

## Chapter 247

### ZONING

**[HISTORY: Adopted by the Town Board of the Town of Pendleton 3-3-1981. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Excavations and topsoil removal — See Ch. 129.  
Fire prevention and building construction — See Ch. 132.  
Flood damage prevention — See Ch. 135.  
Subdivision of land — See Ch. 220.  
Swimming pools — See Ch. 222.

#### ARTICLE I General Provisions

##### § 247-1. Title.

This chapter shall be known and cited as the "Zoning Ordinance of the Town of Pendleton, New York."

##### § 247-2. Purpose.

The zoning regulations and districts stated in this chapter and outlined upon the Zoning Map are made in accordance with a comprehensive plan for the purpose of promoting the public health, safety, morals, convenience, order, prosperity and general welfare of the Town of Pendleton. They have been designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, public utilities, schools, parks and other public requirements. They have been made with reasonable consideration, among other things, as to the character of each district and its suitability for particular uses and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the Town of Pendleton.

#### ARTICLE II Word Usage and Definitions

##### § 247-3. Word usage.

Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense in this chapter shall be interpreted to include the future, and words used in the plural shall be interpreted to include the singular. The word "person" includes a corporation as well as an individual. The word "lot" can be interpreted to include the words "plot" or "parcel." The word "shall" is intended to be mandatory. The word "occupied" or "used" shall be considered as though

followed by the words "or intended, arranged or designed to be used or occupied." The word "includes" or "including" shall not limit the term to the specified example, but is intended to extend its meaning to all other instances of like kind and character.

**§ 247-4. Definitions.**

Certain words and terms used in this chapter are defined as follows:

**ACCESSORY STRUCTURE** — An accessory structure is subordinate to and serves a principal residence. It contributes to the comfort, convenience and/or necessities of the occupants of the principal residence. [Added 2-4-2003<sup>1</sup>]

**ACCESSORY USE** — The use of land that is subordinate, incidental to, and customarily found in connection with the principal use allowed on a lot by the Zoning Law. A garage is incidental to the principal use of a lot as a single-family residence and is customarily found on a single-family parcel. [Added 6-7-2005]

**AGRICULTURE, LIMITED** — The production of crops, plants, vines and/or trees.

**AGRICULTURE, UNLIMITED** — The production of crops, plants, vines and/or trees or the keeping, grazing or feeding of livestock for animal products (including serums), animal increase or value increase. The raising of hogs as the main or principal occupation shall be prohibited.

**AIRPORT** — A piece of land that is maintained for the horizontal or vertical landing and take off of aircraft used for receiving and discharging passengers and/or cargo that usually has facilities for the shelter, supply and repair of aircraft.

**AIRSTRIP** — A runway without normal airport facilities.

**ALTERATION** — As applied to a building or structure, a change or rearrangement of the structural parts or of the exit facilities or an enlargement (whether by extending on a side or increasing in height) or moving from one location or position to another. The term "alter" in its various modes and tenses or its particular form refers to the making of an alteration.

**ANTENNA** — A device used to collect or transmit telecommunications or radio signals. Examples are panels, microwave dishes and single pole known as whips. [Added 2-18-1997]

**APARTMENT HOUSE** — A building arranged, intended or designed to be occupied by three or more families living independently of each other.

**APPLICANT** — A property owner or agent of a property owner who has filed an application for a land development activity. [Added 10-2-2007 by L.L. No. 2-2007]

**BASEMENT** — A portion of a structure partly underground but having at least part of its height above the average level of the adjoining ground. A "basement" shall be counted as a story for the purposes of height measurement and floor area if the vertical distance

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1. Editor's Note: This ordinance also repealed the former definition of "accessory building or use," as amended.

between the ceiling and the average level of the adjoining ground is more than five feet.

**BILLBOARD** — See "sign, advertising."

**BUFFER ZONE** — Green space designed to protect owners of property from the offensive use of adjoining property, especially when the zoning changes between the two. No structures, pavement, storage or business activity is allowed in this area. [Added 8-24-1994]

**BUILDING** — Any structure occupied or intended for supporting or sheltering any occupancy. [Amended 6-7-2005]

**BUILDING AREA** — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between the exterior faces of walls.

**BUILDING DEBRIS** — Any unusable leftover material from constructed, demolished, wrecked or burnt-out structures. Also all unused or broken concrete, stone or similar material. [Added 8-24-1994]

**BUILDING HEIGHT** — The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard-type roofs and to the mean height between eaves and ridge for gable-, hip- and gambrel-type roofs.

**BUILDING LINE** — A line formed by the intersection of a horizontal plane of the average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the "building line."

**BUILDING PERMIT** — A permit issued by the Zoning Officer of the Town of Pendleton in accordance with § 247-71 of this chapter.

**BUILDING SETBACK LINE** — A line parallel to the street line at a distance as regulated by the front yard requirements in this chapter.

