

ZONING LAW FOR THE VILLAGE OF MIDDLEBURGH

ARTICLE I

1.1 Title

This Law shall be known as the “Village of Middleburgh, New York, Zoning Law.”

1.2 Enactment

The Board of Trustees of the Village of Middleburgh, in the County of Schoharie, New York, under and pursuant to the authority of Article VI-A, Section 175, of the Village Law (Article 7-700 as recorded by Chapter 892 of the Laws of 1972) and the Municipal Home Rule Law of the State of New York, hereby enacts and publishes a law regulating and restricting the location, erection, construction, reconstruction, alteration, repair, density, or use of buildings, structures, or land, and under Section 96-a of the General Municipal Law authorizing the imposition of restrictions for the protection of places, buildings, structures, works of art and other objects having special historic or aesthetic interest and values in the Village of Middleburgh.

1.3 Purposes

The Zoning Law for the Village of Middleburgh is enacted for the following purposes:

- (a) to maintain the use value of real property
- (b) to promote the health, safety, morals or the general welfare of the community and the interest of individuals
- (c) to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements
- (d) to protect and promote historic sites and aesthetic values
- (e) to encourage the most appropriate use of the land and to conserve the value of land and buildings
- (f) to lessen congestion in the streets
- (g) to secure safety from flood, fire, panic, and other dangers
- (h) to prevent overcrowding of the land and undue concentrations of population
- (i) to provide adequate light and air
- (j) to maintain the character of districts and its peculiar suitability for particular uses

1.4 Scope

These regulations shall apply to the construction, installment or alteration of any building, structure or appurtenant system, any change in use, and any lot, plat, plot or parcel of land used, occupied or otherwise maintained as herein provided for in the Village of Middleburgh.

1.5 Application of Regulations

No activity listed below shall be commenced, carried out, or continued except in full compliance with this Law and a Zoning Permit has been issued by the Zoning Enforcement Officer, or other applicable permit approval has been issued by the appropriate Board, stating that the proposed building, structure, use of land or structure, or development activity complies with the provisions of this Law:

1. Erection, re-erection, demolition, or movement of a building or structure;
2. Change of the exterior structural dimensions of a building structure;
3. Change in use of land, buildings or structures through the establishment of a new use, or through the expansion, enlargement or relocation of an existing use;
4. The resumption of any use which has been discontinued for a period of one (1) year, or longer;
5. Construction of new on-site sewage disposal system, or the replacement or major modification of any on-site sewage disposal system;
6. Establishment of or change in the dimensions of a parking area for nonresidential or multi-family residential uses;
7. Placement of a sign as regulated in this Law;
8. Conversion of a seasonal use to a year-round use, including residential use.

1.6 Exemptions

No zoning approval is required for the following (**building permit may be required**):

1. Interior structural alterations or routine maintenance and improvement that does not expand the exterior dimensions of the structure (e.g., roofing, window replacement, siding and roofing replacement, etc.)
2. Minor accessory structures such as posts, sidewalks, flagpoles and playground equipment.

ARTICLE II

USE AND INTERPRETATION OF WORDS

2.1 General

For the purposes of this Law, certain words or terms used therein shall be interpreted or defined as follows:

- 2.11 Words used in the present tense include the future tense.
- 2.12 Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.
- 2.13 The word “shall” is always mandatory. The word “may” is permissive.
- 2.14 A “building” or “structure” includes any part thereof. A “building” includes all other structures of every description except fences and walls, regardless of dissimilarity to conventional building forms.
- 2.15 The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be used or occupied.”
- 2.16 The word “person” includes a corporation as well as an individual.
- 2.17 The word “lot” includes the word “plot” or “parcel.”

2.2 Definitions

- 2.21 Terms and words used herein are defined in Attachment II of the Zoning Law, which is hereby made part of these regulations.

ARTICLE III

ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP

3.1 Purpose

In furtherance of those general purposes outlined above, it is the objective of these regulations to define various appropriate categories of residential, commercial districts and open space in such manner as to recognize the existing character and quality of land uses and natural features throughout the Village and in accordance with the Village Land Use Plan.

3.2 Establishment of Zoning Districts

The Village of Middleburgh establishes and is hereby divided into the following zoning districts:

R-3	Low Density Agricultural/Residential, formally known as R-1
R-2	Medium Density Residential
H	Historical
C	Commercial
P	Public
PDD	Planned Development District
FPD	Flood Protection District

3.3 Official Zoning Map

The location and boundaries of said zoning districts are shown on the map designated “Official Zoning Map of the Village of Middleburgh,” certified by the Village Clerk. Said map, together with everything shown thereon and all amendments thereto, is hereby adopted and is declared to be an apparent part of this law.

3.4 Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following centerlines of watercourse and roads, said boundaries shall be construed to be coincident with such lines. Such boundaries shall be deemed to be automatically moved if a centerline or right-of-way line of such street, highway, public utility easement or watercourse is moved a maximum of fifty (50) feet.
- B. Where district boundaries are indicated as approximately following the Village boundary lines, property lines, lot lines or projection thereof, the centerlines of streams, rivers, ponds or other bodies of water said boundaries shall be construed to be coincident with such lines or projections thereof.
- C. Where district boundaries are so indicated that they are approximately parallel to the Village boundary lines, property lines, lot lines, right-of-way lines or projections thereof, said boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map or as shall be determined by the use of scale shown on the Zoning Map.

- D. Where a district boundary line divides a lot held in single or joint ownership of record at the time such line is established the regulations for the less restricted portion of such lot shall extend not more than thirty-five (35) feet into the more restricted portion.
- E. In all other cases, where not dimensioned, the location or boundaries shown on the map shall be determined by the use of the scale appearing thereon.
- F. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered by A through E above, the Zoning Board of Appeals shall interpret the district boundaries

ARTICLE IV

REGULATIONS AND STANDARDS

4.1 Use Schedule

The attached District Regulations (Attachment I) shall be deemed to be part of this Section and is referred to herein as the “District Regulations,” attached at end of law.

4.2 Land Use Activities, Districts, and Special Requirements

4.21 Historic Districts

4.211 Purpose

The purpose of this Section (4.2) is to promote and protect the educational, cultural, economic and general welfare of the public through the protection, enhancement, perpetuation and preservation by the Village of Middleburgh of its architectural heritage. It is the further intent of Section 4.2 to:

- (1) Stabilize and improve property values.
- (2) Foster civic pride and community spirit.
- (3) Strengthen the local economy.
- (4) Maintain and preserve the historic architecture and ambience of the Historic District.
- (5) Promote the full use and adaptive reuse of historic buildings located in the Historic District.

4.212 Applicability

- A) The provisions of this Section shall apply to any rehabilitation, restoration, alteration, demolition, construction or moving of structures within the Historic District.
- B) This Section shall apply only to exterior features of the structure which are visible to the public.

- C) Nothing in this Section shall be construed to prevent normal maintenance or repair of any exterior feature of a structure within the Historic District which does not involve a change in design, material or the outward appearance of the structure.

4.213 Location

The Historic District, as established by this Section, shall follow the boundaries of the Village of Middleburgh Zoning Map.

4.214 Planning Board

The Village Planning Board shall review and act upon all applications submitted under the provisions of this Section before any certificate of compliance, zoning permit or demolition permit is issued by the Zoning Enforcement Officer.

A) Powers and Duties

It shall be the duty of the Planning Board to exercise aesthetic judgment, maintain and protect the historic character of the Historic District and pursue the purposes of this Section through its review of all proposals falling within the criteria of Section 4.213 Applicability. The Planning Board shall also have the following powers and duties:

1. To determine the historic or architectural significance of structures, individually or in relation to the Historic District, as needed to pursue the purposes of this Section.
2. To approve the unconditional or conditional issuance of certificates of approval for rehabilitation, restoration, demolition, alteration, removal or construction of structures within the Historic District.
3. To deny certificates of approval for rehabilitation, restoration, demolition, alteration, removal or construction of structures within the Historic District when the requirements of this Section have not been satisfied.
4. To retain or employ professional consultants and other persons necessary to assist the Planning Board.
5. To conduct surveys and studies relating to the purposes and responsibilities of the Planning Board.
6. To make recommendations concerning changes in size, administration or regulations concerning the Historic District.
7. To make recommendations concerning preparation of maps, brochures, historical markers and other materials for selected purposes.
8. To advise owners of historic buildings on problems of preservation and restoration.
9. To exercise any other power not inconsistent with law to implement its functions and the purposes of this Section.

- B) Nothing in this Section shall authorize the Planning Board to alter or adopt regulations affecting use of land or population densities or to regulate the location of buildings designed for specific uses or to create districts for any such purposes.

4.215 Determination of Significance

A) General

Within 32 days of the preliminary concept conference or the receipt of a complete formal application for a certificate of approval, whichever occurs first, the building, structure or property for which application has been made shall be designated as either significant or nonsignificant, unless an extension of time is mutually agreed upon by the Planning Board and applicant. Such designation shall indicate in a general way the reasons for such designation, including reference to the following considerations:

1. Historic persons, events, development or period with which the building or structure may have been involved or important.
2. Architectural design, arrangement features, style, details, texture, materials or craftsmanship of significance.
3. Aesthetic value of the building taken as a whole and its general relationship to the historic and architectural value of surrounding buildings and structures and to the Historic District as a whole.
4. Such other factors which the Planning Board identifies as pertinent to the question of significance, either in a specific case or by general rule.

B) Presumptions

1. Any building or structure erected in or prior to 1910 shall be presumed to be significant, and such presumption shall stand unless the Planning Board is convinced by the preponderance of the information available that the building or structure is nonsignificant. Any party requesting a determination of nonsignificant shall have the burden of establishing such nonsignificance.
2. Any building or structure erected in or since 1940 shall be presumed to be nonsignificant, and such presumption shall stand unless the Planning Board is convinced by the preponderance of the information available that the building or structure is significant. Any party requesting a determination of significance shall have the burden of establishing such significance.

C) Inventory of Significant Structures

1. As soon as practical after the effective date of this Law, the Planning Board shall compile an inventory of all buildings and structures in the Historic District. Such inventory shall designate each building and structure as significant or nonsignificant in accordance with the considerations and presumptions described in Subsection B above and shall indicate in a general way the reasons for such designation.
2. One copy of such inventory shall be filed with the Zoning Enforcement Officer and shall be available for public inspection.

3. Reference to the inventory of significant structures or the completed portions thereof shall satisfy the requirement for designation of structures as significant or nonsignificant, unless the applicant requests review of the designation at the time of application for a certificate of approval.

4.216 Standards for Review

A) Significant Structures

Certificate of approval for work affecting a building or structure designated as significant shall be issued only subject to the following requirements:

1. Alterations

- a. No alteration, repair or rehabilitation shall remove or destroy exterior architectural features of a building designated as significant unless the applicant proves that a compelling reason exists for the removal of such features.
- b. In cases of alterations not removing or destroying exterior architectural features, repairs, alterations and rehabilitation of existing buildings designated as significant shall either be consistent with the spirit of their architectural style or shall alter the structure to an appropriate appearance consistent with the architectural style of the Historic District.

2. Demolition

Demolition is prohibited in the case of all buildings or structures designated as significant, unless the applicant clearly meets one of the following tests:

- a. Public safety hazard test. The applicant must demonstrate to the satisfaction of the Planning Board all of the following:
 - i. That the subject structure presents a public safety hazard.
 - ii. That the public safety hazard is not the result of the neglect or intentional activity of the applicant or owner.
 - iii. That the public safety hazard cannot be corrected within economic means reasonably available to the applicant or owner.
- b. No reasonable return test. The applicant must clearly establish to the satisfaction of the Planning Board that a reasonable economic return for the use or sale of the property is not possible unless demolition is permitted. That financial return would be greater if demolition were permitted shall not be sufficient to establish no reasonable return.
- c. Nonprofit test. Only in the case of buildings or structures owned by nonprofit organizations, the owner as applicant must clearly establish to the satisfaction of the Planning Board that said organization cannot reasonably provide those services for which it was established unless demolition is permitted. That

demolition is the most convenient means to address the problem of reasonable provision of services is not sufficient to meet the nonprofit test.

- d. No alternate use plan. If the Planning Board has pursued the procedure for an alternate use plan described in Section 4.218 B, and fails to develop such alternative use plan within the prescribed maximum time period, the Planning Board must issue the certificate of approval to permit demolition pursuant to that procedure.

B) Nonsignificant Structures: new construction and reconstruction after demolition.

A certificate of approval for work within the Historic District not affecting buildings or structures designated as significant shall be issued only subject to the following requirements:

1. Alterations to nonsignificant structures.

Alterations, repairs, replacement of exterior features or structural additions to existing buildings designated as nonsignificant shall be either consistent with the existing building's architectural style or shall result in an appearance after completion which is consistent with and does not detract from the architectural style and ambience of the Historic District.

2. New construction and reconstruction after demolition.

Any new construction or reconstruction after demolition occurring within the Historic District shall comply with the following standards:

- a. Compatibility with the architectural style and spirit of the Historic District in terms of materials, size, scale, rhythm, texture and other appropriate considerations.
- b. Compatibility with the architectural style and spirit of the Historic District in terms of height. Infill construction, additions and reconstruction shall not exceed the height of the next two abutting buildings, nor shall the minimum height be less than the lower of the next two buildings on either side of the building site.

4.217 Procedure

- A) No Change in an exterior architectural feature of a structure within the Historic District shall be commenced without a certificate of approval from the Planning Board, nor shall any certificate of compliance or building permit be issued for property within the Historic District without a certificate of approval from the Planning Board.

B) Application Requirements

All applications for a certificate of approval shall be made in writing in a manner prescribed by the Planning Board and shall contain the following:

1. The name, address and telephone number of the applicant, and of the owner, if the applicant is acting for the owner.

2. A sketch plan showing the location of buildings, structures and property affected by the proposed activity in relation to all lot lines and surrounding buildings or structures.
3. For applications for new construction, elevations of all sides of the proposed structure that will be visible from a public street or sidewalk.
4. For applications for alterations to existing structures:
 - a. Such information, drawings and/or photographs as may be necessary in the judgment of the Planning Board to determine the historic and architectural significance of the affected building(s) or structure(s), both individually and in relation to the Historic District.
 - b. Sketch elevations and/or photographs of the existing building(s) with appropriate notions showing proposed changes.
 - c. Samples and/or descriptions of materials to be used in the proposed changes.
5. For applications for demolition of existing structures:
 - a. Such information, drawings and/or photographs as may be necessary in the judgment of the Planning Board to determine the historic and architectural significance of the building(s) or structure(s) to be demolished, both individually and in relation to the Historic District.
 - b. Such information as may be necessary in the judgment of the Planning Board to determine the question of whether a reasonable economic return can accrue without demolition.
 - c. In the case of nonprofit organizations, such information as may be necessary in the judgment of the Planning Board to determine the question of whether such nonprofit organization can reasonably provide those services for which it was established without demolition.
 - d. Information, plans and/or drawings describing the planned reuse of the land after demolition, including an analysis of the benefit of the proposed use to the Village, an analysis of the proposed use in relation to the purposes of this Section and chapter and sketch plans and elevations showing all sides of any proposed new structure that will be visible from a public street or sidewalk.
6. Such additional information, drawings or materials as the Planning Board may require, either in a specific case or by general rule.

C) Preliminary Concept Conference

1. A preliminary concept conference between the Planning Board and the applicant shall be held either before or after receipt of a formal application, in order to:
 - a. Discuss and review the basic concept for proposed activity coming under the provisions of this Section.

- b. Generally determine the scope and impact of the proposed activity on the Historic District and the intent of this Section.
 - c. Specify information required of the applicant to complete the formal application for a certificate of approval.
 - d. Determine, or begin to determine, the designation of the subject buildings or structures as significant or nonsignificant.
2. The Planning Board shall work with the applicant to refine and develop the proposal so it is in harmony with the intent and requirements of this Section and complies to the greatest extent possible with the Secretary of the Interior's Guidelines for Rehabilitation (as amended and this source can be accessed by utilizing the following link: www.nps.gov/history/hps/TPS/tax/rhb/)
 3. In order to assist and advise the applicant in fulfilling the requirements for formal application and in meeting the requirements and purposes of this Section, the Planning Board may recess the preliminary concept conference to allow time for the gathering of additional information or revision of proposals. In such cases, reconvening of said conference shall be considered a continuation of the same preliminary concept conference for purposes of establishing maximum time periods for actions of the Planning Board.

D) Determination of significance.

Within 32 days of the preliminary concept conference or the receipt of a complete formal application for a certificate of approval, whichever occurs first, the Planning Board shall designate the building(s) or structure(s) affected by the proposal as significant or nonsignificant, in accordance with Section 4.216 above, unless an extension of time is mutually agreed upon by the Planning Board and applicant.

