

ZONING LAW – Part 2 of 3

Town of Hardenburgh. New York

TOWN OF HARDENBURGH

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Part 2 - Table of Contents

ARTICLE VI ENFORCEMENT AND ADMINISTRATION	4
6.1 Enforcement and Penalties	4
6.2 Building Permits	5
6.3 Certificates of Occupancy	5
6.4 Non-Conforming Uses and Bulk	6
6.5 Existing Undersized Lots	7
ARTICLE VII BOARD OF APPEALS	8
7.1 Establishment, Appointment and Organization	8
7.2 Powers and Duties	8
7.3 Public Hearings	9
7.4. Interpretation	9
7.5 Appeals	9
7.6 Variances	10
ARTICLE VIII PLANNING BOARD	11
8.1 Powers and Duties	11
8.2 Special Permits	12
8.3 Advisory Opinion	15

ARTICLE VI

ENFORCEMENT AND ADMINISTRATION

SECTION 6.1 ENFORCEMENT AND PENALTIES

6.1.1 ENFORCEMENT OFFICER

This Zoning Law shall be enforced by the Building Inspector who shall be appointed by the Town Board. No building permit or certificate of occupancy shall be issued by the Building Inspector for any purpose except in compliance with the provisions of this Law.

6.1.2 INSPECTION AND NOTICE OF VIOLATION

6.1.2.1 The Building Inspector, based upon reasonable cause and upon the showing of proper credentials and in the discharge of his or her duties, is authorized to enter, inspect and examine any building, structure, place, premises or use in the Town of Hardenburgh at any reasonable hour with regard to the provisions of this Law and to issue a written order for the proper remedying or compliance, within a reasonable period of time, of any condition found to be in violation thereof. In case of refusal of entry, the Building Inspector may obtain a warrant from a court of competent jurisdiction.

6.1.2.2 The Police, the Fire Department Inspector and the Health Department Inspector shall, at the request of the Building Inspector or on their own initiative, upon the showing of proper credentials, examine or investigate, based upon reasonable causes, any building, structure, use or premises with regard to any provision of this Law and shall issue reports and recommendations to the Building Inspector regarding any violation thereof. In the case of refusal of entry, a warrant may be obtained from a court of competent jurisdiction.

6.1.3 LEGAL ACTION BY ENFORCEMENT OFFICER

If an unlawful condition or use is found not to have been properly remedied or made to comply with the provision of this law by the expiration of the reasonable time period granted by the Building Inspector, then the Building Inspector is empowered immediately to institute appropriate action in the Town Court of the Town of Hardenburgh to prosecute any occupant, owner, or offender for the violation and to enforce the penalties set forth in section 6.1.5 hereof; and, upon approval of the Town Board, to take any other appropriate action, charge, or proceeding in the proper legal court for the prevention, cessation, or discontinuance of any condition, use, or occupancy, or act in, on, of, or around any building, structure, or tract of land in violation of this local law and for the prosecution of any owner, occupant, or offender.

6.1.4 LEGAL ACTION BY TAXPAYERS

If the Enforcement Officer fails or refuses to proceed with any action in accordance with Section 6.1.3 within a thirty-day period following written request by any taxpayer so as to proceed, then any three or more taxpayers of the Town of Hardenburgh residing or owning property in the Town wherein such condition or use in violation of this Law exists or in an adjacent district and who are jointly or severally aggrieved by such violation, may institute for reasonable causes, such appropriate action, charge, or proceeding in like manner as such Enforcement Officer is authorized to do under 6.1.3 above.

6.1.5 PENALTIES FOR VIOLATIONS

A violation of any provision of this Law shall be an offense. Each week of continued violation shall constitute a separate additional violation. If more than one provision is violated, each provision shall be considered a separate offense, each liable to maximum penalties as specified in the "Ordinance Establishing Enforcement Procedures for Violation of the Town of Hardenburgh Land Subdivision Regulations"

SECTION 6.2 BUILDING PERMITS

6.2.1 BUILDING PERMIT REQUIRED

A building permit in accord with the procedures of the Town of Hardenburgh shall be issued prior to any action requiring such a permit. Upon receipt of an application for a building permit, the Building Inspector shall review said application to determine compliance with all relevant provisions of this Zoning Law and act to approve, deny or refer such application, as appropriate, within 30 days of receipt. A building permit shall only be issued if the proposed action complies with all relevant provisions of this Law as well as those of any other applicable codes, laws or ordinances of the Town of Hardenburgh. All applications for such permits shall be made in accordance with the requirements established by the Town Board including payment of a fee in accordance with a schedule established therefor.

