do not contain the required materials for review, an administrative fee of 10% of the application fee will be assessed with the returned application. NO FEE IS REFUNDABLE AFTER SCHEDULING OF A REQUIRED PUBLIC HEARING. Where the fee provides for the reimbursement to the Village of the cost of consultant services, such reimbursement shall be made prior to final action on the application.

C. Periodic Review

The Village Board shall periodically review the fee schedule set forth in this local law and shall by resolution, after public hearing for which notice shall be given ten (10) days prior thereto, amend the fees set forth herein.

D. Effective Date

This local Law shall take effect immediately.

E. Separability

Should any section or provision of this local law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§ 16:67 Revocation of Building Permit or Zoning Permit

The Building Inspector may revoke a Building Permit or the Zoning Inspector may revoke a Zoning Permit that has been previously issued and approved, in the following instances:

(a) Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the Building or Zoning Permit was based;
(b) Where he finds that the Building Permit, or Zoning Permit was issued in error and should not have been issued, in accordance with the applicable law;
(c) Where he finds that the work performed under the permit is not being prosecuted in accordance with the provisions of the application, plans or specifications: or
(d) Where the person to whom a Building Permit or Zoning Permit has been issued fails or refuses to comply with a stop order issued by the Building Inspector or Zoning Inspector;
(e) Where there is, or appears to be, a violation of zoning regulations.

§ 16:68 Stop Work Orders

Whenever the Building Inspector has reasonable grounds to believe that work on any building or structure is being prosecuted in violation of the provisions of the applicable building laws, ordinances or regulations, or not in conformity with the provisions of an application, plans or specifications on the basis of which a Building Permit was issued, or in an unsafe and dangerous manner, he shall notify the owner of the property or the owner's agent, or the person performing the work, to suspend all work and any such persons shall forthwith stop such work and suspend all building activities until the stop work order has been rescinded, Such order and notice shall be in writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed, either by delivering it personally to him, or by posting the same on a conspicuous portion of the building under construction and sending a copy of the same by registered mail.

§ 16:69 Right of Entry

Any Building Inspector or Zoning Inspector of the Village of Upper Nyack, upon the showing of proper credentials and in the discharge of his duties, may enter upon any building, structure or premises at any reasonable hour, and no person shall interfere with or prevent such entry.

§ 16:70 Certificate of Occupancy

(a) No land shall be used or occupied and no building hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy shall have been issued by the Building Inspector in accordance with the provisions of the Building Code.

(b) The owner or his agent shall make application for a Certificate of Occupancy. Accompanying this application and before the issuance of a Certificate of Occupancy, there shall be filed with the Building Inspector and with the Village Clerk an affidavit of the owner or of the registered architect or licensed professional engineer who filed the original plans, or of the registered architect or licensed professional engineer who supervised the construction of the work, or of the superintendent of construction who supervised the work and who, by reason of his experience, is qualified to superintend the work for which the Certificate of Occupancy is sought. This affidavit shall state that the deponent has examined the approved plans of the structure for which a Certificate of Occupancy is sought, that the structure has been erected in accordance with approved plans, and as erected complies with the law governing building construction except insofar as variations therefrom have been legally authorized. Such variations shall be specified in the affidavit.

(c) When the Planning Board so specifies or when the Building Inspector deems it appropriate, the Building Inspector may require that the above procedures be followed to secure a Foundation Certificate, certifying that the completed foundation meets all criteria as set forth in the site plan approval granted by the Planning Board. When required, the Foundation Certificate must be obtained before further construction may proceed.

§ 16:71 Inspection Prior to Issuance of Certificate

Before issuing a Certificate of Occupancy, the Building Inspector shall examine or cause to be examined all buildings, structures and sites for which an application has been filed for a Building Permit to construct, enlarge, alter, repair, remove, demolish or change the use or occupancy; and he may conduct such inspections as he deems appropriate from time to time during and upon completion of the work for which a Building Permit has been issued. There shall be maintained by the Building Inspector a record of all such examinations and inspections, together with a record of findings of violations of the law.

§ 16:72 Issuance of Certificate of Occupancy **[Amended 5/15/08 LL #1 of 2008, Filed 6/11/08]**

(a) When, after final inspection, it is found that the proposed work has been completed in accordance with the applicable building laws, ordinances and regulations, and also in accordance with the application, plans and specifications filed in connection with the issuance of the Building Permit, the Building Inspector shall issue a Certificate of Occupancy upon the form provided by him. If it is found that the proposed work has not been properly completed, the Building Inspector shall refuse to issue a Certificate of Occupancy and shall order the work completed in conformity with the Building Permit and in conformity with the applicable building regulations.

(b) A Certificate of Occupancy shall be issued, where appropriate, within 30 days after application therefore is made.

(c) The Certificate of Occupancy shall certify that the work has been completed, and that the proposed use and occupancy is in conformity with the provisions of the applicable building laws, ordinances, regulations and special permits(s), if any, and shall specify the use or uses and the extent thereof to which the building or structure or its several parts may be put. **LL #1 of 2008**

§ 16:73 Temporary Certificate of Occupancy

[Amended 10/19/06 LL #4 of 2014, Filed 10/25/06; Amended 12/18/14, LL #1 of 2015, Filed 1/16/15]

1. Upon request, the Building Inspector may issue a temporary Certificate of Occupancy allowing the temporary occupancy of a building or structure or a portion thereof prior to completion of the work which is the subject of a Building Permit. However, in no event shall the Building Inspector issue a Temporary Certificate of Occupancy unless the Inspector determines:

   a. That the building or structure or portion thereof covered by the Temporary Certificate of Occupancy may be occupied safely, and

   b. That all required fire protection equipment including fire and smoke detection and alarm systems have been installed and are operational, and

   c. That all required means of egress from the building or structure have been provided, and,

   d. That the lot which is subject to the Temporary Certificate of Occupancy shall be safe for ingress and egress and for use of the lot for the period of time that work may be incomplete, and

   e. That prior to the issuance of a final Certificate of Occupancy the site will be maintained in a manner so as to not cause damage to adjoining properties or Village infrastructure.

2. The Building Inspector shall include in the issuance of a Temporary Certificate of Occupancy such terms and conditions he deems appropriate and necessary to ensure safety and further the purposes and intent of the NYS Uniform Building Code.

3. The Building Inspector or the Village Engineer as appropriate shall determine an amount of escrow security to be posted by the Applicant for a Temporary Certificate of Occupancy to guarantee the completion of incomplete work and the Applicant shall execute an agreement to complete said work in a time to be established. Such escrow deposit shall be returned when the Building Inspector or the Village Engineer has determined that the work has been properly completed.

4. The Temporary Certificate of Occupancy shall be effective for a period of time not to exceed six months. During this period the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the NYS Uniform Building Code and conform to the requirements of the approved Plans associated with this permit.

§ 16:74 Penalties for Violations **[Amended 10/19/06 LL #10 of 2006, Filed 10/25/06]**

(a) It shall be unlawful for any person, firm or corporation to use or occupy land or to construct, alter, repair, move, remove, demolish, equip, use, occupy or maintain any building or structure or portion thereof in violation of any provision of the ordinance or to fail in any manner to comply with a notice, directive or order of the Building Inspector, or to construct, alter or use and occupy any building or structure or part thereof in a manner not permitted by an approved Building Permit or Certificate of Occupancy.

(b) Any person who shall fail to comply with a written order of the Building Inspector within the time fixed for compliance therewith, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building who shall knowingly violate any of the applicable provisions of this Ordinance, or any lawful order, notice, directive, permit or certificate of the Building Inspector made thereunder shall be punishable by a fine of not more than two thousand dollars ($2,000.00) or thirty days in jail, or both. Each day that a violation continues shall be deemed a separate offense.

(c) This section shall not apply to violations of the provisions of the State Building Construction Code punishable under Section 385 of the Executive Law of the State of New York; nor to violations of the provisions of the Multiple Residence Law punishable under Section 304 of the Multiple Residence Law of the State of New York.

§ 16:75 Appointment of Village Clerk as Zoning Inspector or Building Inspector

The Board of Trustees of the Village of Upper Nyack, in lieu of appointing a full-time Zoning Inspector or Building Inspector is hereby authorized at any time and for such period or periods as it may determine to appoint the Village Clerk of the Village to serve as the Village Zoning Inspector or as Building Inspector, either with or without any compensation other than his ordinary compensation for services as Village Clerk.

§ 17. Zoning Board of Appeals

Zoning Board of Appeals: There is hereby created a Zoning Board of Appeals consisting of five members each of whom shall be appointed by the Board of Trustees for a term of five years, with the power of removal and of filling vacancies, as provided by the Village Law. The Board of Trustees shall appoint a chairman and the membership shall appoint a secretary. Such Zoning Board of Appeals shall determine its own rules of conduct and procedure consistent with the applicable provisions of the Village Law and this Ordinance.

§ 17:1 Power and Duties: The Zoning Board of Appeals shall have all the powers and duties prescribed by law and by this Ordinance, which are more particularly specified as follows:

§ 17:2 Interpretation: Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this Ordinance, including the determination of the exact location of any district boundary if there is uncertainty with respect thereto.

§ 17:3 Temporary Permits: To issue temporary permits for any of the uses for which this Ordinance requires the obtaining of such permits from the Zoning Board of Appeals; or for the continuance of such a use if such existed at the time of the passage of this Ordinance; but not for any other use or purpose. No such permit shall be granted by the Zoning Board of Appeals unless it finds that the use for which such permit is sought will not, under the circumstances of the particular case and under any other conditions, be injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare.

§ 17:4 Variances: [Amended by Local Law # 4 of 2004, Approved 2-26-04]

A. Purpose.

The Zoning Board of Appeals of Upper Nyack 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 charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal has taken.

§ 17:4 Variances (con't)

B. Use Variances.

1. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of such local law, shall have the power to grant use variances, as defined herein.
2. No such use variance shall be granted by a Board of Appeals 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 (1) the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence; (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; (3) that the requested use variance, if granted will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self created.
3. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved 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. Area Variances

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 local law, to grant area variances as defined herein.
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 weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider (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; (2) whether the benefit sought by the applicant can be achieved by some method feasible by the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions of the neighborhood or district; and (5) whether the alleged difficulty was self created; which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
3. The Zoning Board of Appeals, in the granting of area variance, 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.