E) Action by the Planning Board:

1. On proposals affecting only buildings designated as nonsignificant and new construction:
 - a. Within 32 days of receipt of the completed formal application or the completion of the preliminary concept conference, whichever is later, the Planning Board shall approve, approve with modifications, or deny the certificate of approval for alterations affecting only buildings designated as nonsignificant or for proposed new construction.
 - b. In the case of approval with modifications or denial, the Planning Board shall state in writing to the applicant, and for the public record, the reasons for such required modifications or denial.
 - c. The expiration of said time period without action by the Planning Board shall be construed as approval of the application as submitted.
2. On proposals for alterations affecting buildings designated as significant:

- a. Within 64 days of receipt of the completed formal application or completion of the preliminary concept conference, whichever is later, the Planning Board shall approve, approve with modifications or deny the certificate of approval for alterations to buildings or structures designated as significant.
 - b. In the case of approval with modifications or denial, the Planning Board shall state in writing to the applicant, and for the public record, the reasons for such required modifications or denial.
 - c. The expiration of said time period without action by the Planning Board shall be construed as approval of the application as submitted.
3. On proposals for demolition:
- a. Demolition of buildings designated as nonsignificant:
 - i. Within 32 days of the completed formal application or completion of the preliminary concept conference, whichever is later, the Planning Board shall approve, approve with modifications, or deny the certificate of approval for demolition of buildings or structures designated as nonsignificant.
 - ii. In the case of approval with modifications or denial, the Planning Board shall state in writing to the applicant, and for the public record, the reasons for such required modifications or denial.
 - iii. The expiration of said time period without action by the Planning Board shall be construed as approval of the application as submitted.
 - b. Demolition of buildings or structures designated as significant:
 - i. Within 32 days of receipt of the completed formal application or the completion of the preliminary concept conference, whichever is later, the Planning Board shall:
 - a. Publish, for the purpose of public information, notification that an application has been received stating the nature of the application, location, applicant and other such information as may be pertinent.
 - b. Make a preliminary evaluation of the application.
 - c. Hold a public hearing.
 - ii. Within 32 days of the completion of the public hearing, the Planning Board shall determine if the applicant has met the requirements of the public hazard test, no reasonable return test or nonprofit test described in Section 4.217 A of this Section. If the requirements of any of those tests have been satisfied, the certificate of approval to permit demolition shall be issued immediately.
 - iii. If it is determined that the requirements of those tests have not been met, the Planning Board, in consultation with the applicant, shall within 180 days of the completion of the public hearing propose an alternate use plan for economic reuse of the structure.

- a. This plan may include, but shall not be limited to, the identification of alternative owners who are financially capable of retaining the structure, partial, or complete tax exemption, private financing, remission of taxes, authorization for alterations, construction or reconstruction consistent with the purposes of this Section. Any proposal involving the remission of or exemption from taxes shall be first approved by the Village Board.
- b. If the Planning Board proposes an alternate use plan, it shall mail a copy of the proposed plan to the applicant promptly. A public hearing on the plan shall be held within 32 days following the completion of the proposed plan by the Planning Board and notification of the applicant and a determination made by the Planning Board within 32 days following such public hearing.
- c. If the Planning Board is unable to propose an alternate plan for economic reuse of the structure within the prescribed time period, the certificate of approval to permit demolition shall be issued.
- iv. If the Planning Board determines, after holding a public hearing on the proposed plan, that the plan which it has formulated meets the standards and purposes set forth in this Section, the plan, as originally formulated or with such modifications as the Planning Board deems necessary or appropriate, shall be approved by the Planning Board. A copy of the approved plan shall be mailed to the applicant.
- v. The applicant may accept or reject the plan, in writing, filed with the Planning Board. If an acceptance is filed, the Planning Board shall grant a certificate of approval consistent with the alternate use plan as promptly as is practicable and in any event within 32 days after such filing. If the applicant rejects the plan, the Planning Board shall deny the applicant's request for a certificate of approval to permit demolition.
- vi. If the application for a certificate of approval is denied, the Zoning Enforcement Officer shall not issue a permit for demolition or for any other work not specifically reviewed and approved by the Planning Board.

F) Any certificate of approval issued by the Planning Board shall be valid for a period of six months.

4.218 Minimum Maintenance Standards

- A) Owners of structures in the Historic District are responsible for stabilization of vacant structures. Structures shall be made secure from the elements and from vandalism.
- B) No owner shall willfully allow a structure to deteriorate to a point where it becomes a public safety hazard.

4.219 Penalties for Offenses

Violations of this Section or any rules, regulations and procedures adopted pursuant to this chapter shall be subject to the penalties and procedures outlined in Attachment III of this Law.

4.220 Repairs and Maintenance

Notwithstanding any of the foregoing regulations, nothing in this Section shall be deemed to prevent normal maintenance and repair of any use or building or the issuance of a building permit for major structural alterations or demolitions necessary in the interest of public safety and pursuant to other applicable sections of this Section.

4.22 R-3 Low Density Agriculture/ Residential, formally known as R-1
See Attachment I for district use standards and regulations

4.23 R-2 Medium Density Residential District
See Attachment I for district use standards and regulations

4.24 C – Commercial District
See Attachment I for further district use standards and regulations

4.25 Planned Development District

A Planned Development District (PDD) shall be treated as an amendment to this Zoning Law. The PDD is designed to accommodate such large-scale uses as will be of benefit to the community, but which could not have been anticipated at the time of adoption of this Law.

4.251 Procedure

(1) Preliminary Proposal

Any applicant wishing approval for a Planned Development District shall submit his request to the Village Board in the form of a preliminary proposal which shall include:

- (a) A sketch plan showing existing and proposed land use and the approximate location of proposed buildings, existing topographic characteristics, approximate location of existing and proposed streets and easements, and existing land uses immediately adjacent to the proposed PDD.
- (b) A written explanation of the character and purpose of the Planned Development, including the type and density of any housing proposed, open space to be provided, the water and sewage disposal system proposed, a general statement of proposed financing, and an indication of the expected timetable for development.

(2) Developer's Conference

Upon receipt of the Preliminary Proposal the Village Board shall forward it to the Planning Board for approval or disapproval. Within 45 days after receipt of the Preliminary Proposal from the Village Board, the Planning Board shall schedule a conference with the applicant to review the proposed Planned Development. If said proposal seems to be in accordance with overall planning objectives for the area, the Planning Board and applicant shall jointly consider the conditions and specifications under which the proposal will be approved. After such conference, if the application

wishes to proceed with the Planned Development, he shall submit to the Planning Board a written Statement of Intent to comply with the conditions and specifications as established. If agreement on conditions cannot be reached, the Planning Board may, at that time, recommend to the Village Board that the proposal not be approved. Such recommendation shall include a detailed explanation of the basis for the Planning Board's decision.

(3) Planning Board Recommendation

Upon receipt of the applicant's statement of his intention to comply with the established conditions, the Planning Board shall, within 30 days, forward to the Village Board its recommendation to modify the zoning ordinance and establish the PDD. Such Planning Board report shall include the recommended conditions and covenants which the applicant shall observe in the Planned Development, the applicant's Statement of Intent to Comply with said conditions and covenants, and a recommendation on the type and amount of performance guarantee which the developer should provide.

(4) Conditional Approval

Within 45 days after receipt of the Planning Board's recommendation to approve or disapprove the proposed PDD, the Village Board shall hold a public hearing on the proposal. Within ten days after such public hearing, the Village Board shall approve conditionally or disapprove the proposed PDD. When conditional approval is granted, the location of the PDD shall be noted on the Zoning Map. Conditional approval shall automatically become final acceptance of the Final Development Plan by the Planning Board. In the event the Village Board wishes to act contrary to the recommendation of the Planning Board, such action shall be made only by a majority plus one vote.

(5) Final Development Plan

Upon receiving conditional approval by the Village Board, the applicant shall prepare a Final Development Plan for submission to the Planning Board. Such submission shall satisfy all the conditions imposed by the Village Board and shall include:

- (a) Drawings showing the final location of any streets and plot lines, the location of all nonresidential buildings, all land use activities, areas to be conveyed, dedicated or reserved for parks or open space, and a landscaping and tree planting plan.
- (b) Drawings of approved systems for sewage system disposal, water supply and storm water drainage.
- (c) Any additional drawings or statements, including staging of construction being considered.
- (d) Any additional drawings or statements which may be required by the Planning Board in making its determination that the proposed development will meet all the conditions to which it is subject.

Written approval of a Final Development Plan by the Planning Board shall be filed with the Village Board and the Zoning Enforcement Officer. This shall constitute authorization for the applicant to proceed with the Planned Development.

(6) Changes

Minor changes may be made in an approved Final Development Plan only upon approval of the Planning Board. Major changes such as increased density or reduction of open space are subject to Village Board review and approval.

(7) Certificate of Occupancy

Upon completion of a PDD or any stage of it, a Certificate of Occupancy shall be required in accordance with Attachment III, Section 1.14 of this Law, for that portion which has been completed.

4.252 Development Guidelines

In reviewing proposals for Planned Development Districts, the Planning Board will be guided generally by the following standards and may impose additional conditions as well:

- (a) The proposed district should be at least five (5) acres in area, and the overall density of any residential areas should be no more than two (2) dwelling units per gross acre.
- (b) At least five (5) percent of the gross area of the district should be devoted to open space and/or recreation areas.
- (c) Proposed nonresidential uses shall be appropriate in size and suitably located and shall not create any detrimental influences inside or outside the boundaries thereof.
- (d) Approved utility support systems (water, sewers, electricity) shall be required. Electric distribution, telephone and TV cable lines shall be put underground.
- (e) An approved storm drainage system shall be provided which will not be detrimental to the surrounding area.
- (f) All provisions of the Law affecting signs and off-street parking shall be complied with.
- (g) Development in such districts shall be protected by such reasonable and appropriate safety measure, devices, screening, or yards as may be required by the Planning Board, in order to avoid or minimize any adverse effects on the development itself or on the surrounding area.

All Planned Development District proposals shall be consistent with the need to minimize flood damage, that all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to eliminate or minimize flood damage, and that adequate drainage is provided so as to reduce exposure to flood hazards.

Where the Planned Development concept is deemed appropriate through the rezoning of land by the Village Board to a Planned Development District, the set of conventional land use activities and area specifications as set forth elsewhere in this ordinance are hereby replaced by a review and approval process in which an approved Development Plan becomes the basis for land use controls in said Planned Development District.

4.26 FPD Flood Protection District

The following regulations shall apply in all FPD Districts, in addition to the regulations of the underlying zoning districts and the regulations set forth in the Village of Middleburgh Flood Damage Prevention Law.

- (a) All buildings and structures shall be designed and anchored to prevent floatation, collapse, or lateral movement; shall use construction materials and utility equipment that are resistant to flood damage; and shall use construction methods and practices that will minimize flood damage.
- (b) All public utility systems and facilities servicing any building(s) or structure(s) shall be located, elevated, or constructed to minimize or eliminate flood damage; and adequate on-site drainage shall be provided to reduce exposure to flood hazard.
- (c) Any new, or substantially improved residential structure shall be constructed so that the lowest floor level, including a basement floor, shall be elevated to or above two foot above the base flood level.
- (d) Any new, or substantially improved non-residential structure shall be constructed so that the lowest floor, including basement or cellar, be elevated to or above two foot above the base flood elevation, or be flood-proofed so that the structure is watertight below two foot above the base flood level with walls substantially impermeable to the passage of water, as specified in the Village of Middleburgh Flood Damage Prevention Law.
- (e) Within a floodway designated by the Federal Insurance Administrator, no use, including landfill, or structure shall be permitted within any flood plain having special flood hazard, unless or until the person owning or developing such use or structure shall demonstrate that the cumulative effect of the proposed development, when combined with all other existing uses or proposed uses approved by the Village Planning Board will not increase the water surface elevation of the base flood more than one (1) foot at any one point.
- (f) Within a designated floodway, fill or encroachment shall not be permitted unless the project meets the standards outlined in the Village of Middleburgh Flood Damage Prevention Law.

4.3 Special Conditions and Special Use Permits

Land Use activities listed in Attachment I as being special uses shall not be permitted uses until such special uses meet all conditions as required by the Zoning Board of Appeals in accordance with the provisions of Attachment III Section 1.4 of this Law.

4.4 Supplementary Use Regulations

4.41 General Provisions

(1) Public Utilities

This Law is not intended to restrict the construction or use of underground or overhead public utility distribution facilities or of other public utility structures operating under the laws of the State of New York, except as otherwise provided in this Law, and except that any such structures shall conform in character to the environment in which erected, and shall secure a special use permit to construct new facilities in either a residential or a commercial district.

(2) Principal Buildings Per Lot

There shall be only one principal building and principal use per lot in R-3, R-2, and Historic Districts. Such buildings shall be in keeping with neighborhood character.

(3) Lot Size

Minimum frontage shall be varied for each district as determined by Attachment I.

(4) Existing Undersized Lots

Any lot held in single and separate ownership prior to the original adoption date and subsequent amendments of the Village of Middleburgh Zoning Law whose area and/or width and/or depth are less than the specified minimum lot requirements for that district, may be considered as complying with such minimum lot requirements, and no variance shall be required, provided that:

- (a) Such lot has an area of at least 5,000 square feet and a minimum width of at least 50 feet at the required setback line.
- (b) The following minimum yard dimensions are maintained; each side yard, eight (8) feet; front yard, twenty (20) feet; and rear yards, fifteen (15) feet.
- (c) All other requirements for that district are complied with.

(5) Height Exceptions

The height limitations of this Law, as shown on Attachment I - District Regulations - Area Schedule shall not apply to the following structures, farm buildings and structures, church spires, belfries, cupolas, chimneys, ventilators, skylights, water tanks, bulk heads, and other necessary mechanical appurtenances usually carried above the roof level.

(6) Transition Requirements for District Boundaries

Where a lot in a Commercial or PDD (non-residential) district abuts a lot in a residential district, a strip twelve (12) feet wide immediately adjacent to said residential lot shall not be used for storage of any material or goods, parking, or roadway and shall be provided with a solid wall, fence, or hedge, at least six (6) feet, but no more than eight (8) feet in height. Such wall, fence, or hedge shall begin at a point no more than five (5) feet from the front and/or side property line and shall extend along the full dimension of the abutting lots and shall be properly maintained. Design of such fence shall be approved by the Planning Board and setback from the property line to maintain the outside of the fence.

(7) Yards (set in the area schedule, and defined in Attachment II).

- (a) Corner Lots – On a corner lot, each side which abuts a street shall be deemed a front lot line, and the required yard along each such lot line shall be a required front yard. The owner shall decide which of the remaining yards shall be the required side yard and the required rear yard.
- (b) Double Frontage – For any through lot, fronting on two different streets, both frontages shall comply with the front yard requirements of the district in which it is located.

- (c) Side Yards for Row Houses – Side yards for row houses shall be required at the ends of the row structure.
- (d) Distance Between Principal Buildings – If two or more principal buildings are located on the same lot, one building’s exterior walls containing windows shall be separated from the nearest point on any adjacent building by a horizontal distance, perpendicular to the walls with windows, equal to at least twice the width of the required side yard for the particular district in which the buildings are located.
- (e) Obstructions at Street Intersections – On a corner lot in any district, no fence, wall, hedge, or structure shall be located so as to limit visibility at a street intersection. In general, no such item with a height of over two and one-half feet and a width or length of over three feet shall be allowed within the triangular area formed by the intersecting street lines for a distance of 30 feet from the intersection.
- (f) Fences will be allowed with a maximum height of six (6) feet not to extend beyond the front of the structure. Finished side must face out. No fence shall be constructed on a highway right-of-way.
- (g) Only one (1) accessory building per lot will be allowed. One accessory building, under 12’ X 12’ in size, may be placed within the required rear or side yards. Said accessory building must be located a minimum of 3’ from the property line.

(8) Damaged Buildings

Any building which is damaged by fire or other accidental cause, or by flood, wind, lightning or other natural cause, to the extent that it is no longer used for its regular or former purpose, shall be repaired, rebuilt, or razed within 120 days after the damage is sustained. At the request of the Zoning Enforcement Officer, the Board of Appeals may grant an extension for a period not to exceed one year after the expiration of the 120-day period. Such extension will only be granted if the owner of the property can demonstrate that progress has been made and sufficient reasons exist for not complying with the original 120-day time period.

4.42 Standards and Specifications for Roads Under Construction as Village Highways

All applications for the dedication of streets and rights-of-way shall meet or exceed Village highway construction standards and specifications. All surveys and maps shall be accompanied by a warranty deed, conveying the street(s) and rights-of-way to the Village with releases from mortgages or other claims, together with proper title search covering at least forty (40) years to the time of application. Title Insurance shall be provided in an amount equal to the value of the road. The application for the dedication of streets shall be filed with the Village Clerk of the Village of Middleburgh. The application along with the survey map and plans (see Section 4.421 below) will be submitted to the Village Board.

4.421 Residential Requirements

Before a private road shall be considered for incorporation into the Village Highway System, there shall be at least three (3) permanent year-round dwelling units in said roadway, occupied for at least twelve consecutive months prior to submission of formal application

4.422 Professional Plans

All applications shall have plans prepared by a professional Surveyor, Architect of Engineer licensed to practice in New York State. All plans shall be stamped by a professional with a statement that the street design and rights-of-way meet or exceed all requirements of the Village of Highway Standard & Specifications.

- (a) All plans shall be at a minimum scale of 1 inch equals 50 feet.
- (b) All contours shall be based on USGS datum and at an interval of not greater than (2) feet.
- (c) A minimum of (3) bench marks shall be provided.
- (d) Show all drainage areas tributary to the development and highway.
- (e) Show all drainage area limits tributary to each catch basin, drywell, culvert, and outfall.
- (f) Provide stormwater runoff calculations for all structures for a (10) year storm interval.
- (g) In no instance shall post-development stormwater runoff exceed pre-development runoff.
- (h) Provide and show all above and below ground utilities within the right-of-way.
- (i) Show all proposed streets, roads, and lots with necessary survey data.
- (j) Show the proposed names of all streets and lot numbers.
- (k) Provide soil boring logs with a minimum depth of 10 feet and minimum interval of 300 feet.
- (l) Provide street profiles at a horizontal scale of 1 inch equals 50 feet and a vertical scale of 1 inch equals 5 feet.

4.423 Minimum Street Dimensions

The road bed shall be located as to provide adequate room for ditching, grading and routine maintenance within the right-of-way.

- (a) The minimum width of the street or highway right-of-way shall be 50 feet.
- (b) The minimum road bed width shall be two (2) - 9' travel lanes or 18 feet.
- (c) The minimum shoulder width shall be 5' for each travel lane or 10 feet.
- (d) The minimum ditch line width shall be 10' on both sides of road or 20 feet.
- (e) The minimum width of sidewalks (optional) is 5' on one or both sides of the road.