6.2.2 PRIOR APPROVALS REQUIRED

The Building Inspector shall not issue a building permit for any use requiring issuance of a special permit and approval of a site plan by the Planning Board unless and until such approval has been transmitted in writing by the Planning Board to the Building Inspector and any conditions attached thereto have been satisfied.

SECTION 6.3 CERTIFICATES OF OCCUPANCY

An application for a certificate of occupancy shall be made to the Building Inspector by all persons desiring permission to undertake the following:

- a. Occupy and use a building or structure following construction, erection, alteration, extension, relocation, or structural changes, wholly or in part, in accord with previously issued building permit;
- b. Change the use of an existing building or of a part thereof;

c. Occupy and use vacant land for any commercial or industrial uses other than those consisting principally of tilling the soil;

All applications for such certificates shall be made in accordance with requirements established by the Town Board and shall only be issued upon a finding by the Building Inspector that all provisions of this Law have been satisfied including any conditions established as part of the approval of a special permit.

SECTION 6.4 NON-CONFORMING USES AND BULK

The provisions of this section shall apply to all non-conforming uses or bulk existing on the effective date of this Law and to a use or bulk that becomes nonconforming by reason of any amendment thereof, and to buildings or other structures housing such uses. Any appeals from this provision shall be dealt with in accord with the procedures provided in Article VII.

6.4.1 CONTINUANCE

Any nonconforming use or building may be continued indefinitely except as hereinafter provided in this Section.

6.4.2 CESSATION OF USE

Any nonconforming use which is discontinued for a period of more than three years, shall thereafter be replaced only by a permitted use; except that upon issuance of a special permit by the Planning Board, in accord with the provisions of Section 8.2, a building which housed a nonconforming use may be used for a similar or more restricted use. The Board shall consider, in addition to those criteria set forth in Section 8.2.3, the size, condition and adaptability of the building to other uses in arriving at its decision.

6.4.3 CHANGE TO CONFORMING USE

A nonconforming use may be changed to a conforming use at any time, but shall not thereafter be changed back to a nonconforming use.

6.4.4 CHANGE TO ANOTHER NONCONFORMING USE

A nonconforming use may be changed to another nonconforming use upon a determination by the Planning Board that the proposed nonconforming use is similar in nature to the existing nonconforming use or more in character with surrounding conforming uses than the existing nonconforming use.

6.4.5 EXTENSION OF NONCONFORMING USE

A nonconforming use may be enlarged or extended or relocated to a different position on the lot which it occupies so long as such enlargement or extension shall not exceed 50% of the area devoted to the use at the time of enactment of this Law, so long as no new non-conformities are created.

6.4.6 MAINTENANCE AND REPAIRS

Customary maintenance of a building or other structure containing a nonconforming use is permitted, including necessary structural repairs and minor alterations, subject to the provisions of 6.4.5 above.

6.4.7 MODIFICATIONS TO NONCONFORMING BUILDINGS

Buildings and structures which are only non-conforming in bulk may be altered, moved, reconstructed, or enlarged provided that such change does not extend beyond that part of the existing structure which causes the nonconformity or increase the degree of, or create any new, nonconforming bulk in such building and does not violate any other provisions of this Law.

6.4.8 REDUCTION IN LOT AREA

No lot shall be reduced in area so that it creates a non-conforming bulk or use in violation of any regulations contained in this Law.

6.4.9 DAMAGE OF NONCONFORMING USE OR BULK

A building housing a nonconforming use or which is nonconforming in terms of bulk or set back, which sustains damage or destruction by any cause, may be repaired or reconstructed, so long as the nonconformity is not increased or expanded, subject to the provisions of 6.4.2.

SECTION 6.5 EXISTING UNDERSIZED LOTS

6.5.1 SEPARATE LOTS

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

- a. Such lot does not adjoin other lands held by the same owner which lands may be aggregated to create a lot of two acres or more or a lot more nearly two acres in area.
- b. All other bulk and yard requirements are complied with.