§ 17:4 Variances (con't)

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

E. All Ordinances and Local Laws in Conflict Herewith are Hereby Repealed
The invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

F. This ordinance shall take effect immediately upon filing with the Secretary of State of the State of New York.

§ 17:5 Procedure: Any person aggrieved by the issuance or denying of a Zoning Permit by the Zoning Inspector or any officer, department, board or bureau of the Village of Upper Nyack may appeal to the Zoning Board of Appeals in accordance with the appeal procedure as outlined in this subdivision.

The Zoning Board of Appeals shall act in strict accordance with the procedure specified by law and by this Ordinance. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the permit is sought, or 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.

a. If, in the opinion of the Zoning Inspector, or the Building Inspector, any plan and/or application submitted does not comply with the provisions of this Ordinance, he shall return to the applicant one copy of the plans with his disapproval and forward the other copy of the plans, together with the application, to the Chairman of the Zoning Board of Appeals.

b. Within twenty days after the date of the written disapproval of the Zoning Inspector or Building Inspector of any such plan and/or application, the applicant may appeal to the Zoning Board of Appeals from such ruling by serving upon the Village Clerk, in duplicate, a written Notice of Appeal addressed to the Zoning Inspector and to the Board of Appeals, of the taking of such an appeal from such decision specifying the grounds of appeal. Such service upon the Village Clerk shall be deemed proper service upon the Zoning Inspector and upon the Zoning Board of Appeals. The Village Clerk shall immediately forward to the Zoning Inspector and to the Chairman of the Zoning Board of Appeals said two Notices of Appeal.

§ 17:5 Procedure (con't):

c. In case of any appeal, the Chairman or Acting Chairman of the Zoning Board of Appeals shall, within twenty-five (25) days after the service of such Notice of Appeal upon the Village Clerk, advertise in the local newspaper, serving a copy of the notice upon the parties affected by the Appeal, and giving notice that a hearing upon such appeal will be held before said Zoning Board of Appeals at the Village Hall at a day and hour not less than five (5) and not more than fifteen (15) days after the advertising and service of such notice. The applicant/appellant shall also post the notice on the property at least five (5) days prior to the hearing and the notice shall be sent at least five (5) days prior to the hearing by regular mail with U.S. Postal Certificate of Mailing to all property owners within 200' feet of the subject property. The mailing shall be enclosed in a sealed post paid envelope with the return address and name of the sender, plainly endorsed on the outside thereof addressed to said persons as provided by the Zoning Board of Appeals Clerk, at the address set forth in any post office or post office box regularly maintained by the Government of the United States and that the applicant shall file an affidavit of mailing, stating the date and the name and address of the persons served with the notice and it shall include a statement that either confirms that no mailing was returned as undeliverable or, if the mailing was returned as not delivered to the addressee, specify the reason for the return. The affidavit shall be signed by the applicant/appellant and the applicant shall attach proof from the United States Postal Service of certificates of mailing attached thereto and shall file the affidavit with the Planning Board Clerk, two business days prior to the commencement of the scheduled Public Hearing. The affidavit shall also include a sworn statement that the notice was posted on the property at least five days prior to the hearing. **Amended 1-21-16, LL# 2 of 2016, Filed 2-9-16.**

d. The written decision of the Zoning Board of Appeals and all of the papers in connection with the appeal shall be transmitted to the Village Clerk who shall file the same as and with the Village Records.

e. The Zoning Board of Appeals shall keep Minutes of its proceedings. Every decision shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the Village Clerk, by case number under one or another of the following headings: Interpretations; Use Permits; Variances; together with all the documents pertaining thereto. The Zoning Board of Appeals shall notify the Village Board of Trustees of each use permit and each variance granted under the provisions of this Ordinance.

ARTICLE V ADMINISTRATION OF ZONING

§ 17:6 Alternate Members VILLAGE OF UPPER NYACK **LL # 1 of 1998**

A LOCAL LAW AMENDING SECTION 17 OF THE ZONING ORDINANCE OF THE VILLAGE OF UPPER NYACK AND SUPERCEDING THE APPLICATION OF VILLAGE LAW SECTION 7-712 TO PERMIT THE APPOINTMENT OF AN ALTERNATE MEMBER TO THE ZONING BOARD OF APPEALS OF THE VILLAGE OF UPPER NYACK.
BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF UPPER NYACK, AS FOLLOWS:

Section 1. Authority.
This local law is enacted pursuant to the authority of Section 10 (I)(ii)(e)(3) of the Municipal Home Rule Law authorizing villages to adopt local laws which may amend or supercede and provision of the village law in relation to the property, affairs or government of the village or in relation to any other enumerated subject matters in such Section 10.

Section 2. Purpose.
In order to permit the Zoning Board of Appeal of the Village of Upper Nyack to transact business in those instances when the absence or conflict of interest of one or more members precludes a full membership of five members from considering a particular matter. It is deemed advantageous by the Board of Trustees to enact a local law superseding village law Section 7-712 to provide for the appointment of an alternate member of the Zoning Board of Appeals.

Section 3.
Section 7-712 of the Village Law is hereby amended and superseded in its application to the Village of Upper Nyack by amending section 17 of the zoning ordinance of the Village of Upper Nyack by adding thereto the new section "17:6 ALTERNATE MEMBER" to provide as follows:

§ 17:6 Alternate Members.
The Board of Trustees of the Village of Upper Nyack may, in any year it deems necessary appoint one alternate member to the Zoning Board of Appeals to serve as provided for in this section. Such alternate member shall be appointed for a two-year term of office. The Chairman of the Zoning Board of Appeals shall assign such alternate member to sit on the Board in a given case where a conflict of interest of one of the regular members of said Board would otherwise prevent five members of said Board from considering any pending matter. Once designated to serve on a particular matter before the Board, the alternate member shall have the same powers and duties as regular members of the Board until that matter is concluded. Any determination of said board consisting of an alternate member shall have the same weight and be entitled to the same authority as the act or deed of the regular Zoning Board of Appeals and all laws, statutes and regulations shall apply and be applied with equal force and effect. **LL # 4 of 1999, filed with the State 7/22/99**.

Section 4.
This local Law shall take effect immediately upon filing with the Secretary of State.

§ 18. Violations and Penalties

§ 18:1 Violations and Penalties: Any person, firm or corporation violating or failing to comply with any provisions of this Ordinance shall be fined not more than five hundred dollars ($500.00) or imprisoned in the county jail for not more than thirty days or both for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

§ 18:2 Abatement of Violation: Appropriate actions and proceedings may be taken at law or in equity to prevent unlawful construction or to restrain, correct or abate a violation or to prevent illegal use and/or occupancy of a building, structure, or premises or to prevent illegal acts, conduct, or business in or about any premises; and these remedies shall be in addition to the penalties prescribed in the preceding sections of this Ordinance. The cost of any action or proceeding taken at law or in equity, as above provided, may be assessed against the owner of the premises against which action is taken.

§ 19. Tables of General Regulations [Amended by LL #3 of 2008 Adopted 5-15-08, filed 6-11-08]

§ 19:1 Table of Lot Areas and Restrictions in Residence Districts:

District	Minimum lot area required	Minimum front footage on streets	Minimum setback from front street line*	Minimum setback from side & rear lot lines
Residence R-1	40,000 sq. ft.	150 feet	35 feet	30 feet
Residence R-2	30,000 sq. ft.	100 feet	35 feet	25 feet
Residence R-3	20,000 sq. ft.	100 feet	35 feet	25 feet
Residence R-4	10,000 sq. ft.	90 feet	35 feet	25 feet
Residence R-5	7,500 sq. ft.	75 feet	15 feet	10 feet (Pool-20 feet)

10. See Section 3:6 for corner lots.

§ 19:2 Table of Residence and Dwelling Dimensions: **Amended by LL# 1 of 1999; LL #3 of 2008**

Residence District	Minimum Livable Floor Area Single Floor Dwelling	Minimum Livable Floor Area Two (2) Floor Dwellings		Maximum Structure Height	Maximum Coverage of Lot by Buildings and Structures	Maximum Coverage of Lot by Primary Building
		First Floor	Second Floor			
R-1	1250 sq. ft.	800 sq. ft.	750 sq. ft.	35 feet*	20%	10%
R-2	1250 sq. ft.	800 sq. ft.	750 sq. ft.	35 feet*	25%	12%
R-3	1250 sq. ft.	800sq. ft.	750 sq. ft.	35 feet*	25%	12%
R-4	1000 sq. ft.	750 sq. ft.	600 sq. ft.	35 feet*	40%	20%
R-5	850 sq. ft.	600 sq. ft.	600 sq. ft.	35 feet*	40%	20%

*Two stories not to exceed 35 feet in height measured vertically from any point in the strip of land extending for a distance of 10 feet out from the exterior wall of the building to the highest point of the roof for flat roofs, to the deck line for mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

§ 19:3 Summary of the Use of Land in Residence Districts:

District	Use**
All Residence Districts R-1 through R-4	one-family detached dwellings; incidental home occupation; public parks and playgrounds; places of public assembly by special permit

** For Specific description of permitted uses, see Sections 10, 11, 12, 13, 14 and 15 of Article IV.

Refer to Local Law # 7 of 1998, Local Law # 1 of 1999, Local Law #1 of 2008

§ 19:4 Table of Standards for Commercial Districts: **Amended by LL #3 of 2008**

	MB Marine Business	**VC** Village Center	**OB** Office Business(4)	**LO** Laboratory Office
Minimum Lot Area Required	40,000 sq. ft.	4,000 sq. ft.	25,000 sq. ft.	50,000 sq. ft.
Minimum Front Footage on Street	50 feet	30 feet	100 feet	150 feet
Minimum Setback from Front Street Line (2)	35 feet	See § 15:2 (d)	25 feet	25 feet
Minimum Setback from Side and Rear Lot Lines (3)	15 feet	See § 15:2 (d)	15 feet	15 feet
Maximum Coverage of Lot by Buildings	30%	See § 15:2 (d)	See § 15:3 (d)	See § 15:4 I
Maximum Structure Height (1)	35 feet	See § 15:2 (d)	35 feet	35 feet
Buffering Required	N/A	N/A	75 feet	75 feet
Minimum Parking Required	Refer to §6:1 (a) and (b)	Refer to §6:1 (a) and (b)	Refer to §6:1 (a) and (b)	Refer to §6:1 (a) and (b)

*1) Not to exceed 35 feet in height measured vertically from any point in the strip of land extending for a distance of 10 feet out from the exterior wall of the building to the highest point of the roof for flat roofs, to the deck line for mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.
2) See Section 3:6 for corner lots
3) Also see Definitions
4) For Senior Care Facilities, see §15:3 (d) # 17, and LL # 7 of 1998.