4.424 Minimum Street Standards

- (a) The right-of-way shall be completely cleared of all brush, scrub trees, shrubs and stumps for the entire length and width.
- (b) The minimum road bed grade shall be 1 %. The maximum grade shall be 10%. Where the algebraic difference in street grades exceeds 2%, the grades shall be connected by a vertical curve to produce a safe transition.
- (c) The road shall be crowned in the center with a cross slope of $\frac{1}{2}$ inch/foot.
- (d) Street intersections shall be 90 degrees within 100 feet of the intersected right-of-way line.
- (e) The maximum degree of curvature and slope along the street shall be in accordance with NYSDOT Standard details.
- (f) The minimum length of the street shall be 750 feet.
- (g) All drainage ditches shall be free draining and have a minimum slope of 2%.
- (h) Culvert pipes & structures where needed shall be capable of H-20 loading design and installed at all intersections, driveways, and other crossings to allow free flow of stormwater.
- (i) Minimum design of all culverts shall be for a 10 year storm interval.
- (j) Minimum size for driveway culverts shall be 20' long and 15" in diameter. All piping, culverts and structures shall be installed in accordance with standard construction practice, NYSDOT Section 603 and manufacturers recommended installation methods.

- (k) All driveway culverts installed after the road is accepted by the Village shall require a driveway/curb cut permit from the Village. All driveway culverts' shall be installed in accordance with these specifications and installed at the cost of the property owner. The installation shall be as supervised and approved by the Village Highway Superintendent.
- (l) Driveway culverts are to be maintained in good repair and cleaned by the property owners.
- (m) Easements shall be provided for all drainage facilities.
- (n) All back slopes to the road bed shall be graded, seeded, and reinforced in such a manner to prevent erosion.
- (o) All pipe and necessary appurtenances for the proper collection and disposal of subsurface or underground water shall be provided in order to establish a stabilized road bed.
- (p) There shall be no reserve strips controlling access to streets except where the control of access is definitely placed with the Village under the offer to dedicate.
- (q) The arrangement of streets or highways hereinafter laid out shall, wherever possible provide for the continuation of the principal street to existing streets or future/adjoining subdivision streets.
- (r) Streets designed to have (1) end permanently closed shall be provided with a turnaround roadway. The turnaround shall have a minimum radius for the outside of the road bed of 100 feet and a right-of-way diameter of 108 feet.
- (s) Streets designed to have (1) end temporarily closed until the street is extended or connected to other streets may have a turnaround consisting of a "Tee" 60 foot in width and extending 60 feet beyond the boundaries of the proposed street.
- (t) All bridges shall be constructed in accordance with Schoharie County standards and meet or exceed a minimum capacity of 15 tons. All bridges shall be constructed to have a minimum width of 22 feet.
- (u) All required guide railings, guide posts, signage, markers, and other street guidance and safety requirements shall be placed and conform in type to the NYSDOT Manual for Uniform Traffic Control devices and be approved by the Village of Middleburgh.
- (v) All utility poles are to be set behind the ditch lines at a minimum of 24 feet from the center of the road.

4.425 Roadbed Material Specifications

- (a) The roadway subbase shall be rough graded to within 1" [plus or minus] of the base material. The subbase shall be of adequate soil material (without deleterious or organic materials) with a gradation, density and moisture content sufficient to support the heavy equipment without movement. Subbase material movement due to pumping, shear or displacement of un-stabilized soils must be resolved prior to installing the base material.
- (b) 12" of base material (gravel or limestone) shall be placed, rough graded and compacted to 90% density as measured by standard proctor test method.
- (c) 8" of base material (#4 limestone) shall be placed, fine graded and compacted to 95% density as measured by standard proctor test method. The #4 limestone shall be crowned and fine graded to within 1/2" of the final grade minus the surface treatment.
- (d) The final surface treatment shall be any one of the following materials:
 - 4" asphalt Moto-pave installed in (2) lifts.
 - 3" asphalt concrete installed in (2) lifts.
 - 2" double seal stone and oil in (2) lifts.

4.426 Required Permits and Approvals

- (a) Stormwater Permit as required by NYSDEC. Phase II construction activities disturbing one acre or more require permit coverage.

- (b) A Stormwater Pollution Prevention Plan (approval by DEC).
- (c) Notice of Intent to Construct (N.O.I.) to DEC.
- (d) Village Highway Superintendent approval for dedication with streets/roads/highways.
- (e) Village Board approval for dedication.
- (f) Curb cut from existing highway (NYSDOT, County, Village).
- (g) All plans and construction shall be reviewed and inspected by the Village Engineer and Highway Superintendent, with the cost of any professional engineering fees to be paid by the applicant and no work on the application shall proceed unless the escrow accounts is fully funded to pay for the Village engineering expenses.

4.427 Construction Specifications and Requirements

- (a) All materials of construction shall be approved by the Village Engineer and Highway Superintendent prior to the inclusion in the work.
- (b) Each stage of construction shall be inspected and approved by the Village Engineer and Highway Superintendent prior to start of the next stage:

Stage #1: Roadway layout, survey, staking, and bench marks.

Stage #2: Stormwater Pollution Prevention Plan and all erosion control measures in place.

Stage #3: Clearing, grubbing and rough grading if subbase (Proof-rolled)

Stage #4: Install 12" base materials, graded, compacted and tested.

Stage #5: Install 8" base material, fine graded, compacted, and tested.

Stage #6: Install finished pavement to grade, compacted and tested.

Stage #7: Complete all above and below ground utilities.

Stage #8: Complete drainage, railings, plantings, signs and driveways.

Stage #9: Final walk through with Village Highway Superintendent. Written report by engineer with certification of compliance.

Stage #10: Provide record plans, final acceptance, and road dedication.

- (c) Deviations from the approved project plans and road design due to differing site conditions, must be inspected and approved by the Village Engineer and Highway Superintendent.
- (d) Major changes that would affect the layout of a development along the proposed highway will be referred back to the Planning Board for review and approval.
- (e) Permanent concrete monuments shall be provided at all intersections and every 500' at tangent lengths over 1000'. All monuments shall be placed in pairs with (1) on each side of the street.

4.428 Exceptions

Exceptions to any of the specifications herein will be considered, upon recommendation of the Superintendent of Highways and a majority of the Village Planning Board for the granting of a variance from said specification(s), by the Village Board. Any such variances granted shall be specifically set forth in the decision of the Village Board regarding the disposition of said application.

4.43 Off-Street Parking and Loading

4.431 Recommended Commercial Off-Street Parking or Storage Space

When possible, off-street automobile parking or storage space should be provided as indicated below. Due to limited parking availability in the Village of Middleburgh, these standards are provided as guidelines, but must be adhered to the most practical extent possible and when space allows. The following uses must adhere to the additional parking standards elsewhere in this law: service stations. In review of special use permits the Zoning Board of Appeals must utilize the State Environmental Quality Review Act and traffic and parking issues will be addressed as part of the environmental review.

1. One- two-family structures: Two (2) spaces per household.
2. Multiple Dwellings: Two (2) spaces for each household.
3. Retail Business or service, bank, post office: One (1) space for each two hundred fifty (250) square feet of retail floor area.
4. Theaters: One (1) space for fifteen (15) seats.
5. Office, including professional, personal service, public utility or public use:
One (1) space for each three hundred (300) square feet of gross floor area.
6. Restaurant, Bar, Nightclub: One (1) space for each fifty (50) square feet of customer floor area.
7. Wholesale: One (1) space for each two thousand (2,000) square feet of gross floor area.
8. Automobile Service Stations: See section 4.433 in this law.
9. Funeral Home: One (1) space for each five (5) seats of auditorium capacity.
10. Any Commercial Use: One (1) space for each company vehicle.

4.432 Space Requirements for R-3, R-2, and H Zoning Districts

Parking requirements shall be provided on the basis of two (2) spaces per each dwelling unit and one (1) space for each two hundred (200) square feet of retail, office, sales, or display area in any business or commercial use unless otherwise stipulated. For uses not specified or not the nature or type generally described here, the Board of Appeals shall establish parking requirements in specific cases consistent with the guidelines provided herein.

- (a) The required parking space in residential districts shall be for resident parking only and shall not be located in any required front yard.
- (b) No more than one (1) unlicensed, unregistered, or inoperative motor vehicle shall be parked or stored out-of-doors for more than ninety (90) days, other than in an enclosed structure, in any residential, and H (Historic) district.
- (c) No vehicle shall be parked in any front yard of any district during night time hours other than driveway.

- (d) No recreational vehicle or living unit, boat, or other utility or service vehicle or equipment shall be stored in any required front yard or within ten (10) feet of any lot line.

4.433 Service Station Parking

Off-street parking for gasoline stations and service garages shall be limited to employee and customer cars which are licensed and in running condition and shall not be used for repair or sale of new or used cars or parts therefrom.

The number of motor vehicles permitted to be stored, advertised for sale or parked outdoors at any time on property containing a service station shall be calculated by the Zoning Enforcement Officer or the Planning Board as follows: measure the area of the lot consisting of public street frontage multiplied by a twenty (20) foot buffer and divided by 180. The resulting number shall be rounded down to the nearest whole.

(Note: The average motor vehicle parking area is 9 feet by 20 feet or 180 square feet.)

(Example: A lot has 100 feet of street frontage. $100 \times 20 = 2,000/180 = 11$ motor vehicles).

4.434 Multiple Use Parking

For any building having more than one use, parking space shall be required for each use. For the purposes of computing parking requirements, floor areas shall be the sum of the horizontal area within exterior walls of the several floors of a building, excluding basement, cellar and attic areas.

4.435 Parking for Altered Uses

Off-street loading facilities shall be provided for each commercial or industrial establishment hereafter erected or substantially altered to have gross floor area in excess of 1,500 square feet and shall be so arranged as not to interfere with pedestrian or motor traffic on the public street or highway. Any required off-street loading berth shall have a clear area not less than twelve (12) feet in width by twenty-five (25) feet in length.

4.436 Side Yard Parking

An off-street loading space may occupy any part of any required side or rear yard, except no such berth shall be located closer than one hundred (100) feet to any lot in any residential district unless wholly within a completely enclosed area or within a building.

4.437 Off-Street Parking

(a) Parking Areas in Residential Districts

No open or enclosed parking area shall encroach on any required yards or required open areas.

(b) Parking Areas in Planned Development Districts

Open parking areas may encroach on a required side or rear yard to within three feet of a side or rear lot line. Non-attendant operated parking lots shall allow at a minimum 128 square feet per parking space per vehicle. No parking space or access thereof, except entrances or exit drives, as limited in this section, shall be within 15 feet of a street right-

of-way. Entrance or exit drives connecting the parking area and the street shall be permitted within the 15-foot strip required above, provided:

- (1) No entrance or exit shall exceed 25 feet in total width.
- (2) Drives shall have clear visibility at their intersection with the street.
- (3) There shall be at least 40 feet between access drives and between access drives and right-of-way lines at a street intersection.
- (4) No parking shall encroach on any required front yard.

(c) Required Parking Spaces

No required off-street parking space shall be used for storage, servicing, or dismantling of automobiles or other vehicles, loading or unloading.

(d) Landscaping

Parking lots for more than 20 cars shall be provided with landscaped areas amounting to an aggregate minimum of 5 percent of the total paved area of the parking lot. Each landscaped area must be at least 30 square feet and shall be adequately maintained.

(e) Required Screening

Open off-street parking or loading areas shall be screened from adjoining residential lots by walls, fences, or hedges of sufficient height to prevent the viewing of parked vehicles by a line of sight originating 5 feet above any point on the minimum side or rear yard setback line of such adjoining residential lots.

(f) Off-Street Loading

All off-street loading areas shall be located on the same lot as the use for which they are permitted or required. Each required loading berth may be open or enclosed and shall have the minimum dimensions: 35 feet long, 12 feet wide, 14 feet high. Open off-street loading areas shall not encroach on any required front or side yard, off-street parking area, or access-way. All uses with at least 5,000 square feet of floor space shall have at least one loading space.

4.44 Signs

All signs hereafter constructed, signs established, moved, altered, or changed within the limits of the Village of Middleburgh shall comply with the following regulations:

- (a) No new or additional sign shall be created by erecting, installing, painting upon; or otherwise established without a permit therefore. The permit shall be accompanied by a drawing detailing the method of attachment.
- (b) The total area of any sign shall not exceed 100 square feet.
- (c) Signs must be constructed of durable materials, maintained in good condition, and not allowed to become dilapidated. Signs will be removed when the business ceases operations.

- (d) Signs, other than official traffic signs, shall not be erected within the right-of-way lines of any street or highway, not projected beyond the authorized property line, except where no other provision is possible, in which case the Board of Appeals, in accordance with the variance procedures elsewhere provided for in these regulations, shall make a determination relative thereto.
- (e) No sign shall physically or visually impair vehicular or pedestrian traffic by design, illumination, color, or placement. All signs shall have sufficient clearance so as to provide clear and unobstructed visibility for vehicles entering and leaving the highway or adjacent residential use. If illuminated, the light shall not be directed toward any public highway or adjacent residential use. Colored lights of such shape and hue that may be confused with official traffic lights and signals shall be prohibited. Unlighted signs that can be confused with traffic control devices are also prohibited. In addition, no flashing or intermittently lighted sign shall be permitted.
- (f) Outdoor advertising signs are restricted within the Village of Middleburgh. Signs erected for the purpose of advising the traveler of the availability and location of a service or attraction within the Village of Middleburgh shall not exceed twenty-five (25) square feet.
- (g) Signs in any residential district or in connection with any residential building in any other district shall not exceed eight (8) square feet in area. No more than one such sign shall be permitted. Flashing lights are not permitted.
- (h) Business signs and professional signs in business districts are permitted provided such signs or lettering contain only the name and or names of the lawful owners or occupants of their trademarks and shall identify only the business, profession, general goods or services conducted or dispensed on the premises.
 - (1) Such signs shall not exceed the highest part of the building housing the business or service advertised.
 - (2) Such signs shall not be on adjacent property.
 - (3) Such signs shall not exceed two in number for each property.
- (i) Temporary Signs and Banners: Temporary signs shall be no more than twenty (20) square feet in size, and no more than six (6) feet high. There shall be no more than one (1) temporary sign per property. Political signs are considered temporary signs. There shall be no more than ten (10) political signs per property. All political signs must be removed within seven (7) days after an election and may be erected and placed not more than ninety (90) days prior to the election. Banners advertising an event or an activity are considered temporary signs and are permitted as such, and must be removed within three (3) days after the event advertised and may be erected or placed not more than thirty (30) days prior to the event advertised. Banners and balloon signs advertising a product for special promotional sales are also considered temporary signs and must be removed within three (3) days after the promotional sale and may be erected or placed no more than seven (7) days prior to the advertised promotional sale. Any temporary sign or banner not removed within thirty (30) days of the removal deadline shall be removed at the landowner's expense.

Any non-conforming sign in existence in any district at the date of enactment of this Law shall at the expiration of two (2) years from such date become a prohibitive and unlawful use.

4.45 Gasoline Stations

In a district where permitted, a gasoline station shall be subject to the following restrictions:

- (1) No fuel pump shall be located closer than twenty (20) feet from any side lot line nor closer than twenty-five (25) feet from any street line or highway street line or highway right of way measured from the edge of the fuel island.
- (2) All major repair work and servicing shall be done within a completely enclosed building.
- (3) Gasoline stations that do not perform service or repair work shall not have any apparent unused cars stored on the property.

4.46 Public Garages

- (a) No public garage shall have an opening in the roof, side of rear walls less than fifteen (15) feet from any lot line.
- (b) All repair work requiring more than twelve (12) hours elapsed time shall be done within a completely enclosed building whenever possible. If the vehicle is too large to permit this, than the vehicle may be repaired outside, provided the vehicle and disassembled parts are not in the way of automotive or pedestrian traffic.

4.47 Excavations and Mining

Commercial excavations and mining are prohibited in the Village of Middleburgh.

4.48 Outdoor Motion Picture Theatres

Outdoor motion picture theatres are specifically prohibited in all districts in the Village.

4.5 Kennels

Each Person operating a kennel shall comply with these requirements:

4.51 License

Each kennel must have a current valid kennel license and a current valid permit in those areas which require a permit in addition to a kennel license. Such licenses are required to be displayed and readily available for inspection by any authorized person.

4.52 Records

A kennel record must be kept available for inspection. Such record is to show: the name, current address, and telephone of the owner of the dog, the date entered the kennel, the reason for its being in the kennel, i.e. for boarding, sale, breeding, grooming, etc., the description of the dog, (age, breed, sex, color, etc.). A current valid rabies certificate shall be maintained as a part of this record, as long as the dog is maintained in the kennel.

4.53 Physical facilities

The basic intent of these regulations is to see that all animals receive proper care, that they are being treated kindly, properly fed, and that their surroundings are being kept in a sanitary condition.

(a) Cage

Cage length and width shall exceed the animal's length from the base of the tail to the tip of the nose by at least six (6) inches. Cage height shall exceed the animal's height by at least four (4) inches. Cages shall be so constructed and be of such material as to be maintained in a sanitary condition. Animals shall be removed from and be provided with an exercise yard for their use for such periods as determined by the size, age, and condition of the animal. Diseased animals must be maintained apart from healthy animals in suitable and separate quarters.

(b) General

Walls and floors shall be of material easily cleaned and kept in a sanitary condition. The room shall be properly screened, insect, and vermin proof. It shall be properly ventilated to prevent drafts and remove odors. Heating and cooling should be provided as required, with sufficient light (preferably natural) to allow observation of animals, and sanitation.

(c) Sound Standards

All kennels shall be constructed of material which contains the sound one (1) foot away from the kennel at any direction such that at no time does the sound level exceed 55 dBA as measured by meter.