**CAMPING OR TRAVEL TRAILER PARK** — A parcel of land designed, intended or used for the parking, pitching, erection or maintenance of more than one travel trailer, tent, cabin or any temporary recreation shelter.

**CAMPING TRAILER** — A vehicular, portable structure (whether towed or self-propelled) used as a temporary dwelling for traveling, recreation or seasonal use.

**CAMPSITE** — A parcel of land (with or without structures) designed, intended or used for one temporary shelter or a seasonal residence.

**CELLULAR TELECOMMUNICATIONS FACILITY** — Consists of the equipment and structures involved in receiving telecommunication or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based or satellite telephone facility. [Added

2-18-1997]

**CHANNEL** — A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water. [Added 10-2-2007 by L.L. No. 2-2007]

**CLEARING** — Any activity that removes the vegetative surface cover. [Added 10-2-2007 by L.L. No. 2-2007]

**CLUB** — An organization catering exclusively to members and their guests (including premises and buildings for recreational or athletic purposes) which is not conducted primarily for monetary gain.

**CODE ENFORCEMENT OFFICER** — The person or persons, as appointed by the Town Board, pursuant to the provisions of the Town Law, charged with the responsibility and authority to execute all Town ordinances. [Added 8-24-1994]

**COLOCATED ANTENNAS** — Telecommunications facilities which utilize existing towers or structures for all or partial antenna height requirements. [Added 2-18-1997]

**COMMERCIAL DISTRICTS** — Those districts mentioned in this chapter where retail sales establishments are permitted by right.

**DECORATIVE/ORNAMENTAL PONDS** — A body of water retained by a liner upon one parcel of land and used only for decoration or property enhancement. [Added 7-6-1999]

**DEDICATION** — The deliberate appropriation of property by its owner for general public use. [Added 10-2-2007 by L.L. No. 2-2007]

**DEPARTMENT** — The New York State Department of Environmental Conservation. [Added 10-2-2007 by L.L. No. 2-2007]

**DESIGN MANUAL** — The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation), most recent version or its successor, including applicable updates, which serves as the official guide for stormwater management principles, methods and practices. [Added 10-2-2007 by L.L. No. 2-2007]

**DEVELOPER** — A person who undertakes land development activities. [Added 10-2-2007 by L.L. No. 2-2007]

**DOG KENNEL** — A lot, with or without a structure, used for the harboring of more than three dogs that are more than six months old.

**DUMP** — A lot or land (or part thereof) used for the disposal, by abandonment, dumping, burial, burning or any other means (and for whatever purpose), of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof or waste material of any kind.

**DWELLING UNIT** — One or more rooms providing living facilities (including equipment and provision for cooking) and sanitary facilities for a single household of one or more persons living as a family and having not more than two people who are sheltered and/or fed for profit. [Amended 8-24-1994]

**EATING AND DRINKING ESTABLISHMENT** — A place where food and/or beverages are prepared and/or sold for consumption on the premises or for takeout, including restaurants, tearooms, cafeterias, bars, taverns and lunchrooms.

**EROSION CONTROL MANUAL** — The New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004), most current version or its successor, commonly known as the "Blue Book." [Added 10-2-2007 by L.L. No. 2-2007]

**ESSENTIAL SERVICES** — The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of gas, electrical, steam, water, sewage and communication systems and facilities. Railroad trackage and facilities and bus shelters shall also be considered as providing an "essential service."

**EXCAVATION** — Any man-made depression one foot or more below the surrounding grade, excluding drainage ditches.

**FACTORY-MANUFACTURED HOME** — Any manufactured home approved by the State Fire Prevention and Building Code Council and listed as an approved modular home by this Council. These structures may be constructed as single-family residences. [Added 8-24-1994]

**FALL ZONE** — The radius around a tower within which all portions of the tower and antenna(s) would fall in the event of a structural failure. [Added 2-18-1997]

**FAMILY** — One or more persons related by birth, marriage or other domestic bond occupying a dwelling unit and living as a single, nonprofit housekeeping unit.

**FARM** — An area of land containing at least seven acres which is used for the commercial growing of the usual farm products, such as vegetables, fruit and/or grain, and for the packing or storage of the products produced on the premises, as well as for the raising of the usual farm animals, such as horses, cattle and sheep (but excluding the raising of fur-bearing animals, riding academies, livery or boarding stables, dog kennels or the commercial raising of swine and/or poultry). [Amended 2-4-2003]

**FENCE** — An artificially constructed barrier of wood, masonry, stone, wire, metal or any other manufactured material or combination of materials erected for the enclosure of land and/or dividing one piece of land from another.

**FLOOD or FLOODING** — 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 or abnormally rising lake waters resulting from severe storms or hurricanes.

**FLOOD HAZARD BOUNDARY MAP** — The official map received from the Federal Insurance Administration.

**FLOODPLAIN** — A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation or any area subject to the unusual and rapid accumulation of runoff of surface waters from any source.