6.5.2 APPROVED SUBDIVISIONS

Any lot in a subdivision whose plat has been approved by the Planning Board and properly filed prior to the passage of this Law and whose area and/or width and/or depth are less than the specified minimum lot requirements of this Law shall be considered as complying with such minimum lot requirements.

ARTICLE VII

BOARD OF APPEALS

SECTION 7.1 ESTABLISHMENT APPOINTMENT AND ORGANIZATION

7.1.1 Pursuant to applicable provisions of the Town Law, the Town Board shall appoint a Board of Appeals consisting of three members and shall designate its chairman. No member of the Board of Appeals shall be a member of the Town Board or the Planning Board. Members of the Board of Appeals may receive compensation for their services as provided by the Town Board.

7.1.2 Of the members first appointed, one shall hold office for a term of one year, one for a term of two years and one for a term of three years. Each successor to an original appointee shall be appointed for a term of five years. A vacancy occurring for reason other than by expiration of a term shall be filled by the Town Board by appointment for the unexpired term only.

7.1.3 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 provision of this Law or any other Law of the Town of Hardenburgh.

SECTION 7.2 POWERS AND DUTIES

The Board of Appeals is governed by, and shall act in strict accordance with the procedures specified by Town Law, this Law, and its own duly-adopted rules, by-laws, and forms. Upon proper request made in the form and manner prescribed by the Board and accompanied by a fee in accord with a schedule adopted by the Town Board, the Zoning Board of Appeals shall perform the following functions:

7.2.1 Hear and decide any question properly brought before it involving the interpretation of any provision of this Law;

7.2.2 Hear and decide appeals from any decision, determination, act, or failure to act of the Enforcement Officer, and all matters properly referred to it by the Building Inspector;

7.2.3 Grant variances to provisions of this Law in accordance with Section 7.6.

In exercising the above mentioned powers and duties, the Board of Appeals may, in conformity with Town Law, reverse, affirm or modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as ought to be made in the case referred to it. To that end the Board shall have all the powers of the Enforcement Officer from whom the appeal is made. The concurring vote of a majority of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Enforcement Officer or to decide in favor of the applicant any matter upon which such Board is required to pass.

SECTION 7.3 PUBLIC HEARINGS

The Board of Appeals on due notice shall hold a public hearing on every appeal and application for a variance referred to said Board or upon which it is required to pass under this law.

7.3.1 NOTICE

Notice of each public hearing shall be published in a newspaper of general circulation in the Town of Hardenburgh at least fifteen (15) days prior to such hearing. In addition, the Board of Appeals shall cause a notice of such hearing and an explanation of any change sought to be sent to the owners of all property within 400 feet of the subject property. Such notices shall be sent to the last known address as shown on the most recent Town tax records and mailed at least fifteen (15) days prior to such public hearing.

7.3.2 FINDINGS AND CONCLUSIONS

Within 60 days after such public hearing, and after considering the application, the Board of Appeals shall either grant or deny the request or appeal and make a written report on the findings and conclusions concerning the subject matter of such hearing, including the reasons for the grant or denial of the relief sought. Such decision shall be filed in the office of the Town Clerk within 10 days.

SECTION 7.4 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.

SECTION 7.5 APPEALS

7.5.1 Any person allegedly aggrieved by a decision, determination, act, or refusal to act of the Enforcement Officer may file an appeal with the Board of Appeals. Such request shall clearly state the decision, determination, act, or failure to act, of the Enforcement Officer from which the appeal is taken.

7.5.2 Any appeal from a decision of the Enforcement Officer, properly filed with the Board of Appeals, shall stay all proceedings in furtherance of the action appealed from, unless the Enforcement Officer certifies to the Board of Appeals that by reason of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life and property.

7.5.3 The Board of Appeals shall have the power to grant a restraining order to stay all proceedings in furtherance of the action appealed from, over any action by the Enforcement Officer from whom the appeal is taken, upon notice to the Enforcement Officer and on due cause shown.

SECTION 7.6 VARIANCES

Where strict application of any of the requirements of this Law would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of his land or building--but in no other case--the Board of Appeals shall have the power, in passing upon appeals, to grant a variance to any of the regulations or provisions of this zoning law relating to the area, bulk, construction or alteration of building or structures, or the use of land and buildings, so that the spirit of this Law shall be observed; public health, safety and welfare secured; and substantial justice done. Application for such variance shall clearly state the specific provisions of this Law from which a variance is sought, the special circumstances which allegedly justify such variance, and the interpretation or ruling which is desired.