(d) Outdoor Facilities:

- (1) Shall be provided with windbreaks, roofing, and shelter adequate to protect the animals from the weather.
- (2) Shall be adequately drained and maintained in a sanitary manner.
- (3) Adequate and sanitary means of disposing of droppings shall be provided.
- (4) All kennel runs shall be fenced with a net fence with net spacing no greater than two (2) inches. Such fence is to be separate and apart from the property boundary fence by at least twenty-five (25) feet.
- (5) Kennel runs shall have a minimum free and clear area of fifty (50) feet per dog. Large breed dogs require larger kennel runs, at a minimum of seventy-five (75) square feet per dog.

(e) Indoor Shelter:

- (1) Except where animals are caged, shall have a minimum of twenty-six (26) square feet per dog.
- (2) When the minimum area is provided it should be supplemented with exercise yards for dogs, which are maintained for extended periods.
- (3) Kennels shall not be left unattended for a period in excess of twenty-four (24) hours.

- (4) All animals shall be supplied with sufficient good and wholesome food and fresh water as the feeding habits of such animals require.

All areas of kennel runs, yards, food storage, and auxiliary buildings shall be subject to inspection of the Zoning Enforcement Officer.

4.54 Contact

An emergency name, address, and phone number shall be posted in a conspicuous place at the front of the property.

4.55 Exception

Nothing in this Section shall be construed to require a Veterinarian that maintains a facility for treating sick animals to obtain and maintain a license for a kennel for the purposes of the veterinary practice.

4.6 Junk Yards

Junk yards are specifically prohibited in all districts in the Village.

4.7 Activity Standards for Noisome and Injurious Substances, Conditions, and Operations.

The following activity standards shall apply in all districts except for normal farm uses in agricultural districts such as forestry use tools, crop harvesting, feed lot operation, etc., and must conform to all EPA (Environmental Protection Agency) standards:

- (a) Vibration – No vibration shall be discernible at the lot lines or beyond.
- (b) Smoke – No emission of dense smoke.
- (c) Odors – No offensive odor shall be noticeable at the lot line or beyond.
- (d) Fly Ash, Dust – No emission which can cause any damage to health, animals, or vegetables, or other forms of property, or any excessive soiling.
- (e) Liquid or Solid Wastes – No discharge into any present or future disposal system, public or private, or streams, or into the ground, of any materials of such nature or temperature as to contaminate ground water supply.
- (f) Radioactivity – No activities which emit dangerous radioactivity at any point, as covered by Federal Government Standards.
- (g) Noise – No continuous hum, intermittent noise, or shrill noise noticeable at lot lines shall exceed seventy (70) decibels (busy street).
- (h) Fire and Explosion Hazard – No process or storage of material in such manner as to create undue hazard by reason of fire or explosion.

4.8 Mobile Home Regulations

Mobile homes are specifically prohibited in all districts in the Village.

4.9 Garage Sale Regulations

Garage sales are permitted in the Village, subject to the following regulations:

- (a) A permit issued by the Village Clerk shall be required for the establishment or conduct of any garage sale. The fee set shall be determined by the Village Board of Trustees.
- (b) A garage sale shall be permitted to operate no more than ten (10) hours per day for a permit period not to exceed two (2) consecutive weekends, on Saturdays and Sundays, including Fridays unless Monday is a legal holiday, then the garage sale may operate for four days.
- (c) No more than three (3) such permits shall be issued for the same location, establishment, or person in one calendar year.
- (d) Upon expiration of the permit, and on all days the garage sale is closed for business, all signs, structures, and facilities shall be removed from public view.
- (e) A garage sale shall not maintain year-round signs, facilities or structures.

4.10 Home Occupation

The Village of Middleburgh recognizes the need to nurture and encourage home-based business and to grow its local economy. Home based businesses represent a strong potential for our economy. These types of businesses also provide alternative incomes for families. Because some home based businesses may require additional services and infrastructure and there may be negative impacts on traffic, signage, noise and other qualities, the Village desires to set specific performance criteria and review criteria for home based businesses. Home Occupations are allowed in all zones listed in the Use Schedule (Attachment I). For review of Home Occupation, a Home Occupation application must be obtained from the Village Clerk's Office then submitted to the Zoning Enforcement Officer for review. To be determined a Home Occupation by the Zoning Enforcement Officer, the following standards must be met:

- (a) The Home Occupation must be operated by the owner of the property. Proof of ownership may be requested by the showing of a tax bill, survey or deed.
- (b) No more than five hundred (500) sq. ft. of floor area of the dwelling unit or (30%) of the total floor area of the dwelling unit may be used in connection with a Home Occupation, which ever is lesser. Floor area requirements refer only to heated habitable rooms within the dwelling unit.
- (c) Only one accessory structure may be used for a Home Occupation. An EXISTING accessory structure can be used for a Home Occupation provided that there are no exterior modifications and that the use will not change the residential, historic or commercial character of the area. A NEW accessory structure can be use for a Home Occupation provided the use will not change the residential, historic or commercial character of the area. No more than five hundred (500) square feet of floor area of the accessory building or 50% of the total floor area of the accessory building may be used for storage of materials and supplies for the Home Occupation.
- (d) The total number of Home Occupations conducted within the dwelling is not limited, except that the cumulative impact of all Home Occupations conducted shall not exceed the impact of a single, full time Home Occupation. (example: day care during the day with a bed and breakfast at night.)

- (e) Home Occupations must meet all requirements of the zoning district in which it is located. In addition, the following standards are required:
1. Employees. A home occupation shall be incidental and secondary to the use of a residence or home. It shall be conducted in a manner which does not give the outward appearance of a business, does not infringe on the right of the neighboring property to enjoy the peaceful occupancy of their dwelling unit, and does not alter the character of the neighborhood. A home occupation may be conducted within a dwelling unit and/or within accessory structures. The home occupation is to be conducted with no more than two non-resident assistants or employees at any one time. (Day care for children shall be based on a case by case basis)
 2. Signs. Any signs used in conjunction with a home occupation shall meet the requirements of Section 4.4 of this Law, and shall not exceed 8 sq. ft. In addition, the sign shall be an unanimated, non-illuminated flat or window sign. The sign shall be permitted on the street front of the lot which the dwelling is located. A sample of the sign and location of the sign is required on the site plan if the sign is not located on or in the window of the dwelling.
 3. Parking. Off street parking shall be provided as required in Section 4.437 of this Law. No more than one vehicle larger than a passenger vehicle may be parked in a location visible from a public road or neighboring properties.
 4. Traffic. Automobile and truck traffic generated shall not be excessive, considering both the character of the road on which the use is located and the volume of traffic that would otherwise be generated by a typical residential use.
 5. Outside Storage. There shall be no exterior storage of materials, equipment, vehicles, or other supplies used in conjunction with a home occupation, unless screened from the road and from other properties.
 6. Nuisance. No offensive appearance, noise, vibration, smoke, electrical interference, dust, odors, or heat shall occur. The use of substances which may endanger public health or safety or which pollute the air or water are prohibited.
 7. Fees. After meeting with the Zoning Enforcement Officer and the determination is made that the proposed use is an allowable Home Occupation, a one time application fee as set by the Village Board (payable to the Village of Middleburgh) shall be made at the same time of the submittal of the completed application to the Zoning Enforcement Officer.
 8. Validity. Once the application is approved, the owner has one year from the approval date to complete the requirements agreed upon and obtain a Certificate of Compliance from the Zoning Enforcement Officer. The Home Occupation permit is non transferable.
 9. Expiration of Approval. If the applicant does not get a Certificate of Compliance within one year, the approval is rescinded. Extensions may be granted if requested by the applicant in writing stating the exact completion date.
 10. Required Inspections. Before any Certificate of Compliance is issued by the Zoning Enforcement Officer, all required inspections will take place. A building and zoning permit may be required if alterations are made to the interior, exterior, parking or signage. The Zoning Enforcement Officer may inspect the site for compliance purposes.

4.11 Adult Use and Entertainment Establishments

4.11.1 Allowed Zoning District

All Adult Use and Entertainment Establishments are defined herein may only be created, opened, commenced or operated within the Low Density Residential (R-3) zoning district within the Village of Middleburgh by special use permit issued by the Zoning Board of Appeals.

4.11.2 Location within the allowed Zoning District

An Adult Use and Entertainment Establishment shall be allowed after the issuance of a special use permit only in the allowed zoning district set forth in Section 4.11.1 hereof, and within such district, shall have minimum area requirements as described in the Zoning Law and the structure the adult use is located in and any accessory use/structure shall not be allowed:

- (a) within one thousand (1000) feet of a property line of a parcel used for residential purposes in the Village;
- (b) within one thousand (1000) feet of the property line of a parcel containing a church, synagogue, other place of worship, active cemetery, library, school, licensed day-care facility, park, playground, government facility commonly visited by the public (i.e. post office, Town office, State/Federal/County office) nursing home, adult home, or hospital, whether or not such use is located in the Village; or,
- (c) on the same parcel as another Adult Use and Entertainment Establishment; or,
- (d) within one thousand (1000) feet of the property line of another Adult Use and Entertainment Establishment, whether or not such other establishment is located in the Village.

The above distances of separation shall be measured from the nearest exterior wall or corner of the structure containing the Adult Use and Entertainment Establishment.

4.11.3 Standards appropriate to Special Use Permit for Adult Use and Entertainment Establishment

The Village of Middleburgh intends to protect the scenic beauty of the Village and the value of property in the Village. Therefore, Adult Use and Entertainment Establishments shall meet all applicable requirements in the Zoning Law and shall be designed to be as least intrusive as possible by using the following additional standards:

- (a) Such use and parking area shall be adequately fenced and/or buffered (landscaping/berms) for screening from any adjacent property and lighting shall be directed away from adjacent property and public highways.
- (b) Parking shall be located in the side or rear yard and no parking space may be located less than fifty (50) feet from any property line.
- (c) Any structure containing the Adult Use and Entertainment Establishment and any accessory structure shall have residential appearance similar to existing dwelling units (excluding mobile homes) in the Village of Middleburgh. Building design shall avoid areas of blank wall sections and windows or one-way windows, shall comply with Section 4.11.4 (Display Prohibited).

4.11.4 Display Prohibited

All adult uses and entertainment establishments shall be conducted in an enclosed building. It shall be a violation to display or exhibit (in the open air, through a window, or by means of a sign, depiction or

decoration), or to allow to be displayed or exhibited, any “specified anatomical area” or “specified sexual activity”.

4.12 Outdoor Furnaces

Although outdoor furnaces may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This Section is intended to ensure that outdoor furnaces are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety, and general welfare of the residents of the Village.

4.12.1 Allowed Zoning District

All Outdoor Furnaces are defined herein may only be allowed within the Low Density Residential (R-3) zoning district within the Village of Middleburgh by special use permit issued by the Zoning Board of Appeals

4.12.2 Standards appropriate to Special Use Permit for Outdoor Furnace

The Village of Middleburgh intends to protect the scenic beauty of the Village and the value of property in the Village. Therefore, Outdoor Furnaces shall meet all applicable requirements in the Zoning Law and shall be designed to be as least intrusive as possible by using the following additional standards:

- (a) Permitted fuel. Only firewood and untreated lumber are permitted to be burned in any outdoor furnace. Burning of any and all other materials in an outdoor furnace is prohibited.
- (b) Minimum lot size. Outdoor furnaces shall be permitted only on lots two and one half (2 ½) acres or more.
- (c) Setbacks. Outdoor furnaces shall be located in the rear yard, with a set back not less than 200 feet from the nearest adjoining or neighboring dwelling. Further, in any event the furnace shall be located a minimum of 150 feet from the adjoining property line.
- (d) Spark arrestors. All outdoor furnaces shall be equipped with properly functioning spark arrestors.
- (e) Chimney height must be a minimum of fifteen (15) feet above the furnace.
- (f) All outdoor furnaces shall be installed, operated, and maintained in accordance with the manufacturer’s instruction.

4.12.3 Existing Outdoor Furnaces

Any outdoor furnace in existence prior to the enactment of this section shall be permitted to remain as a non-conforming use provided that the owner conforms with Section 4.12.2 (a), (d), (e), and (f) immediately after the effective date of this zoning law.

4.13 Right to Farm

The Village of Middleburgh intends to maintain and preserve the rural character of the Village of Middleburgh, to permit the continuation of the business of farming within the Village, and to protect

the existence and operation of established farms to encourage the initiation and expansion of farming.

4.13.1 Right to Farm

Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of the farms, may lawfully engage in farming practices within the Village of Middleburgh at any such times and all such locations as are reasonably necessary to conduct the business of farming. For an activity or operation, in determining the reasonableness of the time, place, and methodology of such operation, due weight and consideration shall be given to both traditional customs and procedures in the farming industry as well as advances resulting from increased knowledge and improved technologies.

4.13.2 Declaration

It is hereby declared that agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety. No agricultural or farming operation, place, establishment, or facility shall be or shall become a nuisance, as a result of changed conditions in or around the locality of such agricultural or farming operation, place, or establishment, if such facility has been in operation for one year or more and if it was not a nuisance injurious to the public health, or safety, results from the operation of any such agricultural or farming operation, place, establishment, or facility or any of its appurtenances.

4.13.3 Notice to Real Estate Buyers

In order to promote harmony between farmers and their neighbors, the Village requires land holders and/or their agents and assigns to comply with Section 310 of Article 25-AA of the State Agriculture and Markets Law and provide notice to prospective purchasers and occupants as follows: “ It is the policy of the Village of Middleburgh to conserve, protect, and encourage the development and improvement of agricultural land for the production of food, and other products and also for its natural and ecological value. This disclosure notice is to inform prospective buyers that the property they are about to acquire lies partially or wholly within and Agricultural District or within 500 feet of an Agricultural District and that farming activities occur within this area. Such farming activities may include, but not be limited to, activities that cause noise, dust, and odors.”

A copy of this notice shall be included by the seller or the seller’s agent as an addendum to the purchase and sale contract at the time an offer to purchase is made.

4.13.4 Resolution of Disputes

In order to maintain a viable farming economy in the Village of Middleburgh, it is necessary to limit the circumstances under which farming may be deemed to be a nuisance and to allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference and restriction.

This process is intended to resolve disputes between farmers and non-farming neighbors through mutual understanding of each other's needs, concerns, and desires so that both parties are afforded due property rights.

(a). Should any dispute arise regarding an agricultural operation or agricultural practice which cannot be settled by direct negotiation between parties involved, either party may submit the controversy to a dispute resolution committee as set forth below in an attempt to resolve the matter prior to the filing of any court action and prior to request for a determination by the Commissioner of Agriculture and Markets about whether the practice in question is sound pursuant to Section 398 of Article 25AA of the State Agricultural and Markets Law.

(b). Any controversy between parties shall be submitted to the committee within thirty (30) days of the last date of occurrence of the particular activity giving rise to controversy or the date the party became aware of the occurrence.

(c). The committee shall be composed of three (3) members from the Village selected by the Village Board, as need arises, including one representative from the farm community, one person from the Village government, and one person mutually agreed upon by both parties involved in the dispute.

(d). The effectiveness of the committee as a forum for the resolution of disputes is dependent upon full discussion and complete presentation of all the pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.

(e). The controversy shall be presented to the committee by written request of one of the parties within the time limits specified. Therefore after, the committee may investigate the facts of the controversy but must, within twenty-five (25) days, hold a meeting at a mutually agreed place and time to consider the merits of the matter and within five (5) days of the meeting render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each considers being pertinent facts. No party bringing a complaint to the committee for settlement or resolution may be represented by counsel unless the opposing party is also represented by counsel. The time limits provided in this subsection for action by the committee may be extended upon written stipulation of all parties in the dispute.

(f). Any reasonable costs associated with the function of the committee process shall be borne by the participants.

4.14 Driveway Construction

Applicant must obtain any necessary curb-cut permits from the jurisdiction permitting authority, e.g. State, County, or Village highway department. In addition, the following access requirements shall apply.

1. A driveway may be no more than twenty (20) feet in width which allows for incoming and outgoing vehicles to pass one another safely.
2. There shall be a minimum distance of thirty-five (35) feet between proposed and existing driveways on public roads.
3. No driveway centerline shall intersect a street line less than seventy (70) feet from the intersection of any two (2) roadways.
4. Driveway grades shall not exceed ten (10) percent.

5. Construction of driveways shall be in accordance with Village Highway Specifications and accommodate emergency vehicle loadings for the soil conditions present. Asphalt surfacing is optional; however the driveway must be paved from the edge of existing roadway pavement to the limits of the public right-of-way.
6. When necessary, adequately designed driveway culverts shall be installed, adjacent to the driveways to accommodate the local drainage patterns.
7. No more than one (1) access driveway curb cut shall be permitted to serve any one or two family residence, except that a circular driveway with two (2) curb cuts shall be permitted.

ARTICLE V

NONCONFORMING BUILDINGS, USES, AND ACTIVITIES

5.1 Continuation of Existing Uses

The lawful use or bulk of any building, land use, or activity in existence on the effective date of this Law may continue although not in conformity with this Law, except as otherwise provided in this Article.

5.2 Maintenance and Repair

Normal maintenance and repair of a nonconforming building, including the restoration of a building declared unsafe by proper authority to a safe condition, and the repair of a building damaged by fire or other cause, is permitted as long as the degree or extent of nonconformity is not increased or exceeded or no new nonconformity is created.

5.3 Reconstruction and Repair

If a nonconforming building or land use activity or part thereof has been destroyed or damaged by any means, it may be rebuilt or restored as a nonconforming building or use only if reconstructed or restored with the same or less floor area, height, and cubic content and with the same, or an improved, general site layout as that of the original structure. Board of Appeals approval of reconstruction and restoration plans shall be required and the Board of Appeals may impose conditions on such approval if such conditions would improve an otherwise bad situation and bring the nonconforming use or activity more in conformity with the regulations for the district in which it is located.

5.4 Changes

A nonconforming use may be changed to another nonconforming use only by variance granted by the Board of Appeals. A nonconforming use may be changed to a conforming use but shall not thereafter revert to a nonconforming use.