**FLOODPROOFING** — Any combination of structural or nonstructural additions,

changes, alterations or adjustments to properties or structures which reduce or eliminate flood damage to land, water and sanitary facilities, structures and contents of buildings.

**FLOOD PROTECTION ELEVATION** — The level and elevation above which a particular use will be considered safe from flooding. (Such levels or elevations shall be based and updated from the one-hundred-year flood elevation). [Amended 8-24-1994]

**FLOODWAY** — The designated area on the Flood Hazard Boundary Map of a floodplain required to carry and discharge floodwaters of a given magnitude.

**FLOODWAY FRINGE AREA** — The designated area on the Flood Hazard Boundary Map of a floodplain adjacent to the floodway and within the one-hundred-year special flood hazard area.

**GARAGE, PRIVATE** — An accessory enclosed space, either attached or detached from the principal building, for the storage of one or more motor vehicles, provided that no business, occupation, service or other gain is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises. Only one garage is allowed per building lot in a residential district. [Amended 8-24-1994]

**GARAGE, PUBLIC** — Any garage not a private garage which is used for the storage, repair, painting, rental, servicing or supplying of gasoline or oil to motor vehicles.

**GARAGE SALE** — Shall include all sales entitled "garage sale," "lawn sale," "attic sale," "rummage sale," "flea market sale" or any similar casual sale of personal property which is advertised by any means whereby the public at large is or can be made aware of said sale.

**GOVERNING BODY** — The Town Board of the Town of Pendleton.

**GRADING** — Excavation or fill of material, including the resulting conditions thereof. [Added 10-2-2007 by L.L. No. 2-2007]

**HIGHWAY ACCESS POINT** — The distance between any vehicular entrance or exit to the street.

**HOME OCCUPATION** — An occupation, profession, activity or use that is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood. [Amended 8-24-1994; 9-3-2002]

**HOSPITAL** — Unless otherwise specified, the term "hospital" shall be deemed to include a sanitarium, sanitorium, preventorium, clinic, rest home, nursing home, convalescent home and any other care of ailments and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments. "Hospitals" are required to obtain and renew annually an operating permit issued by the Town Board. [Amended 8-24-1994]

**HOSPITAL, ANIMAL** — An establishment for the medical and/or surgical care of sick or injured animals.

**IMPERVIOUS COVER** — Those surfaces, improvements and structures that cannot

effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.). [Added 10-2-2007 by L.L. No. 2-2007]

**INDUSTRIAL DISTRICT** — Those districts mentioned in this chapter where industrial uses are permitted by right.

**INDUSTRIAL STORMWATER PERMIT** — A State Pollutant Discharge Elimination System (SPDES) permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies. [Added 10-2-2007 by L.L. No. 2-2007]

**INFILTRATION** — The process of percolating stormwater into the subsoil. [Added 10-2-2007 by L.L. No. 2-2007]

**JUNKYARD** — A lot, land or structure (or part thereof) used for the recycling, collection, exchange, storage, packing, disassembly and/or sale of waste, scrap metal, paper, lumber, rags or similar materials, including storage of more than one unregistered, uninsured or uninspected motor vehicle. [Amended 8-24-1994]

**JURISDICTIONAL WETLAND** — An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation." [Added 10-2-2007 by L.L. No. 2-2007]

**LAND DEVELOPMENT ACTIVITY** — Construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale disturbing one acre or more in the aggregate, even though multiple separate and distinct land development activities may take place at different times on different schedules. [Added 10-2-2007 by L.L. No. 2-2007]

**LANDOWNER** — The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land. [Added 10-2-2007 by L.L. No. 2-2007]

**LOADING AND LOADING SPACE, OFF-STREET** — An open, hard-surfaced area of land, other than a street or public way, the principal use of which is for the standing, loading and unloading of motor vehicles, tractors and trailers to avoid undue interference with public streets and alleys. Such space shall not be less than 14 feet in width, 60 feet in length and 15 feet in height, exclusive of access aisles and maneuvering space.

**LOT** — A portion or parcel of land considered as a unit, devoted to a certain use or occupied by a building or a group of buildings that are united by a common interest or use and the customary accessories and open spaces belonging to the same.

**LOT AREA** — The net area contained within lot lines.

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

**LOT COVERAGE** — That percentage of the lot area which is devoted to building area.

District regulations refer to the maximum percentage of the lot area devoted to building area.

**LOT DEPTH** — The shortest distance from the street line to the rear line, measured at right angle to the street line.

**LOT LINE** — Any line dividing one lot from another.

**LOT OF RECORD** — Any lot which individually or as a part of a subdivision has been officially recorded in the office of the Clerk of Niagara County.