§ 19:5 If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder thereof.

§ 19:6 This Local Law shall become effective immediately upon filing in the Office of the Secretary of State.

ARTICLE VI

ARCHITECTURAL HARMONY – BOARD OF ARCHITECTURAL REVIEW
Local Law #2 of 2005, Filed 7/11/2005

§ 20. Intent and Purpose

Whereas homes have been built in the Village of Upper Nyack for over 150 years in a variety of sizes and styles while maintaining an overall peaceful, quiet, scenic, suburban character throughout the Village;

Whereas the value of individual homes are dependent on the overall character of the neighborhood in which they are situated and the architectural harmony of the homes in that neighborhood;

Whereas the Comprehensive Plan of the Village of Upper Nyack states as a basic planning goal that development decisions and activities be compatible with the existing community and should encourage a high standard of architectural, landscape and community design;

Whereas the Board of Trustees finds that excessive uniformity or dissimilarity within a neighborhood; inappropriateness of scale or location; or excessive, unbroken mass or height of structure may adversely affect the desirability and quality of life in the immediate neighborhood; and produce deterioration of conditions affecting the health, safety and welfare of the inhabitants thereof, and destroy the proper relationship between buildings within a neighborhood and reduce the value of individual properties;

Whereas the Planning Board has requested the introduction of preliminary review of and comment on proposed new construction, reconstruction or alteration of building exteriors by the Board of Architectural Review during the site plan review process, as well as final review and approval in order to achieve or maintain architectural harmony within neighborhoods;

Whereas the Board of Architectural Review has requested the opportunity to provide preliminary review and comment on proposed new construction, reconstruction and alteration of exterior appearance, as well as final review and approval of approved site plans;

Whereas the Board of Architectural Review has requested the opportunity to provide review, comment and approval on landscaping, walls and fences proposed as part of an application for building permit;

This article establishes the procedures of the Board of Architectural review.

§ 21. Board of Architectural Review

A Board of Architectural Review is hereby created, to consist of five members to be appointed by the Board of Trustees. Appointments shall be for a term of five years. All members shall be property owners in the Village and shall serve without compensation. The Board of Trustees may remove any member for cause and after a public hearing.

Meeting attendance is a requirement for serving on the Board of Architectural Review. Upon missing four meetings of the Board within a one-year period, a member shall be replaced under the terms of vacancy outlined below. If a vacancy shall occur otherwise than by the expiration of term, it shall be filled by appointment for the unexpired term.

The Board shall officially designate a registered architect to advise and take part in its deliberations, but without vote, unless a registered architect be a member of the Board. The Board of Trustees shall fix the compensation of the consulting architect, and pay other expenses of the Board of Architectural Review.

§ 22. Meetings of the Board of Architectural Review

Meetings of the Board of Architectural Review shall be held when requested by the Building Inspector; the Mayor, the chairman or any two members of the board. Notice of said meetings shall be given as in the case of meetings of the Board of Zoning Appeals and by ordinary mail addressed to the applicant at the address stated upon the application; and the applicant may be heard at such meetings. The Board shall designate a chairman (who may administer oaths and compel the attendance of witnesses.)

§ 23. Procedures of the Board of Architectural Review

§ 23.1 Applications.

Every application for a building permit for new construction, reconstruction or alteration of a building exterior (including application of new siding or other treatment, but not including paint) shall be referred to the Board of Architectural Review within seven days of the date of the receipt of the application provided it conforms in all respects to all other applicable laws and ordinances.

The Architectural Board of Review shall make a decision as to whether they wish to review an application within 14 days of their receipt of the application and the Chairman shall give written notice to the Building Inspector of their decision.

Applications not declined by the Board of Architectural Review shall then be required to provide:

1. Elevation drawings of proposed new construction, reconstruction or major exterior alteration. In the case of minor exterior alterations, photographs of the existing structure will be deemed acceptable.
2. Elevation drawings showing the proposed new construction, reconstruction, or major alteration of building exterior in relation to height and size of dwellings on all contiguous properties. In case of minor exterior alterations, photographs of the surrounding properties will be deemed acceptable.
3. The exact position of the proposed new construction or reconstruction on a survey or site plan.
4. A picture or sample of the exterior colors and materials proposed.
5. The location of trees over 8" proposed for removal or retention, either noted on the site plan or shown in photographs.
6. Proposed landscaping, walls or fences.

Where the Board of Architectural Review has not declined to review the application, the Board shall perform a preliminary review of concept as well as a final determination before final site plan approval or a Building Permit is granted.

§ 23.2 Preliminary Review and Comment.

The Board of Architectural Review shall provide preliminary review and comment to the Building Inspector or Planning Board within 30 days of receipt of the initial application, elevation drawings and other required documents as outlined above.

The Board of Architectural Review may request additional information, including revised elevations at any time during the review process.

§ 23.3 Final Review and Approval

In cases when the Board of Architectural Review has not declined to perform a review, site plan approval by the Planning Board shall be contingent upon the final review and approval of the site plan by the Board of Architectural Review. Approval of each Board, when required shall be indicated by the signature of the Chairman on the site plan.

§ 23.4 Decision of the Board of Architectural Review

The Board of Architectural Review may disapprove any application referred to it provided that such disapproval shall be by the vote of a majority of the members of said Board present at the meeting where said vote is taken, and provided that the Board finds the new construction, reconstruction or alteration of building exterior for which the permit was applied: would not meet the planning goals outlined in the Village Comprehensive Plan; would not preserve and enhance the distinctive character of the Village; is incompatible with the existing community or is incompatible in size, heights, mass or style with the homes found on contiguous properties; or is in conflict with the intent and purpose of this Ordinance as set forth in Section 20.

If in the opinion of the Board of Architectural Review, the application submitted does not comply with the provisions of this Ordinance the Board shall return to the applicant one copy of the plans with the reasons for disapproval.

§ 23.5 Evaluation rubric by which the Board of Architectural Review shall review applications.

In relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application, facing upon the same street or within 250 feet of the proposed site, does the proposed new construction, reconstruction or alteration of exterior appearance show:

(a) excessive similarity in respect to one or more of the following features of exterior design and appearance:

1. Apparently identical façade,
2. Substantially identical size and arrangement of either doors, windows, porticos or other openings or breaks in the façade facing the street, including reverse arrangement, or
3. Other significant identical features, such as but not limited to material, roofline and height or other design elements, provided that a finding of excessive similarity shall state not only that such exists, but further that it is of such a nature as to be expected to provoke beyond reasonable doubt one or more of the harmful effects set forth in Section 20, or

(b) excessive dissimilarity or inappropriateness in respect to one or more of the following features of exterior design and appearance:

1. Exterior materials or colors
2. Visually unbroken or unfenestrated walls
3. Visually unbroken architectural masses that appear to loom over or throw excessive shadow onto adjoining homes or properties
4. Removal of significant trees or natural screening
5. Landscaping
6. Fences or walls
7. Other significant design features of such a nature as to be expected to provide one or more of the harmful effects set forth in Section 20.

§ 24. Issuance of Permits

The building Inspector shall refuse to issue any building permit, the application for which has been disapproved as provided in §23.

§ 25. Appeals

Any person aggrieved by a decision of the Board of Architectural Review in disapproving a building permit application and of the Building Inspector in denying such permit because of such disapproval may appeal to the Zoning Board of Appeals in accordance with the appeal procedure as outlined in this subdivision.

Within twenty days after the date of the written disapproval, the applicant may appeal the disapproval to the Zoning Board of Appeals by serving upon the Village Clerk, in duplicate, a written Notice of Appeal addressed to the Zoning Board of Appeals of the taking of such an appeal from such decision specifying the grounds of appeal. Such service upon the Village Clerk shall be deemed proper service upon the Zoning Board of Appeals. The Village Clerk shall immediately forward to the Chairman said Notice of Appeal.

In case of any such appeal the Chairman shall, within twenty-five days after service of such Notice of Appeal upon the Village Clerk advertise in a local newspaper, serving a copy thereof upon the parties affected by the Appeal, and giving notice that a hearing upon such appeal will be held before said Zoning Board of Appeals at the Village Hall at a day and hour not less than five and not more than fifteen days after advertising and service of such notice. The Zoning Board of Appeals and the parties interested in the appeal shall thereupon proceed as provided for by this Ordinance.

The written decision of the Board of Architectural Review and all of the papers in connection with the appeal shall be transmitted to the Village Clerk who shall file the same as and with the Village Records.

The Board of Architectural Review shall keep Minutes of its proceedings. Every decision shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the Village Clerk together with all the documents pertaining thereto.

§ 26. Enforcement and Penalties

In addition to any other remedies available, the Village authorities shall have all the powers of enforcement granted them by the Zoning Ordinance.

It shall be unlawful for any person, firm or corporation to use or occupy land or to construct, alter, repair, move, remove, demolish, equip, use, occupy or maintain any building or structure or portion thereof in violation of any provision of the ordinance or to fail in any manner to comply with a notice, directive or order of the Building Inspector, or to construct, alter or use and occupy any building or structure or part thereof in a manner not permitted by an approved Building Permit or Certificate of Occupancy.