5.5 Abandonment or Discontinuance

Abandonment or discontinuance of any nonconforming use or activity for a period of twelve (12) consecutive months or for a total of twenty (20) months during any three (3) year period shall terminate such nonconforming use of the building and premises. No such nonconforming use shall be reinstated and any subsequent use of such building or premises shall be in conformance with the provisions of this Law for the area in which such building or premises is located. The date of abandonment or discontinuance of a nonconforming use shall be determined by the Zoning Enforcement Officer and notification of such action shall be made in writing to the property owner with a copy to the Village Clerk. Extension of the termination date of such nonconforming use for an additional six (6) months may be granted by the Board of Appeals after a public hearing.

5.6 Public Properties

This Law is not intended to restrict the construction or use of public buildings or lands or property supported in part or in whole by taxes on property in the Village of Middleburgh in the exercise of a governmental function.

This Law is not intended to restrict the construction or use of underground or overhead public utility distribution facilities or of other public utility structures operating under the laws of the State of New York, except as otherwise provided in this Law, and except that any such structures shall conform in character to the environment in which erected.

ARTICLE VI

MISCELLANEOUS PROVISIONS

6.1 Application

6.11 Compliance with the Law

All applicable buildings shall hereafter be used, occupied, constructed, located, relocated, or enlarged, and all applicable land shall be used or occupied only in compliance with the provisions of this Law.

6.12 Precedence

Wherever any other lawful statute, ordinance, regulation, easement, private agreement, covenant, deed restriction, or other legal relationship – public or private – imposes controls which are inconsistent with any provision of this Law, then those provisions which are the more restrictive or impose higher standards shall take precedence.

6.13 Existing, Prior Permits, Certificates and Variances

If by reason of an amended or supplementary provision of this Law a nonconforming property is created for which a building permit, certificate of occupancy, variance, or special use permit was issued prior to the effective date of such amended or supplementary provision, then the aforementioned permit, certificate, variance, or special use permit shall become null and void, unless one of the following conditions is met:

(a) All footings have been installed, or

(b) Substantial construction or progress in accordance with required conditions has been made and is continuing as of the effective date of such amended or supplementary provisions.

6.14 Remedies

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this Law or of any regulation adopted pursuant thereto, an appropriate action or proceeding, whether by legal process or otherwise, may be instituted or taken in addition to other remedies provided by law, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of said building structure, or land; or to prevent any illegal act, conduct, business, or use in or about such property.

6.15 Penalties

Any person, firm, corporation or other, violating any provision of this Law shall be deemed guilty of an offense, and upon conviction thereof shall be subject to a fine not exceeding two-hundred and fifty dollars (\$250), or to imprisonment for not exceeding fifty (50) days, or to both such fines and imprisonment, for each and every violation and for each and every day that such violation continues.

6.16 Separate Validity

If any part or provision of this Law is adjudged invalid or unconstitutional by any court of competent jurisdiction, such judgment shall be confined in its effect to the part, provision, or application directly involved and shall not affect or impair the validity of the remainder of this Law.

6.17 Effective Date

This Law, together with the appurtenant Official Zoning Map, shall take effect immediately, upon filing with the Secretary of State.

***Attachment I**

District Regulations – Area Schedule

District		Minimum Lot Size		Minimum Yard Space per Principal Building			Maximum Building Height (ft.)
		Area (sq. ft.)	Frontage (ft.)	Set back Measured from R.O.W. (ft.)*	Side (ft.)	Rear (ft.)	
R-3	Low Density Residential/ Agricultural	20,000	100	25	8	12	35
R-2	Medium Density Residential	¼ acre	75	25	8	12	35
H	Historical	¼ acre	75	25	8	12	35
C	Commercial	20,000	100	25	8	12	35
PDD	Planned Development District	Floating district must have approval of Planning Board					
FPD	Flood Protection District						

*Distance of set back shall be measured from edge of a known highway right-of-way or shall be specified distances plus 25 feet measured from the highway centerline. A minimum of 10% greenspace is required for all lots.

***ATTACHMENT I
District Regulations – Use Schedule**

<i>District</i>		Permitted Uses *	Special Uses *	<i>District</i>		Permitted Uses *	Special Uses *
R-3	Low Density Residential/ Agricultural	1. One Family Dwellings 2. Farm Structures and Uses; Accessory Buildings 3. Home Occupation	1. Public Utility Structures 2. Public and Semi-Public Structures and Use 3. Multiple Family Dwellings 4. Temporary Farm Produce Stands for the sale of agricultural products not grown on premises 5. Commercial Recreation/ Tourist Attraction 6. Open Space Recreation Use 7. Adult Use and Entertainment Establishments 8. Outdoor Furnaces	C	Commercial	1. Existing One or Two Family Dwellings 2. Retail/Wholesale Structures/Uses 3. Personal Service Structure/Use 4. Office, Bank, Financial Institutions 5. Eating, Drinking Establishment 6. Warehousing, Storage Operations 7. Filling Station, Service Garage 8. Multiple Dwellings 9. Home Occupation	1. Other Commercial Industrial Structures, uses of a similar nature. 2. Public Utility Structures, Uses 3. Hotel, Motel, Tourist Homes 4. Commercial Recreation/ Tourist Attraction 5. Parking Lots and/or Parking Garages
H	Historical	1. One Family Dwellings 2. Existing Commercial Structures and Use 3. Tourist Accommodations 4. Farm Structures 5. Accessory Buildings 6. Churches 7. Home Occupation		P	Public	1. Parks 2. Public Institutions 3. Public Pools, Other Outdoor Recreational Facilities	1. Parking Lots and/or Parking Garages
				PDD	Planned Development District	All uses must have approval of planning board	
				FPD	Flood Protection District	1. One Family Dwelling 2. Farms and Agricultural Uses development must abide by district standards plus the supplementary regulations of the FPD	

*All permitted uses, special uses and other zoning approvals require certificate of compliance.
All uses not listed as permitted or special uses in a district shall be considered prohibited use

ATTACHMENT II

DEFINITIONS

1.0 Definitions

Except where specifically defined herein, all words used in this Law shall carry their customary meanings.

Access Road, Access Way: A way or means of approach to provide vehicular or pedestrian entrance to a property.

Accessory Building: Building subordinate to the principal building on the same lot and used for purposes customarily incidental and subordinate to those of the principal use of building.

Accessory Use: A use customarily incidental and subordinate to the principal use of the building, on the same lot with such principal use or building.

Adult Use and Entertainment Establishments: A public or private establishment, or any part thereof, which presents any of the following entertainments, exhibitions or services: topless and/or bottomless dancers; strippers; topless waitressing; busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear pasties or G-stings or both; adult arcade; adult bookstore or adult video stores; adult cabarets; adult motels; adult motion picture theatres; escort agencies; nude model studies and sexual encounter centers. Adult Use and Entertainment Establishments customarily exclude minors by reason of age, and definitions for such businesses are defined as follows:

Adult Arcade: means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices which are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions, are maintained to show images to five or fewer persons per machine at any one time, and where the images are distinguished or characterized by depicting or describing “specified sexual activities” or “specified anatomical areas”

Adult Bookstore or Adult Video Store: means a commercial establishment that has a significant or substantial portion of its stock in-trade or derives a significant or substantial portion of its interior business advertising from the sale or rental for any form of consideration any one or more of the following:

- (A) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or describe “specific sexual activities” or “specified anatomical areas”; or
- (B) instruments, devices, or paraphernalia that are designed for use marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as an Adult Bookstore or Adult Video Store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe “specified sexual activities” or “specified anatomical areas”. For the purpose of this definition, “principal business purpose” shall mean twenty-five percent (25%) or more of any of the following:

- (1) the number of different titles or kinds of such merchandise;
- (2) the number of copies or pieces of such merchandise;
- (3) the amount of floor space devoted to the sale and/or display of such merchandise; or
- (4) the amount of advertising that is devoted to such merchandise, either print or broadcast media.

Adult Cabaret: means a nightclub, bar, non-alcoholic or “juice” bar, restaurant, or similar commercial establishment which regularly features:

- (A) persons who appear in a state of nudity; or
- (B) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities” or
- (C) films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

Adult Motel: means a hotel, motel or similar commercial establishment which:

- (A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; and which advertises the availability of sexually oriented type of material by means of a sign visible from the public right of way or by means of off-premise advertising including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television; or
- (B) offers sleeping rooms to rent on a regular basis for a period of time that is less than ten (10) hours; or
- (C) allows a tenant or occupant of a room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult Motion Picture Theatre: means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown which are characterized by the depiction of “specified sexual activities” or “specified anatomical areas”.

Adult Theatre: means a theatre, concert hall, auditorium or similar commercial establishment which for any form of consideration features persons who appear in the state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.

Escort Agency: means a person or business association who furnishes, or offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

Escort: means a person who, for a fee, tip or other consideration, offers or agrees to any of the following: act as a date for another person; to privately model lingerie for another person; or to privately perform a striptease for another person.

Massage Parlor: any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments or any other treatment manipulation of the human body which occurs as part of or in connection with “specified sexual activities”, or where any such person providing such treatment, manipulation, or service related thereto, expose his or her “specified anatomical areas.” The definition of Adult Use shall not include the practice of a massage

in any licensed hospital, nor by trainers for any amateur, semi-professional or professional athlete or athletic team or school athletic program.

Nude Model Studio: means any place where a person who appears in the state of nudity or displays “specified anatomical areas” is regularly provided to be observed, sketched, drawn, painted, sculpted, photographed, or simply depicted by other persons who pay money or any form of consideration, other than as part of a course of instruction offered by an educational institute established pursuant to the laws of the State of New York.

Sexual Encounter Center: means a business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of “specified sexual activities” or exposure of “specified anatomical areas”, or activities between persons where one or more of the persons is in the state of “nudity” or “semi-nude”.

Minor: means a person less than eighteen (18) years of age.

Nudity or a State of Nudity: means the appearance of “specified anatomical areas”.

Person: means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Regularly: means more than once annually.

Semi-Nude: means a state of dress in which clothing covers no more than the “specified anatomical areas”, as well as portions of the body covered by supporting straps or devices.

Specified-Anatomical Areas: means (a) unless completely and opaquely covered, human genitals, pubic region, buttocks, or female breasts below a point immediately above the top of the areola; and (b) even if completely and opaquely covered, male genitals in a discernibly turgid state.

Specified Sexual Activity: means and includes any of the following:

- (A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breasts;
- (B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (C) masturbation, actual or simulated; or
- (D) excretory functions.

Agricultural Activities/Practices: Those activities/practices necessary for the on-farm production, preparation, and marketing of agricultural commodities. Examples of such activities/practices include, but are not limited to, operation of farm equipment, nutrient management, proper use of agricultural chemicals, and other crop protection methods, and construction and use of farm structures and fences.

Agricultural Data Statement: An identification of farm operations within an agricultural district as provided in Section 305-a of the Agriculture and Markets Law.

Agricultural District: Shall mean a district established pursuant to Article 25-AA of the Agriculture and Markets Law.

Agricultural Products: Products grown or produced on a farm or in a garden and minimally processed for resale.

Alley: a narrow street or passage between properties or buildings serving as a secondary means of access to abutting property.

Alteration: As applied to a building or structure, a change or rearrangement in the structural parts or exterior appearance of such structure, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving from one location or position to another.

Apartment House: A building arranged, intended, or designed to be occupied by three or more families living independently of each other and having separate kitchen facilities.

Applicant: Any person, corporation, or other entity applying for a Building Permit, Certificate of Compliance, Special Use Permit, Site Plan Approval, Variance, or Zoning Amendment.

Attic: That space of a building which is immediately below and wholly or partly within the roof framing. An attic with a finished floor shall be counted as one-half story in determining the permissible number of stories.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Basement: A story partly underground, but having at least one-half of its height, measured from floor to ceiling, above the average level of the adjoining ground. A basement shall be counted as one story for the purposes of determining the permissible height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet or is used for business or dwelling purposes.

Bed and Breakfast: An owner occupied facility offering lodging and breakfast for paying customers with stays of three days or less, with a minimum of two bedrooms for this use.

Billboard: See “Outdoor Advertising Sign.”

Boarding or Rooming House: A private dwelling, in which at least three, but not more than six, rooms are offered for rent, and table board is furnished only to roomers, and in which no transients are accommodated. A rooming house or furnished room house shall be deemed a boarding house. Any dwelling in which more than three persons, either individually or as families are housed or lodged, except those engaged in farm work, for hire with or without meals.

Buffer Area, Buffer Zone: Open space, landscape areas, fences, walls, berms or any combination thereof used to physically separate or screen one (1) use or property from another property so as to visually shield or block noise, light, or other nuisances.

Buildable Lot: A lot having buildable area capable of accommodating proposed principal and accessory improvements, and including, where required, an on-site water supply facility and sewage treatment system that meet the standards of the Schoharie County Department of Health. A buildable lot shall also adjoin and have access to an improved street, or shall adjoin and have access to a paper street that will be improved as part of the development plan for the lot.

Building: Any structure, having a roof supported by columns or by walls and intended for shelter, housing, or enclosure of persons, animals, or chattel.

Building, Accessory: A detached subordinate building on a lot, the use of which is customarily incidental to that of the main or principal building.

Building Area: The total ground floor area of a principal building and accessory building, exclusive of uncovered porches, steps, and terraces.

Building (Completely Enclosed): A building separated on all sides from adjacent open space or other buildings by fixed interior walls or partial walls, pierced only by windows and doors, and covered by a permanent roof.

Building, Detached: A building surrounded by open space on the same lot.

Building Footprint: The area encompassed by a building's outer wall at ground level.

Building, Front Line Of: The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed, but does not include steps.

Building, Principal: A building or structure in which is conducted the main or principal use of the lot on which it is located.

Cellar: A story wholly or partly below finished grade on at least three sides and having more than one-half of its height, measured from floor to ceiling, below finished grade. A cellar shall not be counted in determining the permissible number of stories.

Cemetery, Family: The use of a portion of private property for the disposal or burial of deceased human beings in a grave; restricted to members of the immediate family of the property owner.

Cemetery, Public: A place that is established, maintained, managed, operated, or improved and which is dedicated to and used or intended to be used for the final disposition of human remains and their memorialization and in which burial plots and vaults are available for purchase by the general public. A cemetery shall be operated by a religious organization or by a not-for-profit corporation licensed by the New York State Cemetery Board.

Centerline of Road: A line midway between and parallel to two property lines along any public highway right-of-way. Whenever such property lines cannot be determined, such line shall be considered as being midway between and parallel to the paved or improved surface of road.

Chimney: Any flue of flues that carries exhaust from an outdoor heating device, flue box, or burn chamber.

Church: See "Places of Worship"

Clinic: An ambulatory health care facility where patients are admitted for examination, diagnosis and treatment on an outpatient basis by one (1) or more physicians, dentists, or other medical personnel, and where patients are not lodged overnight.

Clubhouse: A building, or portion thereof, used by a club (a group of people organized for a certain common purpose to pursue goals, interests or activities, and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings and a constitution and bylaws) not conducted for profit and which is not an adjunct to or operated by or in connection with a public tavern, café, or other place of business.

Commercial Recreation/Tourist Attraction: Any man-made or natural place of interest open to the general public and for which an admittance fee is usually charged, including, but not limited to: amusement parks; replicas of real or fictional places, things, or people; miniature golf; natural geological formations; health spas; and mineral baths.

Commercial Use: Business intended for the sale of retail goods or personal services; department stores; restaurant; second hand shops; tavern; but excludes gas station, garage, carwash, utility, and agriculture.

Condominium: A legal arrangement involving a combination of two kinds of ownership or real property:
(a) fee simple ownership of the individual dwelling unit, and,
(b) undivided ownership of the structure, land and appurtenances, the management of which is controlled by a property owner's or like association.

Coverage: A lot area or percentage of lot area covered by the building or structure, including accessory buildings and structures or other impervious surfaces.

Cultural or Historical Association: Any buildings or grounds used by an organization for the aesthetic, cultural, or historic advancement of the community.

Day Care Center: A facility where unrelated persons, both children and adults, are cared for during limited periods each day under supervision.

Driveway: A private way providing vehicular access from a public or private road to a residence or to a commercial or noncommercial establishment.

Dwelling: A building designed or used principally as the living quarters for one or more families (See Residences).

Dwelling, Multiple: A building or portion thereof, designed for year-round occupancy, containing separate dwelling units for three or more families living independently of each other, other than a rooming house, hotel, fraternity, commune or other group quarters. This includes, but is not limited to, an apartment house, boarding or rooming house, or condominium.

Dwelling, One Family: A detached dwelling unit providing complete housekeeping facilities designed for year-round occupancy by one family only, other than a mobile home, recreational living unit or any temporary structure. This includes, but is not limited to, seasonal dwellings or vacation homes.

Dwelling, Seasonal: A detached one-family dwelling unit providing complete housekeeping facilities for one family designed for seasonal or non-year-round occupancy other than a mobile home, recreational living unit or any temporary structure.

Dwelling, Two Family: A detached dwelling unit designed or occupied exclusively by two (2) families living independently of each other, other than a mobile home, recreational vehicle, or rooming house.

Dwelling Unit: A dwelling, or portion thereof, providing complete housekeeping facilities for one family. For the purpose of calculating required useable open space or required parking spaces for boarding, rooming, fraternity or sorority houses, and the like, an additional dwelling unit shall be counted for every two bedrooms, or fraction thereof, occupied by residents not included as a member of the family which occupies the principal dwelling unit.

Eating, Drinking Establishment: A place that sells either drinks or food, including, but not limited to, night clubs, taverns, bars, and restaurants.

Elevation: The elevation, in feet, above mean sea level, as determined from the nearest United States Coastal and Geodetic Bench Mark of the principal building to be sited on a lot.

Excavation: Any activity that removes or disturbs surface or subsurface conditions of land, lakes, ponds or watercourses.