**LOT WIDTH MEASUREMENT** — Lot width is measured from side lot line to side lot line following the street line and in addition is measured using the shortest distance from side lot line to side lot line at the minimum front yard setback line. [Amended 8-24-1994; 4-4-2006]

**MAINTENANCE AGREEMENT** — A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices. [Added 10-2-2007 by L.L. No. 2-2007]

**MINING** — The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial or construction use; exclusive of manufacturing processes at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden tailings and waste at the mine location. Mining shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities. [Added 11-8-2000]

**MOBILE HOME** — Excluding camping trailers, any piece of mobile equipment designed or constructed to be towed, pulled by a motor vehicle or self-propelled (regardless of whether the wheels are attached or unattached or a permanent or semipermanent foundation is constructed underneath or any structure of a permanent or semipermanent nature is attached thereto). No "mobile home" shall be located within the town, except in a designated mobile home park. [Amended 8-24-1994]

**MOBILE HOME PARK** — A tract of land used or intended to be used for the parking of two or more mobile homes, together with the necessary improvements and facilities on the land.

**MOTOR HOME** — See "camping trailer."

**MOTOR VEHICLE SERVICE STATION** — Any use of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories and/or including facilities for lubricating, washing or otherwise servicing motor vehicles (but not including the painting thereof by any means, body and fender work or the dismantling or replacing of engines).

**MUNICIPALITY** — The Town of Pendleton.

**NONCONFORMING USE** — A lawful building, structure or use of land existing at the time of enactment of this chapter which does not conform to the regulations of the district in which it is situated. [Amended 8-24-1994]

**NONPOINT SOURCE POLLUTION** — Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources. [Added 10-2-2007 by L.L. No. 2-2007]

**OBSTRUCTION** — Any wall, dam, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, culvert, bridge, building, wire, fence, stockpile, refuse, fill or structure in, along, across or projecting into any channel, watercourse or regulatory flood hazard area which may impede, retard or change the direction of the flow of water (either by itself or by catching or collecting debris carried by such water) or that is placed where the flow of water might carry the same downstream to the damage of life or property.

**OFFICE** — A place which is used to conduct a business or profession and is occupied by a physician, surgeon, dentist, lawyer or person providing similar services or in whose office the functions of consulting, recordkeeping and clerical work are performed.

**OPEN SPACE** — Common or public or private greens, parks or recreation areas, including playgrounds, woodland conservation areas, walkways, trails, stream crossing and drainage control areas, golf courses, swimming pools, tennis courts, ice-skating rinks and other similar recreational uses, but which may not include any such uses or activities which produce noise, glare, odor, air pollution, fire hazards or other safety hazards, smoke or fumes or any use or activity which is operated for a profit or that would be detrimental to existing or prospective development of the neighborhood.

**PARKING SPACE** — A required off-street parking space shall be an area of not less than 170 square feet nor less than 8 1/2 feet wide by 20 feet long (exclusive of access drives or aisles, ramps, columns or office and work areas) accessible from streets or alleys, to be used for the storage or parking of passenger automobiles or commercial vehicles under 11/2 tons' capacity. Aisles between vehicular parking spaces shall not be less than 12 feet in width when serving automobiles parked at a forty-five-degree angle in one direction nor less than 25 feet in width when serving automobiles parked perpendicular to the aisles and accommodating two-way traffic. Handicapped parking shall be provided according to the guidelines of New York State laws. [Amended 8-24-1994; 6-4-1996 by L.L. No. 1-1996]

**PHASING** — Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next. [Added 10-2-2007 by L.L. No. 2-2007]

**PLANNING BOARD** — Unless otherwise designated, the Planning Board of the Town of Pendleton.

**POLLUTANT OF CONCERN** — Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other

pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity. [Added 10-2-2007 by L.L. No. 2-2007]

POND — An excavation for the owner's use on a single parcel of land. [Added 8-24-1994]

PROJECT — Land development activity. [Added 10-2-2007 by L.L. No. 2-2007]

PUBLIC — Owned, operated or controlled by a governmental agency (federal, state, county or local), including a corporation created by law for the performance of certain specialized governmental functions, a public school district or service district.

QUARRY, SANDPIT OR GRAVEL PIT — A lot or land or part thereof used for the purpose of extracting stone, sand or gravel for sale as an industrial operation and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made. [Amended 8-24-1994]

RECHARGE — The replenishment of underground water reserves. [Added 10-2-2007 by L.L. No. 2-2007]

RECREATIONAL VEHICLES — Shall include campers, motor homes and boats, as well as other similar vehicles.

RESIDENCE, MULTIFAMILY — A building used or designed for three or four dwelling units, including apartment houses, townhouses and condominiums. [Amended 8-24-1994]

RESIDENCE, SINGLE-FAMILY DETACHED — A detached building designed to contain one dwelling unit.

RESIDENCE, TWO-FAMILY — A detached building containing two dwelling units separated by a fire separation. [Amended 8-24-1994]

RESIDENTIAL DISTRICTS — Those districts mentioned in this chapter where single-family detached, two-family and/or multifamily residences are permitted by right.

SANITARY LANDFILL — A method of disposing of garbage and refuse by spreading, covering and compacting with earth. This is not allowed in town. [Amended 8-24-1994]

SECTION — Unless otherwise noted, section and section numbers shall refer to this chapter.