Any person who shall fail to comply with a written order of the Building Inspector within the time fixed for compliance therewith, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building who shall knowingly violate any of the applicable provisions of this Ordinance shall be punishable by a fine of not more than two hundred fifty dollars ($250.00) or imprisoned in the county jail for not more than thirty days or both for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

§ 27. Alternate Members

The Board of Trustees of the Village of Upper Nyack may, in any year it deems necessary, appoint one alternate member to the Board of Architectural Review to serve as provided for in this section. Such alternate member shall be appointed for a two-year term of office. The chairman of the Board of Architectural Review shall assign such alternate member as necessary when absence of regular members of said board or the conflict of interest of regular members of said board would otherwise prevent five members of said board from considering any pending matter. Once designated to serve on a particular matter before the board, the alternate member shall have the same powers and duties as regular members of the board until that matter is concluded. Any determination of said board consisting of an alternate member shall hold the same weight and be entitled to the same authority as the act or deed of the regular Board of Architectural Review and all laws, statutes and regulations shall apply and be applied with equal force and effect. **Adopted 2/19/98 by LL #3 of 1998, Amended 7/15/99 by LL# 4 of 1999. Amended on 6/19/2005 by LL #2 of 2005.**

ARTICLE VI ARCHITECTURAL REVIEW BOARD

Architectural Review Board Regulations **Adopted August 22, 1968**

The Board of Architectural Review has adopted regulations requiring that applicants include:

1. A picture, architect's rendering, or the like, which shows the complete dwelling, addition, or structure;

2. The exact position of the structure on the survey, after completion;

3. A description of the colors and materials to be used; and

4. The location of trees or shrubs, etc. to be removed and retained.

ARTICLE VII

CLUSTER DEVELOPMENT

A local Law amending the Zoning Ordinance of the Village of Upper Nyack by adding Article VII Cluster Development to permit the Planning Board of the Village of Upper Nyack to consider Cluster Development in a Subdivision Application.

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF UPPER NYACK AS FOLLOWS:

Authority.

This local law is enacted pursuant to the authority of §10(I)(ii)(e)(3) of the Municipal Home Rule Law authorizing villages to adopt local laws which may amend or supersede any provision of the village law in relation to the property, affairs or government of the village or in relation to any other enumerated subject matters in such §10.

Purpose.

In order to permit the Planning Board of the Village of Upper Nyack to consider Cluster Development pursuant to §7-738 of the Village Law of the State of New York in any residential zones.

The Zoning Ordinance of the Village of Upper Nyack is hereby amended by adding to it a new Article VII entitled "PLANNING BOARDS – CLUSTER DEVELOPMENT" to provide as follows:

§ 28. The Planning Board is authorized and empowered simultaneously with the approval of a plat or plats in any residential district of the Zoning Law of the Village of Upper Nyack, or in a commercial district when a special permit for residential use has been issued, to modify applicable provisions of the said Zoning Ordinance pursuant to §7-738 of the Village Law of the State of New York, subject to the conditions therein provided. However, the approval of the Village Board of Trustees must be secured with regard to the establishment of any park, recreational area or open space as shown on such plat or plats; and the purpose of this provision is to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities and to preserve the natural and scenic qualities of the land.

§ 29. This procedure may be followed at the discretion of the Planning Board if, in the Planning Board's judgment, its application would benefit the Village.

§ 30. This procedure shall be applicable only to land zoned in the residential districts, or in a commercial district when a special permit for a residential use has been issued, and its application shall result in a permitted number of 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 either the zoning applicable to the residential zone in which the property is located or the lot size and density specified in the special permit issued for residential use in a commercial zone and conforming to all other applicable requirements.

ARTICLE VII CLUSTER DEVELOPMENT

§ 31. The dwelling units permitted in residential zones shall be only one family homes on individual lots. In commercial zones when a special permit residential use has been issued, single family homes may be either detached or attached at the discretion of the Planning Board based upon specific site conditions that justify a concentration of development to a limited area.

§ 32. A Cluster Development shall result in a permitted number of building lots 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 residential zone in which the property is located and conforming to all other applicable requirements. In a commercial zone when a special permit has been issued to permit residential use the number of building lots will be determined by the Planning Board in the course of the special permit process.

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

Local Law # 4 of 1998 Adopted 2/19/98 by Board of Trustees
Local Law # 2 of 2006 Adopted 6/8/06 by Board of Trustees. Filed with the State 6/19/06.

ARTICLE VIII

STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL
Local Law # 10 of 2004 Filed July 26, 2004
Amended by Local Law # 1 of 2005 Filed 3/7/2005

§ 33. General Provisions

§ 33.1. Findings of Fact
It is hereby determined that:

1. Land development activities and associated increases in site impervious cover often alter the hydrolic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion and sediment transport and deposition;
2. This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
3. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
4. Increased soil erosion leads to clogging of catch basins, basin overflow and costly repairs;
5. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
6. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
7. Substantial economic losses can result from these adverse impacts on the waters of the municipality;
8. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
9. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety;
10. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

ARTICLE VIII STORMWATER CONTROL

§ 33.2. Purpose

The purpose of the local law is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety and welfare of the public residing within the Village and to address the findings of fact found in section 1. hereof. This local law seeks to meet those purposes by achieving the following objectives:

1. Meet the requirements of minimum measures 4 and 5 of the SPEDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s,) Permit no. GP-02-02 as amended;

2. Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPEDES) General Permit for Construction Activities GP-02-02 as amended;

3. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature and streambank erosion and maintain the integrity of stream channels;

4. Minimize increases in pollution caused by stormwater runoff which flows from any specific site during and following development to the greatest extent practicable; and

5. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 33.3. Statutory Authority

In accordance with Article 10 of the Municipal Home Rule Law of the State of New York, the Village Board of Trustees of the Village of Upper Nyack has the authority to enact local laws and amend local laws and for the purpose of promoting the health, safety or general welfare of the Village of the Village of Upper Nyack and for the protection and enhancement of its physical environment. The Village Board of Trustees may include in any such local law provisions for the appointment on any municipal officer, employees or independent contractor to effectuate, administer and enforce such local law.

ARTICLE VIII STORMWATER CONTROL

§ 33.4. Applicability

1. This local law shall be applicable to all land development activities as defined in this local law.

2. The Village shall designate the Village Engineer as the Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans for the Planning Board. The Stormwater Management Officer may review the plans or, upon approval of the Planning Board, engage the services of professional engineers, hydrologists or other consultants to review the plans, specifications and related documents at a cost not to exceed a fee established by the Planning Board.

§ 33.5. Exemptions

1. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydrologic capacity or original purpose of the site.

2. Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.

3. Land development activities for which final approval of a site plan was granted or a building permit was approved prior to the effective date of this law.

4. Cemetery graves

5. Installation of fences, signs, telephone, electric or other poles or posts.

6. Emergency activity immediately necessary to protect life, property or natural resources.

7. Activities of an individual engaging in home gardening by growing flowers, vegetables or other plants for use by that person.

8. Landscaping and horticultural activities in connection with an existing structure that disturbs no more than ¼ acre of land not including a steep slope (see definition).

ARTICLE VIII STORMWATER CONTROL

§ 34. Zoning Law Amendment

The Zoning Law of the Village of Upper Nyack is hereby amended to include Article VIII, a new supplemental regulation titled Stormwater Control.

§ 34.1. Definitions

The terms used in this local law or in documents prepared or reviewed under this local law shall have the meaning as set forth below.

JURISDICTIONAL WETLAND: an area inundated or saturate by surface water or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

LAND DEVELOPMENT ACTIVITY: construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance equal to or greater than 10,000 square feet in area or any area of the parcel that includes a steep slope.

POLLUTANT OF CONCERN: sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

MAINTAINANCE AGREEMENT: a legally recorded document that acts as a property deed restriction and which provides for long-term maintenance of stormwater maintenance practices.

STEEP SLOPE: an area of topographic change with an increase of 15 feet or more in elevation over 100 feet of horizontal distance or any proportion thereof. Complex or disputed measurement shall be decided by Planning Board review of a survey certified by an engineer licensed in the State of New York, with the goal of controlling erosion as outlined under this law as the basis for the final determination. **Amended by LL #12 of 2004, Filed 11/10/04.**

STORMWATER: rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT FACILITY: one or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT PRACTICE (SMP): measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

§ 34.1. Definitions (con't)

STORMWATER POLLUTION PREVENTION PLAN (SWPPP): a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

SURFACE WATERS OF THE STATE OF NEW YORK: lakes, bays, sounds, ponds, impounding reservoirs, springs well, rivers, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or costal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) which are wholly or partially within or bordering the state or within its jurisdiction.

WATERCOURSE: a permanent or intermittent stream or other body of water, either natural or manmade, which gathers or carries surface water.

WATERWAY: a channel that directs surface runoff to a watercourse or to the public storm drain.

§ 35. Stormwater Pollution Prevention Plan Requirement

No application for approval of a land development activity shall be reviewed until the Planning Board has received a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with the specifications of this local law.

§ 35.1 Contents of Stormwater Pollution Prevention Plans

All SWPPPs shall provide the following background information and erosion and sediment controls

1. Background information about the scope of the project, including location, type and size of project

2. Site map/construction drawings for the project, including general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface waters; wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of offsite material, waste, permanent or temporary equipment storage areas and location(s) of the stormwater discharge(s);

3. Description of the soil(s) present at the site;

4. Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing; excavation and grading; utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control(Erosion Control Manual), not more than ¼ acres or less if on a steep slope (see definition) shall be disturbed at any one time unless pursuant to an approved SWPPP.

5. Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff.

6. Description of the pollution and waste materials expected to be stored on-site with updates as appropriate, and a description of controls for each stage of the project from initial land clearing and grubbing to project close-out.

7. Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;

8. Site map/construction drawing(s) specifying the location(s), size(s), and length(s) of each erosion and sediment control practice;

§ 35.1 Contents of Stormwater Pollution Prevention Plans (con't)

9. Dimensions, material specifications and installation details for all erosion and sediment control practices, including the silting and sizing of any temporary sediment basins;

10. Temporary practices that will be converted to permanent control measures;

11. Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;

12. Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;

13. Names of the receiving waterbodies (i.e. the Hudson River)

14. Delineation of SWPPP implementation responsibilities for each part of the site;

15. Description of the structural practices design to divert flows from exposed soils, store flows, or otherwise limit runoff and discharge from exposed area of the site to the highest degree attainable; and

16. Any existing date that describes the stormwater runoff at the site.

§ 35.2. Land development activities meeting Condition A or B below also include water quantity and water quality controls (post construction stormwater runoff controls) as set forth in Section 2.2.3 below as applicable:

1. Condition A – Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department of Environmental Conservation's 303(d) list of impaired waters or a TDML (Total Maximum Daily Load) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

2. Condition B – Stormwater runoff from land development activities disturbing more than 10,000 square feet in area or any areas of steep slope (see definition).

§ 35.3. SWPPP Requirements for Condition A or B above:

1. All information in Section 2.2.1 of this local law
2. Description of each post construction stormwater management practice
3. Site map/construction drawing(s) showing the specific location(s) and size(s) of each post construction stormwater management practice;
4. Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms (i.e. 50-year storm, 100-year storm);
5. Comparison of post development stormwater runoff conditions with pre-development conditions;
6. Dimensions, material specifications and installation details for each post-construction stormwater management practice;
7. Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;
8. Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
9. Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Article 2, Section 4 of this local law.

§ 35.4. Plan Certification

The SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet requirements in this local law.

§ 35.5. Other Environmental Permits

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

§ 35.6. Contractor Certification

1. Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking and land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

2. The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address or other identifying description of the site; and the date the certification is made.

3. The certification statement(s) shall become part of the SWPPP for the land development activity.

4. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initial construction activities to the date of the final stabilization.

§ 36. Performance and Design Criteria for Stormwater Management and Erosion and Sediment Control

All land development activities shall be subject to the following performance and design criteria:

§ 36.1. Technical Standards

For the purpose of this local law, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards by this law:

1. The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual)
2. New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version of its successor, hereafter referred to as Erosion Control Manual).

§ 36.2. Water Quality Standards

Any land development activity shall not cause an increase in turbitity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 37. Maintenance and Repair of Stormwater Facilities

§ 37.1. The applicant or developer of the land development activity shall at all times properly operate and maintain all facilities and systems of treatment and control (and all related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this local law. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.

§ 37.2. The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and also copied to the site log book.

§ 37.3. Maintenance Easement(s)

Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village of Upper Nyack to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this local law. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Village.

§ 37.4. Maintenance after Construction

The permanent stormwater management practices installed in accordance with this law shall be operated and maintained by the owner or operator in a fashion to achieve the goals of this local law. Proper operation and maintenance includes as a minimum, the following:

1. A preventative/corrective maintenance program for all critical facilities and systems for treatment and control (and related appurtenances) which are installed or used bt the owner or operator to achieve the goals of the law.
2. Written procedures for operation and maintenance and training new maintenance personnel.
3. Discharges from the Stormwater Management Practices (SMPs) shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Article 2, §3.2.

§ 37.5. Maintenance Agreements

The Planning Board shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule A of this local law entitled Sample Stormwater Control Facility Maintenance Agreement. The Village of Upper Nyack, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this local law and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

§ 38. Site Plan Review Regulation Amendment

Local Law #1 of 1976, Planning Board Site Plan Approval of the Village of Upper Nyack is hereby amended by adding the following to the information requirements:

Stormwater Pollution Prevention Plan: A Stormwater Pollution Prevention Plan (SWPPP) consistent with the requirements of Article 1 and 2 of this local law shall be required for Site Plan Approval. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this Local Law. The approved Site Plan shall be consistent with the provisions of this local law.

§ 39. Administration and Enforcement

§ 39.1. Construction Inspection

The Village of Upper Nyack Stormwater Management Officer may require such inspections as necessary to determine compliance with this local law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Village Stormwater Management Officer at least 48 hours before any of the following:

1. Start of construction
2. Installation of sediment and erosion control measures
3. Completion of site clearing
4. Completion of rough grading
5. Completion of final grading
6. Close of the construction season
7. Completion of the final landscaping
8. Successful establishment of landscaping in public areas.

If any violations are found, the applicant or developer shall be notified in writing of the nature of the violation and required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

§ 39.2. Stormwater Management Practice Inspections

The Village Stormwater Management Officer is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit "as built" plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and practices and which plan must be certified by a professional engineer.

§ 39.3. Inspection of Stormwater Facilities after Project Completion

Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice or possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices. Inspections may be performed by the Village Stormwater Management Officer or a consultant hired by the Village. Any consultant hired to inspect Stormwater Facilities and Stormwater Management Practices must have a Professional Engineer's license or be certified as a Professional in Erosion and Sediment Control (CPESC).

§ 39.4. Submission of Reports

The Village Stormwater Management Officer may require monitoring and reporting from entities subject to this law as necessary to determine compliance with this law.

§ 39.5. Right of Entry for Inspection

When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Village the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in paragraph 1.3.

§ 39.6. Performance Guarantee

§ 39.6.1. Construction Completion Guarantee

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Village in its approval of the Stormwater Pollution Prevention Plan (SWPPP) the Planning Board may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Village of Upper Nyack as the beneficiary. The security shall be in an amount to be determined by the Planning Board based on the submission of final design plans, with reference to the actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Planning Board, provided such period shall not be less than one year from the date of final acceptance ore such other certification that the facilities have been constructed in accordance with the approved plans and specification and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the Village Planning Board. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

§ 39.6.2. Maintenance Guarantee

Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns and manages a commercial facility, the developer, prior to construction, may be required to provide the Village with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater and erosion and sediment control facilities, the Village may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

§ 39.6.3. Record Keeping

The Planning Board may require entities subject to this law to maintain records demonstrating compliance with this law and to file them with the Village on a schedule to be determined.

§39.7. Enforcement and Penalties

§39.7.1. Notice of Violation

When the Village determines that a land development activity is not being carried out in accordance with the requirements of this local law, it may issue a written notice of violation to the landowner. The notice shall contain:

1. The name and address of the landowner, developer or applicant;
2. The address when available or a description of the building structure or land upon which the violation is occurring;
3. A statement specifying the nature of the violation;
4. A description of the remedial measures necessary to bring the land development activity into compliance with this local law and a time schedule for the completion of such remedial action;
5. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
6. A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

§39.7.2. Stop Work Orders

The Building Inspector may issue a stop work order for violations to this law. Persons receiving a stop work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop work order. The stop work order shall be in effect until the Building Inspector, with the Stormwater Management Officer, confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this local law.

§39.7.3. Violations

Any land development activity that is commenced or is conducted contrary to this local law may be restrained by injunction or otherwise abated in a manner provided b law.

§39.7.4. Penalties

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this local law shall be guilty of a violation punishable by a fine not exceeding two hundred fifty dollars or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than two hundred fifty dollars nor more than one thousand dollars or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

§39.7.5. Withholding of Certificate of Occupancy

If any building or land development activity is installed or conducted in violation of this local law the Stormwater Management Officer or Building Inspector may prevent the occupancy of said building or land.

§39.7.6. Restoration of lands

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Village may take the necessary corrective action, the cost of which shall be paid by the Performance Guarantee (see Article VIII, § 39. Administration and Enforcement, § 39.6. Performance Guarantee). After these funds are expended, the balance shall become a lien upon the property.

§40. Fee for Services

The Planning Board may require any person undertaking land development activities regulated by this law to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Village or performed by a third party for the Village.

§41. Severability and Effective Date

§41.1. Severability

If the provisions of any article, section, subsection, paragraph, subdivision or clause in this local law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this local law.

§41.2. Effective Date

This local law shall be effective upon filing with the Office of the Secretary of State. Approved by the Board of Trustees. Dated 7/15/04.

SCHEDULE "A"

STORMWATER CONTROL FACILITY MAINTENANCE AGREEMENT

Whereas, the Village of Upper Nyack ("Municipality") and the _____ ("facility owner") want to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for the below named project, and

Whereas, the Municipality and the facility owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components, Therefore, the Municipality and the facility owner agree as follows:

1. This agreement binds the Municipality and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement.
2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, drywells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties fore any commonly owned facilities.
4. The facility owner shall provide fore the periodic inspection of the stormwater control measures, not less than once in every five-year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Municipality within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Municipality.
6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction or the Municipality or in accordance with the recommendations of the inspecting engineer.
7. The facility owner shall provide to the Municipality within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of (a Bond, letter of credit or escrow account).
8. This agreement shall be recorded in the Office of the County Clerk, County of Rockland together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to _____.

9. If ever the municipality determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Municipality or by the inspecting engineer, the Municipality is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.
10. This agreement is effective _____.

VILLAGE OF UPPER NYACK

By: _____ _____
Jeffrey S. Hindin, Mayor

VILLAGE OF UPPER NYACK
Local Law # 1 of 1976
PLANNING BOARD SITE PLAN APPROVAL
[Amended by LL # 2 of 2008, adopted 5-15-08, filed 6-11-08]

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF UPPER NYACK, AS FOLLOWS:

Section 1.
Pursuant to Village Law § 7-725, and such other enabling laws as may be enacted the Planning Board is hereby authorized to review and approve, approve with modifications or disapprove site plans showing the arrangement, layout and design of the proposed use of land shown on such plan.

Section 2.
No building permit shall be granted or issued for any structure for which site plan review by the Planning Board is required unless and until a site plan has been approved by the Planning Board and no certificate of occupancy shall be granted or issued unless the improvement conforms to such approved site plan.

Section 3.
Site plan approval shall be required for all uses permitted in the Zoning Ordinance including, but not limited to residences of all kinds and nature, businesses, retail and service establishments, restaurants, lunchrooms, tea rooms, banks, trust companies, other financial institutions and their offices, professional and general office buildings, medical clinics and doctors' and dentists' laboratories and offices, boat yards, marinas and docks, research and development laboratories, places of assembly including places of worship, schools, private clubs, public parks and playgrounds.