Family: A “family” consists of one person, or more than one person related by blood, marriage, or adoption, who live together in a single dwelling unit and maintain a common household, or not more than five persons not related by blood, marriage, or adoption, and in addition, any domestic servants or gratuitous guests.

Farm: Any parcel of land containing at least five acres which is used for gain in the raising of agricultural products, certain livestock and dairy products. It includes all necessary farm structures. The retail sale of farm produce is considered a part of the agricultural process.

Farm Equipment: Equipment used in the production of livestock or crops, including, but not limited to, mowers, harvesters, loaders, slaughter machinery, agricultural tractors, farm engines, farm trailers, farm carts, and farm wagons, but excluding automobiles and trucks.

Farmland: Any single or multiple, contiguous, or non-contiguous parcel or parcels that are being used for agricultural farm operations or upon which agricultural farm operations or agricultural practices may be established or utilized in the future.

Farm stand: A structure used for the display and sale of farm products grown on the property on which the farm stand is located.

Farm Structure/Use: The management and use of land for the raising for compensation of agricultural products, including field crops, produce, horticultural, livestock and dairy products. The term includes the sale of products grown or raised directly on such land, and the necessary buildings and appurtenant construction such as barns, silos and fences, which are a normal part of such operation.

Fence: Barrier intended to prevent escape or exclusion or to mark a boundary, architecturally compatible with building. Refer to Section 4.41, Items (6) and (7) e and f.

Fill: Any act by which earth, sand gravel, rock or any other similar material is deposited, placed, pushed, pulled or transported to a place other than the place from which it was excavated, and shall include the conditions resulting therefrom.

Filling Station: A building or lot or part thereof supplying and selling gasoline or other equivalent fuel for motor vehicles at retail direct from pumps and storage tanks. A “filling station” may include accessory facilities for rendering services such as lubrication, washing and minor repairs with hand tools.

Final Development Plan: The final map or drawing and supplementary information as required in Attachment III of these Regulations.

Finished Grade: Elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure. If the line of intersection is not reasonably horizontal, the finished grade – in computing height of buildings and other structures or for other purposes – shall be the average elevation of all finished grade elevations around the periphery of the building.

Firewood: Trunks and branches of trees and bushes, but does not include leaves, needles, vines, or brush smaller than three inches in diameter.

Flood: A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers, or other inland areas of water.

Flood Hazard Boundary Map: An official map of the community, issued by the Federal Insurance Administration, on which the boundaries of the flood plain areas having special hazards have been drawn, as adopted by the community.

Flood Plain or Flood Prone Areas: A land area adjoining a river, stream, watercourse, ocean, bay, or lake, which is likely to be flooded. Use Flood Hazard Boundary Map.

Flood Plain, regulated: The land area covered by flood waters of the base flood or the Special Flood Hazard Area (SFHA) on the Flood Insurance Rate Maps (FIRM). The SFHA is the area where the Village of Middleburgh Flood Damage Prevention Law must be enforced and the area where the mandatory purchase of Flood Insurance for mortgages applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A. The SFHA does not include X Zones

Floor Area: When computing the minimum residential floor area, the gross horizontal area of the principal building shall be used, not the sum of the several floors. When computing commercial or industrial floor area in regard to required parking space, only sales space and working space shall be computed.

Floor Area Ratio: The total aggregate floor area of all buildings on a lot divided by the area of such lot.

Garage, Parking: A principal or accessory building or portion thereof used for the parking and storage of vehicles for a fee and which is available to the general public.

Garage, Private: A roofed space for the storage of one or more motor vehicles, provided that no business conducted for profit therein nor space therein for more than one car is leased to a non-resident of the premises.

Garage, Public: An enclosed building which is operated for gain and whose primary purpose is the storage, repair, or servicing of motor vehicles, including painting and the sale of parts or accessories. A junkyard or auto salvage yard is not to be construed as a public garage.

Garage Sale: An organized sale in the Village at which participants sell personal goods which may include goods other than food or produce. Garage sales, porch sales, and yard sales are examples of garage sales.

Gasoline Station: Any area of land including the structures thereon that is used or designed to be used for the sale of gasoline or oil or other motor vehicle fuel and which may include facilities for lubricating, washing, cleaning, or otherwise servicing motor vehicles, but not including the painting

or major repair thereof. The term “Gasoline Station” shall be deemed to include filling station and service station.

Height of Building: The vertical distance measured from the average finished grade along the wall of the building to the highest point of the roof for flat roofs, and to the ridge line of all other roofs.

Home Occupations: An accessory use of a service or commercial character conducted within a dwelling by the residents thereof, which is clearly secondary to the use of the dwelling unit for living purposes, and which is not detrimental to the residential character of the lot on which said home occupation is located or of the surrounding neighborhood. Two additional persons not a resident thereof may be employed in such home occupation. A home occupation shall not be such as to produce offensive noise, traffic, smoke, dust, odor, heat, glare, or electronic disturbance beyond the property it occupies. A business that neither generates visits, nor requires a sign, is not a home occupation per this law.

Hospital: Unless otherwise specified, includes sanitarium or sanatorium, preventorium, clinic, rest home, nursing home, convalescent home and any other place for medical, surgical, diagnostic and therapeutic treatment on an in- and out-patient basis, together with all ancillary support services, for the treatment of other care of human ailments.

Hospital, Animal: An establishment for the medical and surgical care of sick or injured animals.

Hotel/Motel/Tourist Accommodation: A building or group of buildings where overnight transient guests are lodged overnight and designed primarily to accommodate the motoring public. Such uses may include accompanying eating, drinking and related sales uses so long as a minimum of fifteen (15) operating rental units are provided and further, that any such ancillary service uses are directly related and secondary to the principal function of overnight sleeping accommodations. The word ‘motel’ includes ‘motor court’, ‘tourist cabins’, ‘motor lodge’ and similar descriptive titles.

Industrial, Heavy: Includes a wide range of assembling, fabricating, and manufacturing activities such as: food processing, manufacturing and packaging, grain storage, processing and distribution; concrete and asphalt batch plants; manufacture of products and merchandise involving the use of chemicals; processes or materials that might constitute a potential explosive or environmental hazard; slaughter plants; packing houses; animal by-products rendering; and other such animal processing activities; automobile salvage and reclamation yards and facilities; processing and production of oil, natural gas, geothermal resources or other hydrocarbons; foundries; truck terminals, delivery services, moving and storage facilities, and truck maintenance.

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

Junk Car: Any vehicle or major portion thereof which is not licensed by the State of New York or other state or is not in running condition.

Junk Yard: A lot, land or structure or part thereof, used for the collecting, storage, or sale of waste paper, rags, scrap metals, used or salvaged building or other discarded material, or for the collecting, dismantling, storage and deposit, whether in connection with another business or not, where two or more unlicensed, old or secondhand motor vehicles (junk car), no longer intended or in condition for legal use on the public highways, are held, whether for the purposes of resale of used parts or materials therefrom or not. Such term shall include any place of storage or deposit for any purpose of used parts or waste materials from motor vehicles which, taken together equal in bulk two (2) or more such vehicles.

Kennel: Any establishment including dogs, cages, runs, and structures wherein more than three dogs which are over six (6) months old are kept for sale, boarding care, or breeding, for which a fee is charged.

Lot: A parcel of land occupied or capable of being occupied by one building and the accessory uses or buildings customarily incident to it, including such open spaces as are required by this Law.

Lot, Area: The total area included within side and rear lot lines and the street or highway right-of-way line.

Lot, Corner: A lot situated at the junction of and adjacent to two or more intersecting streets when the interior angle of intersection does not exceed 135 degrees.

Lot, Depth: A mean distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot, Through: A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.

Lot Coverage: See "Coverage."

Lot Frontage: A lot line which is coincident with a street line.

Lot Line: The lines bounding a lot as defined herein.

Lot Line Adjustment: A modification of lot boundaries, in which a portion of one or more lots is added to an adjoining lot or lots, without increasing the total number of lots.

Lot Line, Rear: The lot line generally opposite to the street line; if the rear lot line is less than ten (10) feet in length or if the lot comes to the point in the rear, the "rear lot line" shall be deemed to be a line parallel to the front lot line not less than ten (10) feet wide lying farthest from the front lot line.

Lot Width: A width of a lot measured along the rear line of the required front yard.

Manufacturing: Any process whereby the nature, size or shapes of articles or raw materials are changed, or where articles are assembled or packaged in quantity.

Middleburgh, Village of: All that area within the geographical boundaries of the Village of Middleburgh.

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

Mobile Home (Manufactured Home): A factory finished movable dwelling unit, having a minimum floor area of five hundred (500) square feet, designed for and providing housekeeping facilities for year-round or seasonal occupancy after being transported to the living site. It does not include a recreational living unit or modular home, but may include such expandable or joined mobile units referred to as “telescoping” and “doublewides.” Manufactured homes constructed after July 15, 1976 display a HUD seal or date plate to verify proper construction.

Modular Home: A factory manufactured dwelling unit constructed to New York State Building Code standards and requiring no HUD seal or data plate. Modular Homes are typically constructed offsite and transported to a living site in a minimum of two sections, with installation of many finishing components coming after erection of the home. Modular homes are typically indistinguishable in appearance from conventionally built homes.

Motel: A building or a group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term “motel” includes buildings designated as tourist courts, motor lodges, auto courts and similar appellations, but does not include boarding houses.

Motor/Recreational Vehicle: Any passenger, recreation or service vehicle propelled by a fuel-using device, including but not limited to automobiles, trucks, motorcycles and motorbikes, dune buggies, snowmobiles, tractors, motor boats and all terrain vehicles.

Night Club/Tavern/Bar: An establishment operated primarily at night for eating, drinking, and dancing.

Nonconforming Lot: Any lot in single ownership, which does not conform with the minimum area and/or dimensions required in the district in which it is situated and where the owner of said lot does not own any adjoining unimproved property, the subdivision of which could create one (1) or more conforming lots.

Nonconforming Use: Any use of a building, other structure, or tract of land, otherwise lawfully established but which does not conform to the use regulations of the district in which such use is located, either at the effective date of this Law or as a result of subsequent amendments thereto.

Off-Street Loading Zone: An area at least four hundred twenty (420) square feet with minimum dimensions of twelve (12) feet and thirty-five (35) feet and fourteen (14) feet high. This area is to be either paved or a dust and mud-free surface (not a lawn area), which shall be located outside of any public right-of-way.

Office, Business: A place or establishment used for the organizational or administrative aspects of a trade or used in conduct of a business, and not involving the manufacture, storage, display or direct retail sale of goods. This may include, but not limited to, offices of salesmen, sales representatives, insurance brokers, real estate brokers and persons with similar occupations.

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

Official Map: Means the map established by the Village of Middleburgh, if any, pursuant to Village Law, showing the streets, highways and parks therefore laid out, adopted and established by Law and any amendments thereto adopted by the Village or additions thereto resulting from the approval of subdivision plats by the Board and the subsequent filing of such approved plats. Streets not accepted by the Village as public streets may be shown thereon, but shall be marked as private streets.

Open Space: Shall not include driveways, access roads, or parking areas. The term shall include green space.

Open Space Recreation Use: A recreation use particularly oriented to and utilizing the natural landscape and outdoor character of an area, including hiking, equestrian, and recreational vehicle trails; park, picnic or beach area, and similar undeveloped, outdoor, non-intensive uses.

Outdoor Advertising Signs: A sign erected (off-premises or on-premises) for the purpose of advising a traveler of the availability and location of a service or attraction within nearby area.

Outdoor Furnace: Any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat of any interior space.

Parking Garage: A principal or accessory building or portion thereof used for the parking and storage of vehicles for a fee which is available to the general public.

Parking Lot: Land which is open or semi-closed by structures and which is used to provide off-street parking spaces.

Parking Space (Off-Street): An area of at least two hundred (200) square feet with minimum dimensions of nine (9) feet and eighteen (18) feet. This area is to be either a paved or a dust and mud-free surface (not a lawn area) which shall be located outside of any public right-of-way.

Personal Service: A building where a service is sold; such as a cleaners, laundromat, barber shop, beauty salon, or tailor.

Places of Worship: A building or structure, or groups of buildings or structures that by design and construction are primarily intended for conducting organized religious services and associated accessory uses, including church hall, parsonage, and rectory.

Planned Development: A tract of land which is developed as a unit with a grouping of residential, commercial, or industrial buildings together with their accessory buildings and all appurtenant roadways, parking areas, loading spaces, and service buildings and facilities. Such tract shall be at least three (3) acres in size. (A Planned Development shall involve a detailed plan review and a zoning amendment shall be required).

Preliminary Plan/Plat: The preliminary drawing or drawings and supplemental information as required in Attachment III of these regulations.

Premises: A lot together with all the buildings and uses thereon.

Public and Semi-Public Use: Land use or buildings under the auspices of a governmental unit, public agency or those involving public benefit or advantage; hospital, schools, park and recreational facilities, cemeteries, passenger stations, libraries, fire stations, public-utility installation, government offices or facilities, philanthropic institutions, places of worship, community centers, day nurseries and like uses are included in this definition.

Public Highway: An existing public way which affords principal means of access to abutting properties and is suitably improved by all appropriate official agencies.

Public Highway Line: A line commonly referred to as the right-of-way line, which separates a street right-of-way from a lot.

Public Utility Use: A building, structure or lot used for or in connection with the transmission, distribution, or regulation of water, sewer, gas, electric, telephone, or other public utility service.

Recreational Living Unit: A mobile recreational housekeeping unit including travel trailer, pick-up camper, converted bus, tent-trailer, camper trailer, tent or similar device used for temporary portable housing.

Residences/Residential: A building, or any part of a building, which contains living and sleeping accommodations for permanent occupancy. "Residences" therefore include all one-family and two-family houses, row houses, apartment houses, boarding, rooming, fraternity, and sorority houses. However, "residences" shall not include the following:

- (a) transient accommodations, such as hotels, motels, and mobile homes; or,
- (b) that part of a building containing both residences and other uses which is used for any non-residential uses, except accessory uses for residences.

Restaurant: A building or portion thereof where food and beverages, whether or not alcoholic, are sold to the public for consumption on the premises.

Retail Use, Retail Business, Store or Shop: Traditional establishments, such as, florists, lumber and hardware stores, pharmacies, grocery stores, convenience stores, stationery stores, book stores, video rental stores, clothing stores, department stores, shoe stores, antique stores, feed supply, building supply, lawn and garden supply, farm equipment, etc., that sell goods or merchandise to the general public for personal or household consumption, but not including an adult business.

Right-of-Way (R.O.W.): The right-of-way is the total public strip of land within which there is public control and common right of passage and within which all pavements and utility lines is located. All setbacks will be measured from the right of way or 25 feet from centerline plus set back specified.

Row House (Townhouse): A building consisting of a series of one-family attached residential dwelling units having common party walls between each dwelling unit. These units must have public water and sewer.

Setback: The shortest horizontal distance in feet from the right of way line to the principal building on a lot.

Shopping Center, Shopping Mall: A group of commercial establishments planned, constructed or managed as a single entity, with customer and employee parking provided on-site, provision for

Sign: A device that directs attention to a business, commodity, service, or entertainment (also see “Outdoor Advertising Sign”).

Sign Area: The area within the shortest lines that can be drawn around the outside perimeter of a sign including all decorations and lights, but excluding the supports if they are not used for advertising purposes. Any neon tube, string of lights, or similar device shall be deemed to have a minimum dimension of one (1) foot.

Site Plan: A rendering, drawing, or sketch prepared in accordance with the specifications of the Zoning Law, and which shows the arrangement, layout and design of a proposed use of single parcel of land as shown on a said plan.

Special Use: A use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood may be permitted if specific provision for such special use is made in the Regulations, after application to and authorization by the Zoning Board of Appeals of a Permit thereof.

Story: The section of a building between the surface of a floor and the surface of a floor next above or below – whether or not counted for purposes of computing floor area or floor area ratio. (See “Attic,” “Basement,” and “Cellar”).

Street: A strip of land, including the entire right-of-way, publicly or privately owned, serving primarily as a means of vehicular, pedestrian and bicycle travel, and furnishing access to abutting properties, which may also be used to provide space for sewers, public utilities, shade trees, sidewalks, and streetscape amenities.

Street Grade: The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the “street grade.”

Street Line: The dividing line between the street and the lot.

Street, Paper: A street that has never been built but is shown on an approved plan, subdivision plat, tax map, or Official Map of the Village of Middleburgh.

Structure: Anything constructed or erected, the use of which requires location on, in or under the ground or attached to something having location on the ground.

Subdivision: The division of any parcel of land into two (2) or more lots, blocks, or sites with or without streets or highways. Such divisions shall include resubdivision of parcels of land for which an approved plat has already been filed in the office of the County Clerk and which is entirely or partially undeveloped. This definition shall also include lot line adjustments.

Substantially Change: To substantially change from one use to another generally involves, but is not limited to, a change that potentially increases existing parking requirements or alters existing traffic flow, involves placement of larger size outdoor waste disposal equipment, or creates new emissions. For example, although both are commercial to commercial changes, a gift shop changing to a music store would not necessarily be considered a substantial change whereas a gift shop to a restaurant shall be.

Swimming Pool, Public: Any constructed body of water exceeding eighteen (18) inches in depth or structure to contain water and any accessory buildings or equipment pertaining thereto which are operated for profit or gain and are used or intended to be used for swimming or bathing by persons who pay admission on a daily, weekly or other basis, including season tickets.

Temporary Farm Produce Stands: Stands that are used 6 months or less during any year which have no permanent structural components. (Permanent stands or stands used for more than six (6) months during any year shall be considered retail stores).

Theatre, Indoor: A building or part of a building devoted to the showing of moving pictures on a paid-admission basis.

Theater, Outdoor: An open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures or theatrical products, on a paid admission basis, to patrons seated in automobiles or on outdoor seats.