SEDIMENT CONTROL — Measures that prevent eroded sediment from leaving the site. [Added 10-2-2007 by L.L. No. 2-2007]

SEMIPUBLIC — Places of worship, institutions for the aged and children, child-care facilities, nonprofit colleges, hospitals, libraries, cemeteries and institutions of a philanthropic nature and also open space. [Amended 8-24-1994]

SENSITIVE AREAS — Coldwater fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, or habitats for threatened, endangered or special concern species. [Added 10-2-2007 by L.L. No. 2-2007]

SETBACK — The distance from the edge of the right-of-way to the part of the structure

nearest to the edge of the right-of-way, measured by right angles to the edge of the right-of-way, not including cornices or entrance steps. [Amended 8-24-1994]

**SIGN** — Any structure or device for visual communication that is used for the purpose of attracting the attention of the public. A "sign" includes any portion of a structure or device attached to a structure upon which is painted or represented or displayed any letter, word, model, banner, flag, pennant, insignia, decoration or representation used to communicate a message to (or attract the attention of) the public. The word "sign" does not include the flag, pennant or insignia of any nation, state, city or other political unit.

**SIGN, ADVERTISING** — A sign which offers services or goods produced or available somewhere other than on the lot on which the sign is located. The words "advertising sign" include the word "billboard." Neither directional, warning nor other signs posted by public officials in the course of their public duty shall be construed as "advertising signs."

**SIGN AREA** — The area defined by the outermost portion of the frame, support or edge of a sign (including roof, enhancement, etc.). Where there is not a geometric frame or edge of a sign, the "sign area" shall be defined by a projected, enclosed four-sided (straight sides) geometric shape which most closely outlines the sign. Only one face of a sign shall be used in measuring the "sign area."

**SIGN, BUSINESS** — A sign for a permitted use conducted on the premises which shall identify the written name and/or the type of business and/or any trademark of an article for sale or rent on the premises and/or communicate the type of service or articles offered on the premises.

**SIGN ERECTION** — To build, construct, alter, repair, display, relocate, attach, hang, place, suspend, affix or maintain any sign, including the painting of exterior wall signs.

**SIGN, NAMEPLATE** — Any sign attached directly to the wall of a building occupied by the person to whom such sign indicates the name, occupation and/or address of the occupant. A nameplate shall not exceed two square feet in area.

**SIGN, TEMPORARY** — A sign which offers a premises for sale, rent or development or announces special events or calls attention to new construction or alteration. Signs advertising sale items are not to be considered as "temporary signs."

**SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01** — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land. [Added 10-2-2007 by L.L. No. 2-2007]

**SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02** — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards. [Added 10-2-2007 by L.L. No. 2-2007]

**SPECIAL EXCEPTION** — A special exception deals with special permission granted only by the Town Board to occupy land for specific purposes under special and specific

conditions when such use is not permitted by right.

**SPECIAL FLOOD HAZARD AREA** — The maximum area designated on the Flood Hazard Boundary Map of the floodplain that, on the average, is likely to be flooded once every 100 years.

**SPECIAL PERMIT** — As required is granted by the Town Board. [Added 8-24-1994]

**STABILIZATION** — The use of practices that prevent exposed soil from eroding. [Added 10-2-2007 by L.L. No. 2-2007]

**STABLE, PRIVATE** — An accessory building in which a horse or horses are kept for private use and not for hire, remuneration or sale.

**STABLE, PUBLIC** — A building in which horses are kept for remuneration, hire, sale or other gain.<sup>2</sup>

**STOP-WORK ORDER** — An order issued which requires that all construction activity on a site be stopped. [Added 10-2-2007 by L.L. No. 2-2007]

**STORMWATER** — Rainwater, surface runoff, snowmelt and drainage. [Added 10-2-2007 by L.L. No. 2-2007]

**STORMWATER HOTSPOT** — A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies. [Added 10-2-2007 by L.L. No. 2-2007]

**STORMWATER MANAGEMENT** — The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment. [Added 10-2-2007 by L.L. No. 2-2007]

**STORMWATER MANAGEMENT AREA** — For use during excessive rainfall or water runoff conditions to prevent property damage. Constructed under subdivision or site plan review regulations. [Added 7-6-1999]

**STORMWATER MANAGEMENT FACILITY** — One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff. [Added 10-2-2007 by L.L. No. 2-2007]

**STORMWATER MANAGEMENT OFFICER (SMO)** — An individual designated by the Town Board to accept and review stormwater pollution prevention plans (SWPPPs), forward the plans to such agency, committee, employee, or board of the Town of Pendleton which may be reviewing any application for a construction activity requiring submission of a SWPPP, and inspect stormwater management practices. The Town Board shall appoint such individual to act as the SMO by resolution annually. [Added 10-2-2007 by L.L. No. 2-2007]

**STORMWATER MANAGEMENT PRACTICES (SMPs)** — Measures, either structural or nonstructural, that are determined to be the most effective, practical means of

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2. Editor's Note: The definition of "storm retention basin," which immediately followed this definition, was repealed 11-8-2000.

preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies. [Added 10-2-2007 by L.L. No. 2-2007]

**STORMWATER POLLUTION PREVENTION PLAN (SWPPP)** — A plan for controlling stormwater runoff and pollutants from a site during and after construction activities. [Added 10-2-2007 by L.L. No. 2-2007]

**STORMWATER RUNOFF** — Flow on the surface of the ground resulting from precipitation. [Added 10-2-2007 by L.L. No. 2-2007]

**STORY** — That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, then the space between any floor and the ceiling next above it.