Section 4.
All site plans shall include therein:

a. On site parking
b. Means of access
c. Screening
d. Signs
e. Landscaping
f. Architectural features
g. Location and dimensions of all buildings and improvements
h. Impact of the proposed use on adjacent land uses.

Section 5.
The Planning Board may prepare additional rules and regulations not inconsistent with this law and the enabling legislation and which shall be reasonably related to the health, safety and general welfare of the community.

VILLAGE OF UPPER NYACK
Local Law # 1 of 1976
PLANNING BOARD SITE PLAN APPROVAL
[Amended by LL # 2 of 2008, adopted 5-15-08, filed 6-11-08]

Section 6.
No site plan or special use permit may be approved by the Planning Board unless due notice of the nature of such application is published once in the official newspaper, not less than 5 days prior to the hearing by the Board of such application and a like notice shall be posted on the property for at least five days prior to the hearing and the same notice shall be given at least five (5) days prior to the hearing by regular mail with US Postal Certificate of Mailing to all property owners within 200' feet of the subject property. The mailing shall be enclosed in a sealed post paid envelope with the return address and name of the sender plainly endorsed on the outside thereof, addressed to said persons as provided by the Planning Board Clerk at the address set forth in any post office regularly maintained by the Government of the United States and that the applicant shall file an affidavit of mailing stating the date mailed and the names and addresses of the persons served with the notice and shall include a statement that either confirms that no mailing was returned as undeliverable or, if the mailing was returned as not delivered to the addressee, specify the reason for the return. This affidavit shall be signed by the applicant who shall attach proof from the United States Postal Service of certificates of mailing attached thereto and shall be filed with the Planning Board Clerk at least two (2) business days prior to the commencement of the scheduled public hearing. The affidavit shall also include a sworn statement that the notice was posted on the property at least five (5) days prior to the hearing. **Amended 1-21-16 by LL# 1 of 2016, Filed 2-9-2016.**

Section 7.
The Planning Board shall hold its public hearing on the site plan within 62 days of filing thereof with the clerk to the board and shall make its decision within 62 days of the hearing, or if no hearing is held, within 62 days of filing.

Section 8.
This local law shall become effective immediately upon filing in the Office of the Secretary of State.

Section 9.
If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder thereof.

Filed 10-20-76
Amended by LL # 2 of 2008, adopted 5-15-08, filed 6-11-08

VILLAGE OF UPPER NYACK
Local Law # 1 of 1977
STATE ENVIRONMENTAL QUALITY REVIEW ACT

1. a. Unless the context shall otherwise require, the terms, phrases, words and their derivatives used in this local law shall have the same meaning as those defined in section 8-0105 of the environmental conservation law and Part 617 of Title 6 NYCRR.

   b. "Village" shall mean the Village of Upper Nyack.

2. No decision to carry out or approve an action other than an action listed in section 3(b) hereof or section 617.12 of 6 NYCRR as Type II action, shall be made by the Board of Trustees or any department, board, commission, officer or employee of the Village until there has been full compliance with all requirements of this local law and Part 617 of Title 6 NYCRR, provided however, that nothing herein shall be construed as prohibiting

   a. the conducting of contemporaneous environmental, engineering, economic feasibility or other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action which do not commit the Village to approve, commence or engage in such action, or
   b. the granting of any part of an application which relates only to technical specifications and requirements, provided that no such partial approval shall entitle or permit the applicant to commence the action until all requirements of this local law and Part 617 of Title 6 NYCRR have been fulfilled.

3. a. Consistent with Part 617 of Title 6 NYCRR and the criteria therein, the following actions, in addition to those listed in section 617.12 of Title 6 NYCRR as Type I actions, are likely to have a significant effect on the environment: NONE

   b. Consistent with Part 617 of Title 6 NYCRR and the criteria therein, the following actions, in addition to those listed in section 617.12 of Title 6 NYCRR as Type II actions, are deemed not to have a significant effect on the environment: NONE

4. For the purposes of assisting in the determination of whether an action may or will not have a significant effect on the environment, applicants for permits or other approvals shall file a written statement with the Board of Trustees setting forth the name of the applicant; the location of the real property affected, if any; a description of the nature of the proposed action; and the effect it may have on the environment. In addition, applicants may include a detailed statement of the reasons why, in their view, a proposed action may or will not have a significant effect on the environment. Where the action involves an application, the statement shall be filed simultaneously with the application for the action. The statement provided herein shall be upon a form prescribed by resolution by the Board of Trustees, and shall contain such additional relevant information as shall be required in the prescribed form. Such statement shall be accompanied by drawings, sketches and maps, if any, together with any other relevant explanatory material required by the Board of Trustees.

5. a. The Board of Trustees shall render a written determination on such application within 15 days following receipt of a complete application and statement, provided however, that such period may be extended by mutual agreement of the applicant and the Village Board. The determination shall state whether such proposed action may or will not have a significant effect on the environment. The Board of Trustees may hold informal meetings with the applicant and may meet with and consult any other person for the purpose of aiding it in making a determination on the application.
   b. The time limitations provided in this local law shall be coordinated with, to the extent practicable, other time limitations provided by statute or local law, ordinance or regulation of the Village.

6. Every application for determination under this local law shall be accompanied by a reasonable fee set forth in this section to defray the expenses incurred in rendering such determination. The fees shall be as follows: $25.00. [**Amended by L.L. # 1 of 2001, see §16.66, page 45.**]

7. If the Board of Trustees determines that the proposed action is not an exempt action, not an action listed in section 3(b) hereof or section 617.12 of Title 6 NYCRR as a Type II action and that it will not have a significant effect on the environment, the Board of Trustees shall prepare, file and circulate such determination as provided in section 617.7 (b) of Title 6 NYCRR and thereafter the proposed action may be processed without further regard to this local law. If the Board of Trustees determines that the proposed action may have significant effect on the environment, the Board of Trustees shall prepare, file and circulate such determination as provided in 617.7 (b) of Title 6 NYCRR and thereafter the proposed action shall be reviewed and processed in accordance with the provisions of this local law and Part 617 of Title 6 NYCRR.

8. Following a determination that a proposed action may have a significant effect on the environment, the Board of Trustees shall, in accordance with the provisions of Part 617 of Title 6 NYCRR:

   a. in the case of an action involving an applicant, immediately notify the applicant of the determination and shall request the applicant to prepare an environmental impact report in the form of a draft environmental impact statement;
   b. in the case of an action not involving an applicant, shall prepare a draft environmental impact statement.

   If the applicant decides not to submit an environmental impact report, the Board of Trustees shall prepare or cause to be prepared the draft environmental impact statement, or in its discretion notify the applicant that the processing of the application will cease and that no approval will be issued.

9. Where more than one agency is involved in an action, the procedures of sections 617.4 and 617.8 of Part 617 of Title 6 NYCRR shall be followed.

10. Actions undertaken or approved prior to the dates specified in Article 8 of the environmental conservation law for local agencies shall be exempt from this local law and the provisions of Article 8 of the environmental conservation law and Part 617 of Title 6 NYCRR, provided however, that if, after such dates the Board of Trustees modifies an action undertaken or approved prior to that date and the Board of Trustees determines that the modification may have a significant adverse effect on the environment, such modification shall be an action subject to this local law and Part 617 of Title 6 NYCRR.

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

Filed 6-29-77

1980 AMENDMENT OF ZONE MAP

RESOLUTION AMENDING ZONING ORDINANCE

At a regular meeting of the Board of Trustees of the Village of Upper Nyack, held on the 19th day of June, 1980, in said Village, the Board of Trustees, by virtue of the authority vested in it by law, hereby ordains and enacts as follows:

Section 1.
This Ordinance is entitled, "Amendment to the Village of Upper Nyack Zoning Ordinance."

Section 2.
The Planning Board of the Village of Upper Nyack having by resolution duly adopted at a regular meeting held by said Board on the 18th day of February, 1980, recommended the change of zone of property hereinafter described from its present zone of B-1 to either R-1 or R-3, the district or zone of said property is hereby changed and the official Zone Map of the Village of Upper Nyack is hereby amended accordingly as follows:

1. Lands presently designated to be in zone B-1 are hereby redesignated to be in zone R-1. The area so affected constitutes all of the preexisting B-1 zone bounded on the west by the westerly line of State Route 9W, and bounded on the south by the pre-existing line separating the preexisting R-1 zone to its north and the preexisting R-2 and R-3 zones to its south, which line runs westerly from the Hudson River on a course of North 83 ° 29' 35" West, said line lying approximately 225 feet northerly of the northerly line of Jewett Drive (also known as Jewett Road) and the westerly extension thereof.

2. Lands presently designated to be in zone B-1 are hereby redesignated to be in zone R-3. The area so affected constitutes all of the preexisting B-1 zone bounded on the north by the pre-existing line separating the preexisting R-1 zone to its north and the preexisting R-2 and R-3 zones to its south, which line runs westerly from the Hudson River on a course of North 83° 29' 35" West, said line lying approximately 225 feet northerly of the northerly line of Jewett Drive (also known as Jewett Road) and the westerly extension thereof; and bounded on the west and south by the following described lines:

   Beginning at a point on the aforementioned dividing line between zones R-1 and R-3, said point lying 166.09 feet easterly of the easterly line of State Route 9W on a course of South 83° 29' 35" East, and running from said beginning point:

   i. South 6° 30' 25" West a distance of 275.00 feet to a point on the westerly extension of the southerly line of Jewett Drive (also known as Jewett Road); thence
   ii. North 83° 29' 29" West along said extension of the southerly line of Jewett Drive (also known as Jewett Road) 8.50 feet; thence
   iii. South 6° 30' 31" West 110.84 feet; thence
   iv. South 84° 01' 32" East approximately 230 feet to the pre-existing boundary line between zones B-1 and R-3.

Section 2. (con't)

It is the intent of the Village Board, by this change in the Zone Map of the Village of Upper Nyack, to include in the R-1 zone all of tax lots presently designated as Lots 1.07 and 1.08 in Block A of Section 136, and to include in the R-3 zone all of tax lots presently designated as Lots 39.04, 39.05, 39.10 and 39.11 in Block A of Section 136.