Tourist Accommodation: A dwelling in which overnight accommodations are provided or offered for transient guests for compensation. (Bed and Breakfast).

Untreated Lumber: Dry wood which has been milled and dried but which has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint, or other substance.

Use: This term is employed in referring to:

- (a) The purpose for which any buildings, other structures, or land may be arranged, designed, intended, maintained, or occupied; or
- (b) Any occupation, business activity, or operation conducted (or intended to be conducted) in a building or other structure, or on land.

Vacation Home: A residence used on a seasonal basis.

Variance: Written authority to deviate from any of the regulations of the Law, said authority to be granted by the Village of Middleburgh Board of Appeals in accordance with the provisions of law and this Law.

Village Zoning Enforcement Officer: The duly designated official responsible for enforcing this Local Law as prescribed herein and as directed by the Village Board.

Warehouse: A building or part of a building for storing goods, wares, and merchandise, whether for the owner or for others, and whether it is a public or private warehouse, including self-storage units.

Way: A street or alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

Yard (Front): An open space between the front line of the principal building and the front line of the lot and extending the full width of the lot.

Yard (Rear): An open space between the rear line of the principal building and the rear line of the lot and extending the full width of the lot.

Yard (Required): That portion of the open area of a lot extending open and unobstructed from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for another building on another lot.

Yard (Side): A yard situated between the building and the side line of the lot and extending from the front yard (or from the front lot line, if there is no required front yard) to the rear yard (or rear lot line). The width of a side yard shall be measured from the side lot line towards the building.

ATTACHMENT III

ADMINISTRATION

1.1 Zoning Enforcement Officer

This Law shall be enforced by the Zoning Enforcement Officer who shall be appointed by the Board of Trustees. No building permit or Certificate of Occupancy shall be issued by him, except where all the provisions of this Law have been complied with.

1.11 Entry and Inspection

After requesting permission of the owner, the Zoning Enforcement Officer shall have the right to enter upon, examine and inspect, or cause to be entered, examined and inspected, any building or property at any reasonable time for the purpose of carrying out his duties and to determine compliance with the provisions of this Law. Request for permission to inspect will normally be made verbally, but in case such a request is refused, the request will be made in writing. The right to inspect will then be granted within one week of date of delivery or date of mailing of the request, at a time of owner's convenience, or the matter will be handled in accordance with due process of law. The request will then be granted within one week of date of delivery or date of mailing of the request, at a time of owner's conveniences, or the matter will be handled in accordance with due process of law. Inspection of the interior of a building will normally be required only when the owner has indicated a change of use or where there is good cause to believe a change of use is being accomplished. A written report of each such examination and inspection shall be prepared on any appropriate form and kept on file by the Zoning Enforcement Officer.

No modification to any existing building or structure shall be made that will infringe on the requirements of the District Regulations Schedule pertaining to maximum percentage of lot occupied, minimum floor area, maximum height of principal buildings, or setback, or that would increase infringement of buildings and structures already non-conforming in this regard until a permit has been issued by the Zoning Enforcement Officer after approval by the Board of Appeals.

1.12 Violations

Whenever in the opinion of the Zoning Enforcement Officer after proper examination and inspection, there appears to exist a violation of any provision of this Law, or of any rule or regulation adopted pursuant thereto, he shall serve a written notice of violation upon the appropriate form.

Such Notice of Violation shall inform the recipient of:

- (a) the nature and details of such violation and shall clearly indicate that section of the Zoning Ordinance which has been violated.
- (b) recommend remedial action which if taken will effect compliance with the provisions of this Law and with rules and regulations adopted pursuant thereto;
- (c) the date of compliance by which the violation must be remedied or removed.

1.121 Extension

The Zoning Enforcement Officer may extend the date of compliance specified in a notice of violation after written application, if in his opinion (and with the approval of the Zoning Board of Appeals) there is reasonable evidence of intent to comply and that reasonable conditions exist which prevent compliance by the specified date.

1.122 Emergency Action

If in the opinion of the Zoning Enforcement Officer, a violation exists which requires immediate action to avoid a direct hazard or imminent danger to the health, safety, morals, or welfare of occupants of a building or to other persons, he may order such violation immediately remedied, or may take direct action on his own initiative to abate the hazard or danger. Any costs incurred by such action shall be paid for by the owner, occupant or person responsible for the violation. The Zoning Enforcement Officer shall keep on file an affidavit stating, with fairness and accuracy, the items of expense and date of execution of action taken; and he is furthermore authorized to institute a suit, if necessary, against the person liable for such expenses or place a lien against his property, in order to recover the costs.

1.123 Certificate of Zoning Compliance

On reinspection following the expiration of the date of compliance as specified in the Notice of Violation, if the violation has been remedied or removed in accordance with the specified remedial action and there is no longer a violation of any provision of the Law, then a Certificate of Zoning Compliance shall be issued by the Zoning Enforcement Officer.

1.124 Penalties

If after Notice of Violation, any person shall continue to willfully violate, or cause to be violated, or assist in the violation of, any provisions of this Law, he shall be subject to conviction of a misdemeanor by a proper court and be subject to a fine of not more than \$250.00, or imprisonment for not more than fifteen days, or both, for each and every violation. Each week that such violation continues shall constitute a separate offense. The term "person" as used in this section shall include an owner occupant, mortgagee, tenant, vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm, or corporation directly in control of a building, property, or part thereof.

A violation by a person of any of the provisions of this Law, after notice of violation, shall be enforced by:

Civil Penalties:

1. For a first violation, a civil penalty not exceeding \$350.00;
2. For a second violation, provided both the first and second violations occurred within a period of 5 years, a civil penalty of not less than \$350.00 nor more than \$700.00; and
3. For a third or subsequent violation all of which occurred within a period of 5 years, a civil penalty of not less than \$700.00 nor more than \$1,000.00;
4. Each week's continued violation shall constitute a separate additional violation, for which separate and additional civil penalties may be imposed and recovered;
5. No remedy provided for enforcement is intended to be exclusive and the Village reserves the right to enforce this Law by an action for injunction.

1.13 Building Permits

- (a) Whenever a building or structure is to be erected, a permit shall be requested from the Zoning Enforcement Officer and shall be granted, unless from the sketch or drawing submitted it is obvious to the Zoning Enforcement Officer that the building or structure does not conform to the Law requirements for the district in which it is to be constructed. Except upon a written order of the Board of Appeals, no such building permit or Certificate of Occupancy (see Section 1.14) shall be issued for any building where said construction or use thereof would be in violation of any provisions of this Law.
- (b) No building or structure shall be erected until a permit therefore has been issued by the Zoning Enforcement Officer. Except upon a written order of the Board of Appeals, no such building permit or Certificate of Occupancy (see Section 1.14) shall be issued for any building where said construction or use thereof would be in violation of any provisions of this Law.
- (c) No modifications to any existing building or structure shall be made that will infringe on the requirements of the District Regulations Schedule pertaining to maximum percent of lot occupied, minimum floor area, maximum height of principal buildings, or setback, or that would increase infringement of buildings and structures already non-conforming in this regard until a permit has been issued by the Zoning Enforcement Officer. No Certificate of Occupancy shall be granted for a building or structure modified as above without a written order of the Board of Appeals.
- (d) Ordinary maintenance to a conforming or existing nonconforming building or structure, or improvements to same which do not result in infringement under the category of (c) above do not require the approval of the Zoning Enforcement Officer.
- (e) There shall be submitted with all applications for new building permits two (2) copies of a layout or plot plan drawn or sketched approximately to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, and such other information as may be necessary to determine and provide for the enforcement of this Law.
- (f) Modifications to existing buildings and structures which would result in infringement to the Law as noted in (c) above must be handled as a variance. Applications for such a variance shall be accompanied by two (2) copies of a layout or hand drawn sketch, approximately to scale, showing clearly the degree to which the modifications will violate the terms of the Law.
- (g) The Zoning Enforcement Officer 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, including manufactured, pre-fabricated and modular homes, or substantial improvement of any existing building must:
 - (1) be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure,
 - (2) use construction materials and utility equipment that are resistant to flood damage,
 - (3) use construction methods and practices that will minimize flood damage.
- (h) All applicants must conform to regulations in Attachment I.

1.14 Certificate of Occupancy (Compliance)

No land shall be used or occupied and no building hereafter erected, altered, or extended shall be used or occupied until a Certificate of Occupancy shall have been issued by the Zoning Enforcement Officer stating that all applicable provisions of this Law have been adhered to.

1.15 Fees

The Zoning Enforcement Officer shall issue building permits and certificates of occupancy where compliance is made with the provisions of this ordinance, and except on written order of the Board of Appeals, refuse to issue the same in the event of noncompliance, giving prompt written notice of such refusal and the reason therefore to the applicant.

The fees of each permit shall be set by the Village Board.

1.16 Health Department Requirements

No building permit or Certificate of Occupancy issued under the provisions of this Article shall become or remain valid unless the holder thereof has complied with the applicable rules and regulations of the Health Department of jurisdiction.

1.2 Board of Appeals

1.21 General Provisions

1.211 Creation, Appointment and Organization

A Board of Appeals is hereby created. The chairman and four additional members shall be appointed by the Village Board. The Board of Appeals shall choose its vice-chairman who shall preside in the absence of the chairman. The Board of Appeals shall appoint a secretary and shall prescribe rules for the conduct of its affairs.

1.212 Members of the Board of Trustees

No person who is a member of the Board of Trustees shall be eligible for membership on the Board of Appeals.

1.213 Term of Appointment

After the initial appointments for terms as specified in Section 267 of Village Law, all terms shall be for five years, with the term of one Board member expiring each year. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment by the Village Board for the unexpired term.

1.214 Rules of Procedure, By-Laws, Forms

The Board of Appeals shall have the power to make, adopt and promulgate such written rules of procedure, by-laws, and forms as they may deem necessary for the proper execution of their duties and to secure the intent of this Law. Such rules, by-laws and forms shall not be in

conflict with, nor have the effect of waiving, any provisions of this Law, or any other Laws of the Village of Middleburgh.

1.215 Staff

The Board of Appeals may employ such clerical or other staff assistance as may be necessary, and prescribe their duties, provided it shall not at any time incur expenses beyond the amount of the appropriation made and then available for that purpose.

1.216 Meetings

All meetings of the Board of Appeals shall be held at the call of the chairman. All meetings shall be open to the public. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member on every question, and shall keep records of all official actions. Every order, requirement, decision or determination of the Board of Appeals shall immediately be filed in the Office of the Village Clerk and shall be a public record.

1.22 Authority

The Board of Appeals is governed by and shall act in strict accordance with procedures specified by the Village Law, this Law, and its own duly-adopted rules, by-law and forms, and shall perform the following functions:

- (1) Decide any question properly brought before it involving the interpretation of any provision of this Law.
- (2) Hear and decide appeals from any decision, determination, act, or failure to act of the Zoning Enforcement Officer, and all matters properly referred to it by the Zoning Enforcement Officer.
- (3) Grant variances to provisions of this Law in accordance with Section 1.3.
- (4) Issue permits for special uses in accordance with Section 1.4 and other applicable provisions of this Law.

The Chairman of the Board of Appeals, and in his absence the acting chairman, may administer oaths and compel the attendance of witnesses at meetings and hearings.

1.221 Public Hearings

The Board of Appeals shall after due notice hold a public hearing on every appeal of application for a variance or for a special use permit referred to or taken to said Board or upon which it is required to pass, in accordance with this Law and the Village Law. The Board of Appeals shall have published a notice of each such hearing in a newspaper of general circulation in the Village of Middleburgh as least five days prior to such hearing. In addition, at least seven days prior to such public hearing, the Board of Appeals shall have sent by registered mail the notice of such a hearing, and an explanation of the variance or special use permit sought, to all property owners within 200 feet of the subject property. Such notices shall be sent to the last known address as shown by the most recent Village tax records.

1.222 Findings and Conclusions

After such public hearing and after considering the application, the Board of Appeals shall either grant or deny the variance or special use permit and shall make written findings of fact and conclusions concerning the subject matter of such hearing, including the reasons for the granting or denial of the relief sought.

1.223 Reporting and Filing of Decisions, Permits, and Variances

Every official and final decision of the Board of Appeals shall be by written resolution, each of which shall contain a full record of its findings in the particular case, and each of which shall be filed in the office of the Village Clerk, together with all pertinent documents. The Board of Appeals shall notify the Board of Trustees and the Planning Board in writing of each special use permit and variance issued or granted under provisions of this Law.

1.224 Rehearing and Reversal

Upon motion initiated by any member and adopted by majority vote of members present, but not less than a majority of all members, the Board of Appeals may vote to give notice and hold one rehearing to review any order, decision, or determination previously made. After such rehearing, the Board upon the concurring vote of all members present, and provided it shall then appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision, or determination reviewed will not be subject to prejudice thereby, may reverse, modify or annul its original order, decision, or determination.

1.23 Interpretation

The Board of Appeals shall, upon proper request, interpret any provision of this Law about which there is uncertainty, lack of understanding, or misunderstanding, ambiguity, or disagreement, and shall determine the exact location of any zoning district boundary about which there may be uncertainty or disagreement.

1.3 Variances

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Law, the Board of Appeals shall have the power to grant a variance in the application of any of the use regulations or provisions of this Law in such a way that the spirit of the law shall be observed and maintained, public health, safety, and welfare secured, and substantial justice done.

1.31 Application

Application for such variance may be made on an appropriate form by any property owner in the Village of Middleburgh allegedly aggrieved by the strict application of any of the provisions or requirements of this Law or who may desire to deviate therefrom.

1.32 Referral of Use Variances

All appeals for use variances shall be referred to the Planning Board. No decision shall be made by the Board of Appeals until such Planning Board review has been completed and a report issued. If the Planning Board fails to issue a report within 30 days, the Board of Appeals shall assume that a favorable report has been issued.

1.33 Criteria for Granting Variance

A variance to provisions of this Law shall be granted by the Board of Appeals only if or wherever it finds that for each and every permitted and special use under the zoning regulations (Attachment I) for the particular district where the property is located:

- (a) There are special circumstances or physical conditions fully described in the findings, applying to the land or buildings for which variance is sought – such as exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions – and that said circumstances or conditions are peculiar to such particular land or building and do not apply generally to land or buildings in the neighborhood; and that said circumstances or conditions are such that the strict application of the provisions of this Law would result in practical difficulty or unnecessary hardship that would deprive the applicant of the reasonable use of such land or building.
- (b) For reasons fully set forth in the findings, that the granting of the variance is necessary for the reasonable use of the land or buildings involved and that the variance, as granted by the Board of Appeals, is the minimum variance that will accomplish that purpose.
- (c) The granting of the variance will be in harmony with the general purpose and intent of this Law and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (d) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
- (e) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
- (f) The requested use variance, if granted, will not alter the essential character of the neighborhood.
- (g) The alleged hardship has not been self-created.

1.34 Area Variances

Where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height, and all other regulations not specifically related to use of land or building, unreasonable or impossible to comply with, the Board of Appeals shall have the power to vary or modify these regulations as long as the spirit of the regulation to be altered is observed. In granting an area variance the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the community by such grant. In making such determination the Board must take into account the following factors:

- (1) There is no practical way for the applicant to accomplish his or her intended objective observing the area regulations specified in this Law.
- (2) The variance requested will not be unduly detrimental to adjoining properties.
- (3) 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.

- (4) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
- (5) Whether the requested area variance is substantial.
- (6) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- (7) 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.

1.35 Financial Gain Not a Criterion

In no case shall a use or area variance be granted solely for reasons of additional financial gain on the part of the owner or occupant of the land or building involved.

1.36 Conditions

In granting any variance, the Board of Appeals may prescribe any conditions that it deems to be necessary or desirable. The Board of Appeals, in the granting of use and area variances, shall grant the minimum variance that it shall deem necessary and adequate.

1.37 Compliance with Rest of Law

The granting of a variance to any provisions of this Law shall not obviate the necessity of complying in every other respect with the other provisions of this Law.

1.38 Fee

Each application to the Board of Appeals for a variance shall be accompanied by a fee set annually by the Village Board.

1.4 Special Use Permits

1.41 Application and Issuance

On referral by the Zoning Enforcement Officer, after application has been made to him for a building permit, or on direct application, the Board of Appeals is hereby authorized to issue a special use permit for any use which this Law requires the obtaining of such permits from the Board of Appeals, subject to applicable regulations of this Law.

1.42 Standards Applicable To All Special Use Permits

- (a) The location and size of the use, the nature and intensity of the operations involved, the size of this site in relation to the proposed use, and location of the site with respect to the existing or future streets giving access to it, shall be such that it will be in harmony with the orderly development of the district, and the location, nature and height of buildings, walls, and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

- (b) Operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibrations, or flashing lights, than would be the operations of any permitted use.
- (c) Suitability of the property for the proposed use considering its size, topography, vegetation, soils, hydrology and, if appropriate, its ability to be buffered or screened (landscaping) from neighborhood properties and public roads. The Zoning Board of Appeals may impose setbacks larger than those required if it deems appropriate.
- (d) Environmental, social, and economics impacts of traffic, noise, dust, odors, release of harmful substances, solid waste disposal, glare, or any other nuisances.
- (e) Any restrictions or conditions on design of structures or operation of the use (including hours of operation) necessary either to ensure compatibility with surrounding uses or to protect the natural and scenic resources of the Village.
- (f) Adequacy of parking for the proposed use, and its accessibility to fire, police, and emergency vehicles.
- (g) Any applicable guidelines in Article IV of the Village of Middleburgh Zoning Law.

1.43 Required Findings

After a public hearing is held in accordance with Village Law 274-b (6), the Zoning Board of Appeals shall have sixty-two (62) days after the public hearing to make a decision. The Zoning Board of Appeals shall not issue a special use permit unless it makes a written finding that the proposed use, if conducted to any conditions imposed, will satisfy the criteria in Section 1.1 above. If the Zoning Board of Appeals does not make such a finding, it shall deny the special use permit in writing setting forth the reasons for the denial.