**STORY, HALF** — A story under a gable, hip or gambrel roof, the wall plates of which, on at least two opposite exterior walls, are not more than two feet above the floor of such story.

**STREET** — A public way which affords the principal means of access to abutting properties. [Amended 8-24-1994]

**STREET LINE** — The common line joining a street right-of-way to any lot. [Amended 8-24-1994]

**STRUCTURE** — That which is built or constructed or a portion thereof. [Amended 6-7-2005]

**SUBDIVISION** — The process of creating more than one parcel from any recognized parcel of property in Pendleton. All "subdivisions" must be approved by the Planning Board. [Added 8-24-1994]

**SURFACE WATERS OF THE STATE OF NEW YORK** — Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state. [Added 10-2-2007 by L.L. No. 2-2007]

**TELECOMMUNICATIONS EQUIPMENT BUILDING** — The building in which the electronic receiving and relay equipment for a telecommunications facility is housed. [Added 2-18-1997]

**TOWER** — A structure that is intended to support equipment used to transmit and/or receive telecommunications signals. Examples of such structures include monopoles and lattice construction steel structures. [Added 2-18-1997]

TOWN BOARD — The Town Board of the Town of Pendleton. [Added 10-2-2007 by L.L. No. 2-2007]

TOWN ENGINEER — Either a consulting or a full-time engineer, New York State licensed as a professional engineer, as appointed by the Town Board. [Added 8-24-1994]

TOWNHOUSE — A dwelling unit designed to be occupied as a residence for one family which is in a group of three or more attached dwellings, placed side by side, separated by party walls, each containing one or two stories and each having separate front and rear or side and rear or front and side entrances from the outside.

TRACT — A large piece of land under single ownership and developed, or to be developed, as a single entity for two or more units of use.

USE — Any purpose for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

VARIANCE — Permissive waivers from the terms of this chapter granted by the Board of Appeals (that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship) designed such that the spirit of this chapter shall be observed and substantial justice done.

WATERCOURSE — A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water. [Added 10-2-2007 by L.L. No. 2-2007]

WATERWAY — A channel that directs surface runoff to a watercourse or to the public storm drain. [Added 10-2-2007 by L.L. No. 2-2007]

YARD, FRONT — An open unoccupied space on the same lot with the main building between the front line of the building and the front line of the lot and extending the full width of the lot.

YARD, REAR — An open unoccupied space on the same lot with the main building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

YARD, SIDE — An open unoccupied space on the same lot with the main building between the main building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

ZONING BOARD OF APPEALS or BOARD OF APPEALS — The Zoning Board of Appeals of the Town of Pendleton.

ZONING MAP — The map or maps incorporated into this chapter as a part thereof designating zoning districts, the originals of which are on file with the Town Clerk. [Amended 8-24-1994]

ARTICLE III  
**Establishment of Districts**

**§ 247-5. Creation and enumeration of districts.** [Amended 8-24-1994]

For the purpose of promoting the public health, safety, morals and general welfare in the Town of Pendleton, the Town is hereby divided into the following types of districts:

- FP District: Floodplain
- R1 District: Low-Density Residential
- R2 District: Medium-Density Residential
- CO1 District: Light Commercial
- CO2 District: Medium Commercial
- LI District: Light Industrial
- SLI District: Special Light Industrial

**§ 247-6. Zoning Map.**

The districts are bounded as shown on a map entitled "Zoning Map of the Town of Pendleton" and certified by the Town Clerk, which accompanies and which, with all explanatory matter thereon, is hereby a part of this chapter.<sup>3</sup>

**§ 247-7. Interpretation of district boundaries.**

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

- A. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or highway right-of-way lines, such center lines, street lines or highway right-of-way lines shall be construed to be the boundaries.
- B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be the boundaries.
- C. Where district boundaries are so indicated that they are approximately parallel to the center lines or street lines of streets or the center lines or right-of-way lines of highways, the district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Zoning Map.
- D. Where the boundary of a district follows a railroad line, the boundary shall be deemed to be located in the middle of the main tracks of said railroad line.
- E. Where the boundary of a district follows a stream, lake or other body of water, the

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<sup>3</sup>. Editor's Note: The Zoning Map is on file in the office of the Town Clerk; the district boundary descriptions are included in Appendix A at the end of this chapter.

boundary line shall be deemed to be at the limit of jurisdiction of the Town of Pendleton unless otherwise indicated.