Section 3.
All ordinances, resolutions or local laws or parts thereof, previously adopted and inconsistent herewith, are hereby repealed.

Section 4.
It is declared that this ordinance has been adopted with a view of promoting the health, safety, morals, and general welfare of this community.

Section 5.
This ordinance shall take effect immediately.

VILLAGE OF UPPER NYACK
Local Law # 2 of 1998
Adopted 2/19/98 by Board of Trustees
ALTERNATE MEMBER TO THE PLANNING BOARD

A LOCAL LAW AMENDING THE POWER GRANTED TO THE PLANNING BOARD IN THE ZONING ORDINANCE OF THE VILLAGE OF UPPER NYACK AND SUPERCEDING THE APPLICATION OF VILLAGE LAW § 7-725 TO PERMIT THE APPOINTMENT OF AN ALTERNATE MEMBER TO THE PLANNING BOARD OF THE VILLAGE OF UPPER NYACK.

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF UPPER NYACK AS FOLLOWS:

Section 1. Authority.
This local law is enacted pursuant to the authority of § 10(I)(ii)(e)(3) of the Municipal Home Rule Law authorizing villages to adopt local laws which may amend or supersede any provision of the village law in relation to the property, affairs or government of the village or in relation to any other enumerated subject matters in such § 10.

Section 2. Purpose.
In order to permit the Planning Board of the Village of Upper Nyack to transact business in those instances when the absence or conflict of interest of one or more members precludes a full membership of five members from considering a particular matter it is deemed advantageous by the Board of Trustees to enact a local law superseding Village Law §7-725 to provide for the appointment of an alternate member of the Planning Board.

Section 3.
§7-725 of the Village Law is hereby amended and superseded in its application to the Village of Upper Nyack by amending the Zoning Ordinance of the Village of Upper Nyack by adding a new section under the Authority of the Planning Board to read as follows:

Alternate Member of Planning Board
The Board of Trustees of the Village of Upper Nyack may, in any year it deems necessary, appoint one alternate member to the Planning Board to serve as provided for in this Section and Section 7-725 of the Village Law. Such alternate member shall be appointed for a two-year term of office. The Chairman of the Planning Board shall assign such alternate member to a particular case when a regular member of said Board has a conflict of interest which would otherwise prevent five members of said Board from considering any pending matter. Once designated to serve on a particular matter before the Board, the alternate member shall have the same powers and duties as regular members of the Board until the matter is concluded. Any determination of said Board consisting of an alternate member shall have the same weight and be entitled to the same authority as the act or deed of the regular Planning Board and all laws, statutes and regulations shall apply and be applied with equal force and effect. **Amended 7/15/99 by Local Law #3 of 1999.**

Section 4.
This local law shall take effect immediately upon filing with the Secretary of State.

VILLAGE OF UPPER NYACK
Local Law # 3 of 1998
Adopted 2/19/98 by the Board of Trustees
ALTERNATE MEMBER TO THE BOARD OF ARCHITECTURAL REVIEW

A LOCAL LAW AMENDING ARTICLE VI OF THE ZONING ORDINANCE OF THE VILLAGE OF UPPER NYACK TO PERMIT THE APPOINTMENT OF AN ALTERNATE MEMBER OF THE BOARD OF ARCHITECTURAL REVIEW OF THE VILLAGE OF UPPER NYACK.

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF UPPER NYACK AS FOLLOWS:

Section 1. Authority
This local law is enacted pursuant to the authority of §10(I)(ii)(e)(3) of the Municipal Home Rule Law authorizing villages to adopt local laws which may amend or supersede any provision of the village law in relation to the property, affairs or government of the village or in relation to any other enumerated subject matters in §10.

Section 2. Purpose.
In order to permit the Board of Architectural Review to transact business in those instances when the absence or conflict of interest of one or more members precludes a full membership of five members from considering a particular matter. It is deemed advantageous by the Board of Trustees to enact a local law to provide for the appointment of an alternate member of the Board of Architectural Review.

Section 3.
Article VI Architectural Harmony – Board of Architectural Review of the Zoning Ordinance of the Village of Upper Nyack is hereby amended by adding §27 to provide as follows:

§27. Alternate Members

The Board of Trustees of the Village of Upper Nyack may, in any year it deems necessary, appoint one alternate member to the Board of Architectural Review to serve as provided for in this section. Such alternate member shall be appointed for a two year term of office. The chairman of the Board of Architectural Review shall assign such alternate member as necessary when absence of regular members of said board or the conflict of interest of regular members of said board would otherwise prevent five members of said board from considering any pending matter. Once designated to serve on a particular matter before the board, the alternate member shall have the same powers and duties as regular members of the board until that matter is concluded. Any determination of said board consisting of an alternate member shall hold the same weight and be entitled to the same authority as the act or deed of the regular Board of Architectural Review and all laws, statutes and regulations shall apply and be applied with equal force and effect. **Amended 7/15/99 by Local Law # 4.**

Section 4.
This local law shall take effect immediately upon filing with the Secretary of State.

VILLAGE OF UPPER NYACK
Local Law # 7 of 1998
SENIOR CARE FACILITIES

A LOCAL LAW AMENDING SECTION 2, SECTION 15:1 AND SECTION 19 OF THE ZONING ORDINANCE OF THE VILLAGE OF UPPER NYACK.

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF UPPER NYACK, AS FOLLOWS:

Section 1. Authority
This local law is enacted pursuant to the authority of Section 10(I)(ii)(e)(3) of the Municipal Home Rule Law authorizing villages to adopt local laws which may amend or supersede any provision of the Village Law in relation to the property, affairs or government of the village or in relation to any other enumerated subject matters in such Section 10.

Section 2. Purpose.
The Board of Trustees is mindful of the overall aging of the populations of the Village of Upper Nyack and of the surrounding area. While there are numerous nursing home facilities in the vicinity, there are few facilities which provide care to generally healthy seniors. The Board of Trustees believes that such facilities would be a beneficial addition to the village. Such facilities would provide needed services to our aging population without unduly burdening municipal services. As commercial operations, they provide additional tax revenues to the village, as well as to the town of Clarkstown and the Nyack Union Free School District.

The Board of Trustees is also aware that, although these facilities have some residential characteristics, they are essentially business uses. This is because the provision of care services is a necessary component of these facilities. Thus, it is appropriate to limit them to the Commercial OB District of the Village. Since it is necessary to provide a campus–like atmosphere to ensure the privacy and welfare of a facility's residents and to provide adequate buffers for adjoining properties, and uses, it is also appropriate to require that the parcels devoted to these facilities be of a minimum size.

Accordingly, the Board of Trustees herewith amends the zoning code to permit the use of the land for privately operated Senior Care Facilities within the Commercial OB District.

Section 3. Amendment to Zoning Code.

(a) Section 2 of the zoning code is hereby amended by adding thereto, in its proper alphabetical location, the following definition:

"SENIOR CARE FACILITY EXCLUDING NURSING HOMES: A privately operated for-profit business which provides studio, and/or one and two bedroom living accommodations, personal care services and support facilities in a living campus for people who are 62 years of age or older or for couples, at least one of whom is 62 years of age or older. The facility must contain common dining areas and a common kitchen to serve the residents on a regular basis.

Section 3. Amendment to Zoning Code. (con't)

Kitchen facilities in the individual units would be for incidental use only and not for regular meals. The facility may include such other accessory uses as are customarily associated with and subordinate to the principal use, provided that such are limited to the residents, their guests and the staff of the senior care facility. For purposes of this section, a "nursing home" shall have the same definition as set forth in Title 10, NYCRR, Section 700.2"

(b) Section 15:1 of the Zoning Code is hereby amended by adding thereto, as subdivision (i) thereof the following use:

"(i) Senior Care Facilities as defined herein provided that the minimum lot area is 10 acres all of which must be within the Commercial OB District and which has required frontage on and access from a State Highway. Senior Care Facilities must comply with the area and bulk requirements set forth in section 19:5 of the table of standards for business districts."

(c) Section 19:5 "Table of Standards for Business Districts" is hereby amended by adding thereto the following:
" Section 19:5 – TABLE OF STANDARDS FOR BUSINESS DISTRICTS": AREA AND BULK REQUIREMENTS FOR SENIOR CARE FACILITIES:

Requirement	OB District
Minimum lot area (acres)	10
Minimum lot depth (feet)	300
Minimum front footage on state highway (feet)	600
Minimum front yard (feet)	75
Minimum side yard (feet)	75
Minimum rear yard (feet)	75
Maximum building coverage (percent)	20
Maximum impervious coverage (percent)	55
Maximum density (units per acre)	12
Minimum buffer between residential and OB district (feet)	75
Minimum distance between buildings (feet)	35
Maximum height (feet) (at adjacent grade*)	35

*Adjacent grade is the grade that abuts the exterior wall of the building and extending for a distance of ten (10) feet from the exterior wall.

1. No building or structure shall have an uninterrupted façade exceeding 150 feet.
2. Not withstanding anything to the contrary in this zoning code, the minimum parking requirement for this use shall be 0.75 parking space for each living unit. The Board of Trustees as a condition of its approval of a special permit application may increase the minimum parking requirement for this use to 1.0 parking spaces for each living unit.
3. No dwelling unit shall contain more than two bedrooms.

Section 3. Amendment to Zoning Code. (con't)

4. Permitted accessory uses for a Senior Care Facility shall include those uses which are customarily associated with senior housing facilities such as personal and recreational services and small gift and necessary shops solely for the use of the senior housing community or their visitors. Examples of permitted accessory uses, all contained within the facility, would be as follows: indoor and/or outdoor recreation facilities; entertainment facilities; library; food preparation facilities; dining facilities; laundry and linen service facilities; housekeeping services; security facilities; administrative offices; storage and maintenance facilities; chapel; barber shops and beauty parlors; facilities for the sale of sundries, personal articles, newspapers, food and similar convenient products for the residents; staff facilities and such other uses as are customarily associated with and subordinate to the principal use, provided that such accessory uses are limited to the residents of the Senior Care Facility, their guests and the staff of such facility.
5. All units shall be not less than 300 square feet.