7.6.1 CRITERIA FOR GRANTING VARIANCES

A variance to the provisions of this Law shall be granted by the Board of Appeals only as set forth below:

a. Use Variance

A variance to permit a parcel of land or a building to be used for a purpose not otherwise allowed may only be granted when the applicant demonstrates that the zoning has caused unnecessary hardship and is able to show that:

- (1) The applicant is deprived of all economic use or benefit from the property;
- (2) The circumstances applying to the property are unique and do not generally apply to other properties in similar circumstances;
- (3) The use to be authorized by the variance will not alter the essential character of the surrounding area; and
- (4) The hardship is not self created.

b. Area Variance

Prior to granting permission to waive the dimensional requirements applying to a parcel of land the Board of Appeals shall consider the following:

- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of the variance.
- (2) Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
- (3) Whether the requested variance is substantial
- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.
- (5) Whether the alleged difficulty was self-created (although it does not necessarily preclude the granting of the area variance).

c. For reasons fully set forth in the findings, the granting of the variance by the Board of Appeals shall be the minimum variance necessary.

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

7.6.2 CONDITIONS AND COMPLIANCE TO LAW

In granting any variance the Board of Appeals may prescribe any conditions that it deems to be necessary, or desirable. 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.

7.6.3 REFERRALS

a. Referral to the Town Planning Board

At least 30 days before the date of a public hearing held in connection with any application for a variance submitted to the Board of Appeals, the Board of Appeals 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 prior to the date of said hearing. Should the Planning Board fail to submit such report within the stipulated time, the Board of Appeals may proceed to make a determination.

b. Referral to Ulster County Planning Board

Any application for a variance involving real property lying within 500 feet of any of the features listed under Section 9.3.2 (a) shall be referred to the Ulster County Planning Board prior to final action in accord with Sections 239.1. and m. of the General Municipal Law. The Board shall not make a determination until it has received comment from the Ulster County Planning Board or until 30 days has elapsed.

ARTICLE VIII

PLANNING BOARD

SECTION 8.1 POWERS AND DUTIES

In addition to those other powers and duties assigned to it by law, the Planning Board is hereby empowered to perform the following functions:

8.1.1 Issue special permits for those uses specifically listed as requiring such a permit in the Use Schedule in accord with the provisions of Section 8.2 below, including approval of the site development plan.

8.1.2 Review and submit advisory opinions concerning applications for variances and amendments to the zoning regulations, as required by this Law.

All resolutions or official actions of the Planning Board shall require the concurring vote of a majority of the Board.

SECTION 8.2 SPECIAL PERMITS

Pursuant to an application, either directly or through the Building Inspector, the Planning Board is hereby authorized to issue a special permit only for a use specifically listed as requiring such permit, subject to the following regulations and procedures:

8.2.1 APPLICATION

Each application for a special permit shall be submitted in the number of copies and form prescribed by the Planning Board, accompanied by a fee in accord with a schedule adopted by the Town Board, and shall include the following data. The Planning Board, at the request of the applicant, may waive such information as it deems not relevant to its review or which would cause unusual hardship to obtain.

a. Legal Data

- (1) The names of all owners of record of the property in question and of all adjacent property and the lot, block and section number of such properties as shown on the Town Tax Assessment Maps.
- (2) A survey of the property boundary, building or setback lines, if different from those required in the Zoning Law, and lines of existing streets and lots as shown on the Tax Assessment Maps. Reservations, easements and areas dedicated to public use shall also be shown.

b. Existing Features

- (1) A plan showing the location of existing buildings on the site and on adjacent property if within 200 feet of the property line.
- (2) Location of existing sewage disposal systems, wells, culverts and drains on the property, with pipe sizes, grades and direction of flow.
- (3) The location of existing features such as watercourses, wetlands, rock outcroppings, wooded areas, steep slopes and similar physical features.

c Topographic Data

- (1) Existing contours with intervals of five feet or less, referred to a datum satisfactory to the Board.
- (2) Proposed grading with a contour interval of two feet.

d. Development Data and Site Plan

- (1) Title of development, date, north point, scale, name and address of record owner, engineer, architect, land planner or surveyor preparing the Plan.
- (2) The proposed use or uses of land and buildings and proposed height and location of buildings and lots.
- (3) All existing and proposed means of vehicular ingress and egress to and from the site onto public streets.
- (4) The location and design of any off-street parking areas or loading areas.
- (5) The proposed location, direction, power and hours of operation of proposed outdoor lighting.
- (6) The proposed screening and landscaping plan.
- (7) Proposed storm water drainage systems and erosion control plans.