- F. Any floodplain boundary shown on the Zoning Map indicates general location only. The precise location of floodplain boundaries shall be established by the Zoning Officer after consulting with the United States Corps of Engineers and the Federal Insurance Administration (FIA).

ARTICLE IV  
**District Regulations**

**§ 247-8. Minimum regulations; applicability.**

Unless otherwise noted, the regulations set by this chapter within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land. No building, structure or land shall hereafter be used and no building, structure or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations herein specified.

**§ 247-9. FP District: Floodplain.**

- A. The requirements and regulations under the Floodplain District shall conform to Chapter 135, Flood Damage Prevention. [Added 7-7-1992]
- B. The FP District is subdivided into two categories (FWA Floodway Area and FFA Floodway Fringe Area). The boundaries for the FP District are the same as the boundaries for the Flood Hazard Boundary Maps originating from the Federal Insurance Administration (FIA). This area may be further refined to include both the Floodway and the Floodway Fringe District as defined and delineated by the FIA. The following controls shall apply:
  - (1) FWA Floodway Area.
    - (a) Uses permitted by right:
      - [1] Orchards.
      - [2] Off-street parking areas.
      - [3] Open recreational uses, including parks, playgrounds, golf courses, picnic groves, beaches and boat launching areas.
      - [4] Unlimited and limited agriculture (excluding any structures).
      - [5] Wildlife sanctuaries, woodland preserves, scenic sites and arboretums.
    - (b) Prohibited uses:
      - [1] Landfills of any type.
      - [2] Storage of materials or equipment.

- [3] Any other use that would unduly affect the efficiency or capacity of the floodway or unduly increase flood heights or cause increased velocities or obstructions or catch and collect debris which would obstruct flow under flood conditions.
- (c) Existing nonconforming uses. No existing nonconforming use in the Floodway Area shall be expanded; however, the use may be modified, altered or repaired to incorporate floodproofing measures (provided that such measures do not raise the level of the one-hundred-year flood).<sup>4</sup>
- (2) FFA Floodway Fringe Area.
  - (a) Uses permitted by right:
    - [1] Facilities for raising insects.
    - [2] Flood retention dams, dikes, culverts and bridges as approved by the State of New York.
    - [3] Nurseries, orchards and greenhouses.
    - [4] Open storage if contiguous to an industrial district.
    - [5] Outdoor recreation uses, including tennis courts, parks, a campsite, picnic groves, golf courses and swimming, fishing and boating facilities.
    - [6] Private stables subject to the following restrictions:
      - [a] No stable shall be less than 250 feet from the street line and less than 100 feet from the side and rear lot lines.
      - [b] No storage of manure or odor-producing substance shall be permitted within 250 feet from the street line and 100 feet from the side and rear lot lines.
      - [c] See also restrictions in § 247-40, Livestock and livestock buildings and § 247-41, Domestic animals and livestock. [Added 7-7-1992; amended 8-24-1994]
    - [7] Unlimited and limited agriculture.
    - [8] Wildlife sanctuaries, woodland preserves and arboretums.
    - [9] Essential services.
    - [10] Single-family residences. [Amended 7-7-1992]
    - [11] Accessory uses.
  - (b) Dimensional requirements.

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<sup>4</sup>. Editor's Note: Former Section 401A4, which immediately followed this subsection and dealt with minimum lot size and permanent structures, was repealed 7-7-1992.

- [1] The minimum horizontal setback for all structures shall be 75 feet from the top of the slope of any watercourse. The minimum setback for all structures shall be 60 feet from the road right-of-way line.
- [2] Where public sewerage is not available (and sewage disposal is required), no lot shall be built upon which has insufficient space or conditions for a private sanitary waste disposal system. Water supply systems and/or sanitary disposal systems shall be designed to eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- [3] New construction or substantial improvements of habitable structures shall have the lowest floor (including basement) elevated to or above the level of the one-hundred-year flood. All utility and sanitary facilities shall be floodproofed up to the level of the one-hundred-year flood.
- [4] All structures to be used for human occupancy must be located on the building site so as to offer the minimum obstruction to the flow of floodwaters (i.e., longitudinal axis parallel to the direction of flood flow). All structures (including prefabricated and mobile homes) must be designed (or modified) to be firmly anchored to prevent flotation, collapse or lateral movement.
- [5] All utilities (water, sewer, gas and electrical systems) shall be located and constructed to minimize or eliminate flood damage. All access roads to structures shall be graded to an elevation above the one-hundred-year flood. Restrictions of bridge openings or other narrowing of streams or rivers shall be constructed at or above the flood protection elevation of the one-hundred-year flood.<sup>5</sup>

(c) Also see Article VI, General Regulations, and Article VII, Supplemental Regulations.