Section 4. Suppression of the Village Law.
Pursuant to the provisions of section 10.1 (e) (3) of the Municipal Home Rule Law, this local law is enacted pursuant to the provision of Article 2 and 3 of the Municipal Home Rule Law.

Section 5. Separability.
Should any section, sentence or provision of this local law be determined by any court of competent jurisdiction to be unconstitutional or invalid in any way, such determination shall not affect the validity of this local law as a whole or any part thereof other than the part expressly so determined to be unconstitutional or invalid.

Section 6. Effective Date.
This local law shall be effective immediately upon filing with the Secretary of State.

VILLAGE OF UPPER NYACK
Local Law # 1 of 1999, Filed 1-28-99

A Local Law amending Article II "Definitions"; Section 19.2 – "Table of Residence and Dwelling Dimensions: maximum building height and maximum coverage of lot by buildings"; and Section 19.4 "Table of Standards for Commercial Districts: maximum building height" and 19.4 "Table of Standards for Commercial Districts: maximum coverage of lot by buildings and structures" of the Zoning Ordinance of the Village of Upper Nyack. Also a new column under Section 19.4 "Table of Standards for Commercial Districts: maximum building height" and a new column under section 19.2 "Table of Residence and Dwelling Dimensions: maximum coverage of lot by buildings and structures and by primary building."

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF UPPER NYACK AS FOLLOWS:

Section 1. Authority.
This Local Law is enacted pursuant to Section 7-700 of the Village Law as amended, Section 10, Subdivision 1 (ii) (e) of the Municipal Home Rule Law and Section 10, Subdivision 6, of the Statue of Local Governments authorizing Villages to adopt Local Laws which may amend or supersede any provision of the Village Law in relation to the property, affairs or government of the Village or in relations to any other enumerated subject matter in such Section 10.

Section 2. Amendment to Article II "Definitions" of the Zoning Code.
In proper alphabetical order insert the following new definition:

ACCESSORY BUILDING OR STRUCTURE: A building or structure on any legally existing parcel of land, which is used for a purpose that is considered an accessory use to the main use of the parcel. In the case of a building, the building shall be separated by air and space from the primary building in order to be considered secondary, whether or not the building is inhabited by humans.

ACCESSORY USE: A use that is incidental to and on the same legally existing parcel of land as the primary use.

BUILDING: Any man-made structure whether made temporary or permanent that has more than three walls and a roof and is at least six feet high.

IMPERVIOUS SURFACE: Any material that substantially reduces or prevents the infiltration of storm water into previously undeveloped land. Impervious surface shall include graveled or paved driveways and parking areas, patios, walkways and similar elements.

LOT COVERAGE: The percentage of any legally existing parcel covered by structures and /or buildings.

PRIMARY BUILDING: A building which is used for the primary use of any legally existing parcel of land, whether or not the building is inhabited by humans.

STRUCTURE: Any man-made improvement to a legally existing parcel, regardless of the intended use, as long as the structure is taller than three feet, or is considered a permanent improvement to the property. Structure shall include, but are not limited to buildings, parking areas, driveways, car ports, tennis courts, pools, sidewalks, retaining walls, fountains, fences, gazebos, sheds, patios, and any of the like improvement. The definition of a structure shall include buildings, however, all structures are not necessarily defined as buildings. Also plantings shall not be considered a structure.

TEMPORARY BUILDINGS OR STRUCTURES: A structure or building that is considered a temporary improvement of less than six months, and placed on any legally existing parcel for the convenience of the users on a non-permanent basis.

Section 3. Amendment to Section 19.2 of the Zoning Code.

Section 19.2 "Table of Residence and Dwelling Dimensions:"

District	Maximum Coverage of Lot by Buildings and Structures	Maximum Coverage of a Lot by Primary Building	Maximum Building Height
Residence R-1	20%	10%	35 feet*
Residence R-2	25%	12%	35 feet*
Residence R-3	25%	12%	35 feet*
Residence R-4	40%	20%	35 feet*
Residence R-5	40%	20%	35 feet*

*Two stories not to exceed 35 feet in height measured vertically from any point in the strip of land extending for a distance of 10 feet out from the exterior wall of the building to the highest point of the roof for flat roofs, to the deck line for mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

Section 4. Amendment to Section 19.4 "Table of Standards for Commercial Districts":
Superseded by LL #4 of 2003, Refer to §19:4

District	Maximum coverage of lot by buildings and structures	Maximum Coverage of Lot by Primary Building	Maximum Building Height
Business B-1	85%	75%	35 feet*

*Two stories not to exceed 35 feet at adjacent grade, which is the grade that abuts the exterior wall of the building and extending for a distance of 10 feet from the exterior wall.

Section 5. Suppression of the Village Law.
Pursuant to the provisions of Section 10.1 (e) (iii) of the Municipal Home Rule Law, this Local Law is enacted pursuant to the provision of Article II and III of the Municipal Home Rule Law.

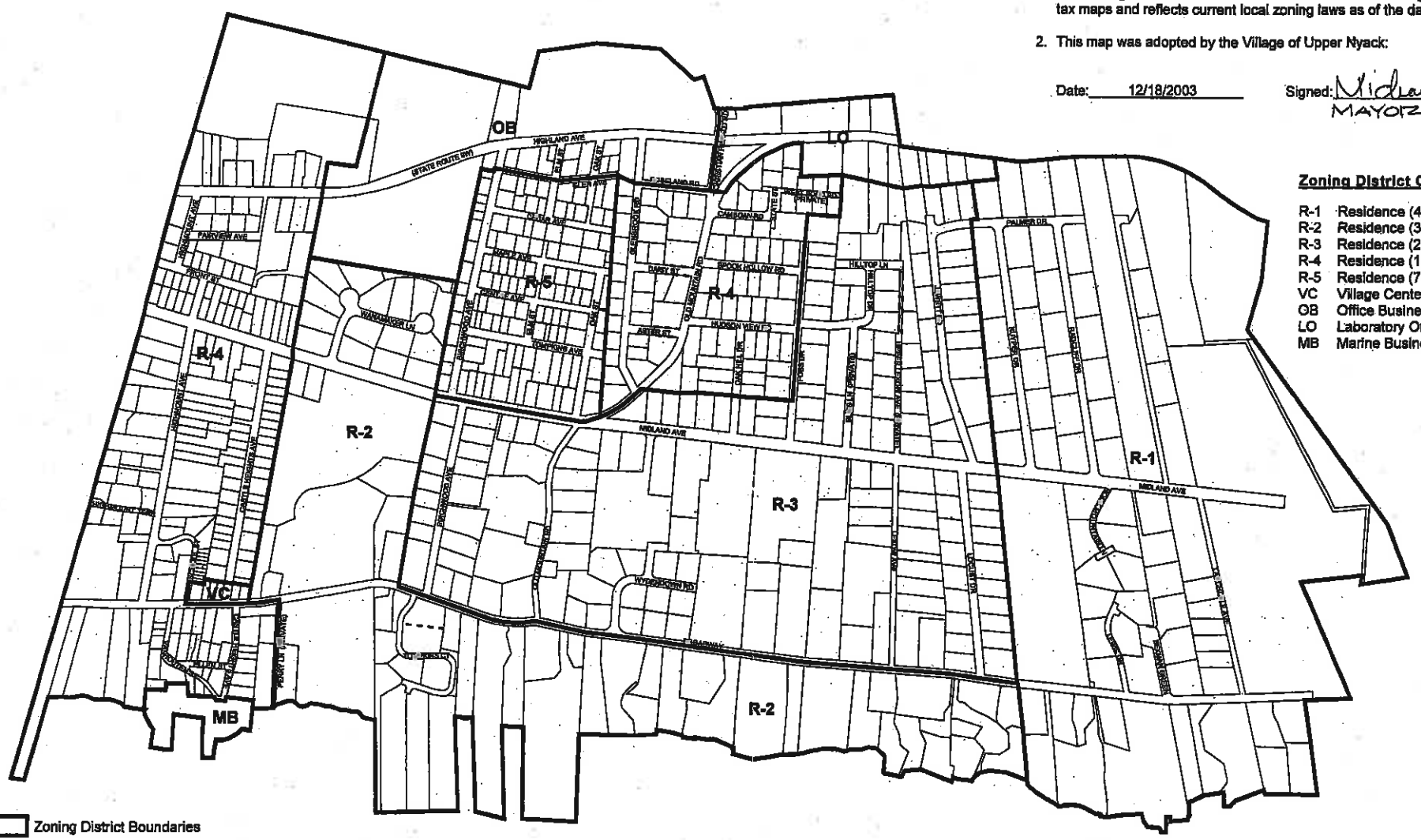
Section 6. Separability.
Should any Section, sentence or provision of this Local Law be determined by any Court of competent jurisdiction to be unconstitutional or invalid in any way, such determination shall not affect the validity of this Local Law as a whole or any part thereof other than the part expressly so determined to be so unconstitutional or invalid.

Section 7. Effective Date.
This Local Law shall be effective immediately upon filing with the Secretary of State of the State of New York.

1. The Zoning Boundaries were derived from the Local Zoning Ordinance and tax maps and reflects current local zoning laws as of the date of adoption.

2. This map was adopted by the Village of Upper Nyack:

Date: 12/18/2003 Signed: Michael Egan
MAYOR



Zoning District Classifications

R-1	Residence (40,000 s.f.)
R-2	Residence (30,000 s.f.)
R-3	Residence (20,000 s.f.)
R-4	Residence (10,000 s.f.)
R-5	Residence (7,500 s.f.)
VC	Village Center (4,000 s.f.)
OB	Office Business (25,000 s.f.)
LO	Laboratory Office (50,000 s.f.)
MB	Marine Business (40,000 s.f.)

Zoning District Boundaries
Parcels
No Thru Connection
Conservation Easement

Prepared November 2003

600 0 600 Feet
1 inch = 600 feet

OFFICIAL ZONING MAP

Village of Upper Nyack
ROCKLAND COUNTY, NEW YORK

ROBERT GENESLAW CO.
Planning and Development Consultants
2 Executive Blvd., Suite 401
Suffern, NY 10901