8.2.2 PUBLIC NOTICE AND HEARING

8.2.2.1 Public Hearing Schedule

The Planning Board shall schedule a public hearing to be held within 115 days of receipt of a complete application for a special permit.

8.2.2.2 Hearing Notice

Notice of the public hearing shall be published in the official newspaper of the Town at least fifteen (15) days prior to the date of such hearing. In addition, the Planning Board shall cause a notice of such hearing to be mailed to the owners of all property within 400 feet of the subject property at least fifteen (15) days prior to the public hearing. Such notices shall be sent to the owner's last known address as shown on the most recent Town Tax Assessment records.

8.2.2.3 Referral to County Planning Board

Any application for a special permit involving real property lying within 500 feet of any of the features listed under Section 9.3.2 (a) shall be referred to the Ulster County Planning Board prior to final action in accord with Sections 239 I. and m. of the General Municipal Law. The Planning Board shall not make a decision until it has received comment from the Ulster County Planning Board or until 30 days have elapsed.

8.2.3 DECISION AND FINDINGS

8.2.3.1 Criteria for Decisions

The Planning Board shall only approve the issuance of a special permit if it finds that the following criteria have been met:

- a. That any specific standards set forth for the proposed use in Section 5.1.5 have been satisfied.
- b. That all proposed structures, equipment, or material shall be readily accessible for fire and police protection and shall be adequately served by sewer and water facilities and recreation facilities.
- c. That the proposed use is of such location, size, and character that, in general, it will be in harmony with the appropriate and orderly development of the area in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties.
- d. That, in addition to the above, the site plan satisfies the following objectives:
 - (1) That all proposed traffic access ways are adequate but not excessive in number; adequate in width, grade, alignment, and visibility; not located too near street corners or other places of public assembly; and other similar safety considerations.
 - (2) That off-street parking and loading spaces are designed to prevent obstruction in access roads, and that the interior circulation system is adequate to provide safe accessibility to all required parking lots, loading bays and building services.
 - (3) That all parking, and service areas are adequate in size and reasonably screened at all seasons of the year from the view of adjacent residential lots and streets and that the general landscaping of the site is such as to enhance the character of the Town and is in character with that generally prevailing in the neighborhood.
 - (4) That all existing trees, wooded areas, water courses and other natural features shall be retained to the maximum extent possible consistent with the development plan.
 - (5) That all outdoor lighting is of such nature and so arranged as to preclude the diffusion of glare onto adjoining properties and streets.
 - (6) That the drainage system and the internal water and sewer systems are adequate.
 - (7) That the site plan and building design accommodate the needs of the handicapped and are in conformance with state standards for construction concerning the handicapped.

8.2.3.2 FINDINGS AND CONCLUSIONS

- a. Within 45 days after the public hearing, unless the time has been extended by mutual consent of the applicant and the Planning Board, the Planning Board shall review its decision as to whether to issue the special permit and shall make a written report setting forth its findings and conclusions and the basis for its decision.
- b. The decision of the Board shall be filed with the Town Clerk within ten days and a copy thereof mailed to the applicant.

8.2.4 ADDITIONAL CONDITIONS

When issuing a special permit, the Planning Board may attach such conditions and safeguards as it deems necessary to further the intent of these regulations and to protect the public interest. Such conditions may include a requirement that the special permit be periodically renewed. Such renewal shall only be withheld, following due public notice and hearings, upon a determination that the applicant has not complied with the provisions of the original application or with any conditions prescribed by the Board in conjunction with approval of such application. In such case, the applicant shall be granted a period of 60 days within which to achieve full compliance with all conditions prior to revocation of the special permit.

SECTION 8.3 ADVISORY OPINIONS

The Planning Board shall review all applications for variances submitted to the Board of Appeals and all proposed amendments to this Zoning Law being considered by the Town Board referred to it in accord with the provisions of this Law. The Board shall have 30 days prior to the public hearing in which to prepare and submit its advisory opinion. Failure to submit an opinion within 30 days shall not prevent determination and action on the proposed variance or amendment by the appropriate Board.