1.44 Referrals to the Planning Board

At least 30 days before the date of public hearing held in connection with any application for a special use permit (Section 1.4) submitted to the Board of Appeals, said Board shall transmit to the Planning Board a copy of said application, and shall request that the Planning Board submit to the Board of Appeals its advisory opinion on said application. The Planning Board shall submit a report of such advisory opinion prior to the date of said public hearing. The failure of the Planning Board to submit such report shall be interpreted as a favorable opinion for the granting of the special use permit applied for.

1.45 Renewal, Time Limit, and Extension

The Board of Appeals may require, as a condition to the issuance of any special use permit, that it be periodically renewed, or may issue any special use permit for a specific time period, subject to adequate guarantees that the use covered will be terminated at the end of the period specified or such extension thereof as may be granted by said Board. Any such renewal or extension shall be subject to the same procedure and requirements as specified herein for the original issuance of the special use permit involved.

1.46 Submission of Plans

Each application for a special use permit shall be accompanied by:

- (a) a proposed plan or sketch, at an approximate scale, showing the size and placement of the lot, and the design and location of the proposed facilities, (including driveways, parking spaces, screens, and fences) and existing and proposed contour lines. The location of the subject lot and all streets within a radius of 1,000 feet shall also be shown.
- (b) a brief narrative describing the proposed use.
- (c) a short form Environmental Assessment Form (EAF) (unless the Zoning Board of Appeals requests a long-form EAF).
- (d) an agricultural data statement, if required.

1.47 Fees

Each original application to the Zoning Board of Appeals for a special use permit shall be accompanied by a fee set annually by the Village Board.

1.5 Procedure for Appeals

Any person allegedly aggrieved by a decision, determination, act or refusal to act of the Zoning Enforcement Officer, may file an appeal with the Board of Appeals. All appeals and applications made to the Board of Appeals shall be in writing on forms prescribed by said Board and shall clearly set forth the interpretation that is claimed, the use for which the special use permit is needed, 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.

1.51 Public Hearing

The Board of Appeals shall, after due notice, hold a public hearing on every appeal or application for a variance or for a special use permit referred or taken to said Board or upon which it is required to pass, in accordance with this Law and the Municipal Village Law. The Board of Appeals shall have published a notice of each such hearing in a newspaper of general circulation in the Village of Middleburgh at least five days prior to such hearing.

The Board of Appeals shall have sent, by registered mail, the notice of the variance or special use permit sought, to all property owners within 200 feet of the subject property. Such notices shall be sent to the last known address as shown by the most recent Village tax records.

1.52 Notices and Referrals

The Board of Appeals shall, at least five (5) days prior to a public hearing, mail notice thereof to the parties and to the Regional State Park Commission having jurisdiction over any state park or parkway within 500 feet of the property affected by said appeal.

1.521 Planning Board Referrals

Before taking final action on certain appeals for a variance or special use permit, the Board of Appeals shall refer such matters to the Middleburgh Planning Board and Schoharie County Planning Commission for report and recommendation in accordance with the provisions of Section 239-m of General Municipal Law.

1.53 Findings and Conclusions

Within 60 days after the final public hearing, the Board of Appeals shall either grant or deny the variance or special use permit and shall make written findings of facts and conclusions concerning the subject matter of such hearing, including the reasons for the granting or denial of the relief sought.

1.54 Reporting and Filing of Decisions, Permits, and Variances

Every official and final decision of the Board of Appeals shall be a written resolution, each of which shall contain a full record of its findings in the particular case, and each of which shall be filed in the office of the Village Clerk, together with all pertinent documents. The Board of Appeals shall notify the Village Board and the Planning Board in writing of each special use permit and variance issued or granted under provisions of this Law.

1.55 Rehearing and Reversal

Upon motion initiated by any member and adopted by unanimous vote of members present, but not less than a majority of all members, the Board of Appeals may vote to give notice and hold one rehearing to review any order, decision, or determination previously made. After such rehearing, the Board, upon the concurring vote of all members present, and provided it shall then appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision, or determination reviewed, will not be subject to prejudice thereby, may reverse, modify or annul its original order, decision, or determination.

1.6 Review of Large-Scale Planned Residential, Commercial, and Industrial Developments

In each case where a building or use or a group of buildings is proposed in a large-scale planned residential, commercial, or industrial development, not including new streets, the Zoning Enforcement Officer shall refer the site plan for such proposal to the Planning Board for review before issuing a building permit. The Planning Board shall either approve, approve with modifications, or disapprove said site plan, stating the reasons therefore in writing in its records, and shall send a written notice of its decision to the Zoning Enforcement Officer, who then shall act accordingly, either issuing a building permit, postponing issuing such permit pending compliance with the decision of the Planning Board, or denying such permit. The Planning Board, in reviewing the proposal, shall follow the same procedure as outlined for Planned Development Districts (Section 4.25).

1.61 Proposals

All such proposals are consistent with the need to minimize flood damage – refer to Section 4.26.

1.62 Flood Hazard Facilities

All public utilities and facilities, such as sewer, gas, electrical, water systems, and cable TV are located, elevated, and constructed to minimize or eliminate flood damage.

1.63 Flood Hazard Drainage

Adequate drainage is provided so as to reduce exposure to flood hazards.

1.7 Site Plan Review

All new land construction activities within the Village shall require a site plan review and approval before being undertaken, except the following:

- (1) Construction of one- or two-family dwelling and ordinary accessory structures, and related land use activities, unless located within the flood protection district.
- (2) Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this local law.
- (3) Ordinary repair or maintenance or interior alterations that do not substantially change the use or the structure of an existing commercial or residential structure.
- (4) Exterior alterations or additions to an existing residential or commercial structure which does not substantially change its use, and which would not increase the square footage of the existing structure by more than 25 percent and having a cost value of less than \$10,000
- (5) Nonstructural agricultural or gardening uses not involving substantial timber cutting.
- (6) Signs under 10 square feet.
- (7) The sale of agricultural produce and temporary structures related to the sale of agricultural produce.

Any person uncertain of the applicability of this local law to a given land use activity may apply in writing to the Zoning Officer for a written jurisdictional determination. Parties with standing that disagree with a determination of the Zoning Officer may request an interpretation from the Zoning Board of Appeals.

1.71 Sketch Plan

A sketch plan conference may be held between the Planning Board and the applicant prior to the preparation and submission of a formal site plan. The intent of such a conference is to enable the applicant to inform the Planning Board of his proposal prior to the preparation of a detailed site plan, and for the Planning Board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant should provide the following:

- (a) A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measurements and features to comply with flood hazard and flood insurance regulations;
- (b) A sketch or map of the area which clearly shows the location of the site with respect to nearby streets, rights-of-way, properties, easements and other pertinent features; and
- (c) A topographic or contour map of adequate scale and detail to show site topography.
- (d) All site plans are required to comply with the State Environmental Quality Review Act (SEQRA), and a long or short Environmental Assessment Form will be required.

1.72 Application for Site Plan Approval

An application for site plan approval shall be made in writing to the chairman of the planning board and shall be accompanied by information contained on the following checklist. Where the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as determined necessary by the Planning Board at said sketch plan conference.

1.73 Site Plan Checklist.

1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
2. North arrow, scale and date;
3. Boundaries of the property plotted to scale;
4. Existing watercourses;
5. Grading and drainage plan, showing existing and proposed contours;
6. Location, design, type of construction, proposed use and exterior dimensions of all buildings;
7. Location, design and type of construction of all parking and truck loading areas, showing access and egress;
8. Provision for pedestrian access;
9. Location of outdoor storage, if any;
10. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;
11. Description of the method of sewage disposal and location, design and construction materials of such facilities;
12. Description of the method of securing public water and location, design and construction materials of such facilities;
13. Location of fire and other emergency zones, including the location of fire hydrants;
14. Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;
15. Location, size and design and type of construction of all proposed signs;
16. Location and proposed development of all buffer areas, including existing vegetative cover;
17. Location and design of outdoor lighting facilities;
18. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;
19. General landscaping plan and planting schedule;
20. An estimated project construction schedule.
21. Record of application for and approval status of all necessary permits from state and county officials.
22. Identification of any State or County permits required for the project's execution;
23. Other elements integral to the proposed development as considered necessary by the Planning Board.

1.74 Review of Site Plan

The Planning Board's review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:

- (a) Location, arrangement, size, design and general site compatibility of buildings, lighting and signs. Signs and lights will be compatible and in scale with building elements and will not dominate the overall visual impact of the project and neighborhood.
- (b) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- (c) Location, arrangement, appearance and sufficiency of off-street parking and loading.
- (d) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- (e) Adequacy of storm water and drainage facilities.
- (f) Adequacy of water supply and sewage disposal facilities.
- (g) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of the existing vegetation.
- (h) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- (i) Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- (j) A review for compliance with the intentions of the Comprehensive Plan.

1.75 Planning Board Action on Site Plan

Within sixty-two (62) days of the acceptance of a complete application for site plan approval, the planning board shall render a decision, file said decision with the Village Clerk, and mail such decision to the applicant with a copy to the Zoning Enforcement Officer. The time within which a decision must be rendered may be extended by mutual consent of the applicant and Planning Board.

1.76 Reimbursable Costs

Costs incurred by the Planning Board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan shall be charged to the applicant, not to exceed 2% of the total cost of proposed project.

1.77 Performance Guarantee

No certificate of compliance shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed. The sufficiency of such performance guarantee shall be determined by the Village Board after consultations with the Planning Board, Zoning Enforcement Officer, Village Attorney and other appropriate parties.

1.78 Inspection of Improvements

The Zoning Enforcement Officer shall be responsible for the overall inspection of site improvements including coordination with the Planning Board and other officials and agencies, as appropriate.

1.79 Integration of Procedures

Whenever the particular circumstances of proposed development require compliance with either the special use procedure in this Zoning Ordinance or other requirements of the Village, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this section with the procedural and submission requirements for such other compliance.

1.80 Waivers

The Planning Board may waive certain requirements of Section 1.72 if a majority of the Planning Board determines that certain information is not necessary due to the type of project or project location. Waivers may be requested by applicants in writing and the Planning Board shall issue waivers in writing outlining the reasons for the waivers.

1.8 Subdivision Guidelines

1.81 Filing Plats and/or Deeds

A. Due to the small amount of land that is available in the Village of Middleburgh, the Village does not find it necessary to have a process to approve or deny subdivisions (lot-line adjustments) within the Village, pursuant to Section 7-728 of the NYS Village Law.

B. Any property owner that wants to file with the Schoharie County Clerk a plat and/or deed that involves subdivision (lot-line adjustment) shall only create parcels that are in accordance with this Zoning Law and must receive the proper written area verification from the Zoning Enforcement Officer.

1.82 Zoning Enforcement Officer Review and Area Verification

A. Prior to filing a plat and/or deed with the Schoharie County Clerk that involves a subdivision (lot-line adjustment), a land owner shall provide the Village Zoning Enforcement Officer with a plat and/or deed that is adequate to determine that the minimum area regulations of this law are met. The Zoning Enforcement Officer may require a survey to satisfy this requirement.

B. Within thirty (30) business days of receiving a plat and/or deed, if the Zoning Enforcement Officer finds that the parcels involved in the plat and/or deed meet the minimum area regulations of the Village Zoning Law, the following written verification from the Zoning Enforcement Officer must be placed on the plat and/or deed:

“The Village of Middleburgh does not review subdivisions (lot-line adjustments) pursuant to Section 7-728 of the NYS Village Law. This plat and/or deed was reviewed by the Village Zoning Enforcement Officer and the parcel(s) indicated on the plat and/or deed meet the minimum area regulations and have adequate access for emergency vehicles as required by the Village of Middleburgh Zoning Law. This verification does not guarantee that a parcel is buildable.”

C. The written verification must be signed and dated by the Zoning Enforcement Officer

D. If the Zoning Enforcement Officer finds that any parcel involved in the plat and/or deed that involves a subdivision (lot-line adjustment) does not meet the minimum area regulations of the Village Zoning Law, the written verification will not be provided and such plat and/or deed shall not be filed with the Schoharie County Clerk unless the plat and/or deed is revised to meet the area regulations or an area variance is granted. If an area variance is granted, the Zoning Enforcement Officer shall provide the written verification upon proper review and approval by the Zoning Board of Appeals.

ATTACHMENT IV

AMENDMENTS

1.1 General Provisions

1.11 Amendments by Village Board

The Village Board from time to time on its own motion or on petition by taxpayers or on recommendations of the Planning Board after public notice and hearing as prescribed by the Village Law, may amend, supplement, modify, or repeal, in whole or part, this Law or the boundary of any district established by this Law.

1.12 Advisory Report by Planning Board

Any such proposed change in text or zoning district boundary not originating from the Planning Board shall first be referred to the Planning Board which shall submit a written report to the Village Board prior to public hearing thereon by the Village Board. The Planning Board shall favorably recommend adoption of an amendment or change in this Law or in a district boundary, only if:

(a) Such change does not conflict with the general purposes, goals and intent of this Law.

The Planning Board shall submit to the Village Board its advisory report within 30 days after receiving notice from the Village Clerk of the proposed change. The failure to make such report within 30 days shall be deemed to be a favorable recommendation.

1.2 Public Notice and Hearing

1.21 Public Hearing

No such change in text or zoning district boundary of this Law shall become effective until after a public hearing is held in relation thereto at which the general public shall have an opportunity to be heard.

1.22 Newspaper Notice of Hearing

At least 15 days prior to the date of such public hearing, a notice of the time and place shall appear in a paper of general circulation. Such notice shall describe the area, boundaries, regulations, or requirements that such proposed change involves.

1.23 Written Notice of Change or Amendment

At least ten days prior to the date of said public hearing, written notice of such proposed change or amendment affecting property within 500 feet of the boundaries of any adjoining Town or Village shall be given to the Town or Village Clerk. The Town or Village shall have the right to appear and to be heard at such public hearing with respect to any such proposed change or amendment. Written notice shall also be sent to any applicable agency as required in Section 178 of the Village Law.

1.24 Referral to County Planning Commission

Before taking final action on certain proposed amendments to this Law, as specified in, and in accordance with, Section 239-m of Article 12-B of the General Municipal Law, the Village Board shall refer such amendments to the Schoharie County Planning Commission for report thereon.

1.25 Effective Date

This Law shall take effect upon filing with the Secretary of State.

1.3 Publication and Posting

Every Zoning Law and every amendment to a Zoning Law (including any map incorporated therein) adopted in accordance with the Village Law shall be entered in the minutes of the Village Board, and a copy or abstract thereof (exclusive of any map incorporated therein) shall be published once in a newspaper published in the Village, if any, or in such newspaper published in the County in which such Village may be located, having circulation in such Village, as the Board of the Village may designate. In addition, a copy or abstract of such Law or amendment, whether with a copy of any map incorporated therein, shall be posted on the signboard maintained by the Village Clerk pursuant to Village Law. Affidavits of the publication and posting thereof shall be filed with the Village Clerk. Such Law shall take effect ten days after such publication and posting, but such Law or amendment shall take effect from the date of service against a person served personally with a copy thereof certified by the Village Clerk under the corporate seal of the Village and showing the date of its passage and entry in the minutes.

1.4 Protest

A protest against a proposed change or amendment to this Law, if signed by the owners of 20% or more of the area of the land included in such proposed change, or by the owners of 20% or more of the land immediately adjacent extending 100 feet there from or by the owners of 20% or more of the land directly opposite thereto extended 100 feet from the street frontage of such opposite land, shall require the favorable vote of at least four members of the Village Board to become effective.

1.5 Change of Zoning in Subdivision Approval

In approving subdivision plats where one or more lots do not comply with the zoning regulations, application may be made to the Board of Appeals for an area variance, without the necessity of a decision or determination of the Zoning Enforcement Officer. The Planning Board shall provide a written recommendation to the Board of Appeals concerning the proposed area variance.

1.51 Review of Decisions of Planning Board

Any person or persons, jointly or severally aggrieved by any decision of the Planning Board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the Village, may bring a proceeding to review in the manner provided by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the Office of the Board.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a

part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the Planning Board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceedings under this section shall have precedence over all other civil actions and proceedings.

1.6 Exceptions

Certain nonconforming uses which are considered sufficiently objectionable, undesirable, out of character with the district in which located, and degrading to the value of other buildings and uses permitted in the district, so as to deter the proper and orderly development and general welfare of such district and of the Village, and which are inconsistent with the purposes and intent of this Law, shall be terminated.

1.7 Public Properties

This law is not intended to restrict the construction or use of public buildings or lands or property supported in part or in whole by taxes on property in the Village of Middleburgh in the exercise of a governmental function. Such structure shall conform in character to the environment in which erected.

1.8 Public Utilities

This Law is not intended to restrict the construction or use of underground or overhead public utility distribution facilities or of other public utility structures operating under the laws of the State of New York, except as otherwise provided in this Law, and except that any such structures shall conform in character to the environment in which erected.

1.9 Lot in Different Districts

If a lot is divided by a zoning district boundary, one of the following conditions shall apply:

- (a) the respective district regulations shall apply to each portion of the lot so divided, or,
- (b) the regulations of the more restricted district may be applied to the entire lot, or,
- (c) the Board of Appeals may establish requirements within the intent of this Law, which represent a compromise between the requirements of the districts involved, and which are approximately proportional to the area of the lot that lies within each different district. In no case shall such requirements be less restrictive than the regulations in the least restrictive district.

The least-restrictive district shall be determined by the number of permitted uses in each zone. The greater the number of uses, the less restrictive the zoning district shall be determined to be.

2.0 Fee

Every petition for a change or amendment to this Law shall be accompanied by a fee set by the Village Board to help defray the cost of such technical studies or professional assistance as may be necessary in connection therewith.