**§ 247-10. R1 District: Low-Density Residential.** [Amended 12-1-1992]

A. Uses permitted by right:

- (1) Farms, limited agriculture and unlimited agriculture (excluding public stables).
- (2) Home occupations as permitted by § 247-39.
- (3) Single-family detached residences limited to one residence per building lot (excluding mobile homes and mobile home parks).

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<sup>5</sup>. Editor's Note: Former Section 401B3, Bulk and area regulations, which immediately followed this subsection, was repealed 7-7-1992.

- (4) Private stables in conjunction with principle residences subject to the following restrictions:
  - (a) No stable shall be less than 250 feet from the street line and less than 100 feet from the side and rear lot lines.
  - (b) No storage of manure or odor-producing substance shall be permitted within 250 feet from the street line and 100 feet from the side and rear lot lines.
  - (c) See also restrictions in § 247-40, Livestock and livestock buildings and § 247-41, Domestic animals and livestock.
- (5) Accessory structure in conjunction with a principal residence as permitted by § 247-34. [Amended 2-4-2003]
- (6) Outdoor recreational uses, including tennis courts, parks, golf courses and rod and gun clubs. See Article VI for special requirements.

B. Uses permitted by special exception:

- (1) Public uses.
- (2) Semipublic uses.
- (3) Clubs, lodges and meeting halls.

C. Minimum lot area: [Amended 8-24-1993; 8-2-2005; 4-4-2006]

- (1) Single-family with sewers: 31,250 square feet with a minimum width of 125 feet and a minimum depth of 250 feet.
- (2) Single-family without sewers: One acre with a minimum width of 125 feet and a minimum depth of 250 feet.
- (3) Wetlands, wetland buffer areas, ponds (both retention and detention) and easement areas are excluded in calculating minimum square foot, lot width and lot depth requirements.
- (4) Lot width measurement: 125 feet measured from side lot line to side lot line following the street line and 125 feet measured using the shortest distance from side lot line to side lot line at the minimum front yard setback line.

D. Minimum and maximum front yard setbacks: [Amended 2-4-2003; 7-5-2005]

- (1) Minimum front yard setback of 75 feet for main structures, 100 feet for detached garages. See § 247-34 for accessory structures.
- (2) Exception for minimum front yard setback. Where the front setbacks have been previously established by existing structures, the required minimum front yard setback shall be determined by averaging the front setback for all principal structures located within 400 feet from either side of the property.
- (3) Maximum front yard setback of 250 feet for main structures.

- E. Minimum side yard setback: 15 feet for dwelling and garages. See § 247-34 for accessory structures. [Amended 2-4-2003]
- F. Minimum rear yard setback: 50 feet for main structure; 15 feet for detached garage. See § 247-34 for accessory structures. [Amended 2-4-2003]
- G. Maximum height restrictions:
  - (1) Dwellings: 35 feet.
  - (2) Detached garages: 20 feet (not to exceed height of primary structure).
  - (3) See § 247-34 for accessory structures. [Amended 2-4-2003]
- H. Minimum size of primary dwellings: [Amended 8-24-1993]
  - (1) One-story dwelling: 1,000 square feet living area.
  - (2) One-and-one-half-story dwelling: 1,000 square feet living area.
  - (3) Two-story dwelling: 1,200 square feet living area.
- I. Maximum size of detached or attached garage shall be no more than 50% of the floor area of the primary structure, not to exceed 1,200 square feet. Only one garage is allowed per building lot. [Amended 2-4-2003]
- J. Structures used in customary farming. [Amended 2-4-2003; 6-4-1996 by L.L. No. 1-1996; 6-3-2008]
  - (1) Customary farm and/or agricultural buildings on lots (parcels) of seven acres and over may be allowed for customary farming and/or agriculture use.
- K. Also see Article VI, General Regulations, and Article VII, Supplemental Regulations.
- L. Commercial vehicles, other than pickup trucks, weighing in excess of 10,000 pounds GVW shall not be parked on a less than 1 1/2 acre residentially zoned lot. [Added 8-21-2001; amended 12-2-2003]

**§ 247-11. R2 District: Medium-Density Residential.** [Amended 12-1-1992]

- A. Uses permitted by right:
  - (1) Home occupations as permitted by § 247-39.
  - (2) Single-family detached residences or one two-family residence on one building lot (excluding mobile homes and mobile home parks).
  - (3) Farms, limited agriculture and unlimited agriculture (excluding public stables).
  - (4) Private stables in conjunction with principal residences subject to the following restrictions:
    - (a) No stable shall be less than 250 feet from the street line and less than

100 feet from the side and rear lot lines.

(b) No storage of manure or odor-producing substance shall be permitted within 250 feet of the street line and 100 feet from the side and rear lot lines.

(c) See also restrictions in § 247-41, Domestic animals and livestock.

(5) Accessory structure in conjunction with a principal residence as permitted by § 247-34. [Amended 2-4-2003]

(6) Outdoor recreational uses, including tennis courts, parks, golf courses and rod and gun clubs. See Article VI for special requirements.

B. Uses permitted by special exception:

(1) Public uses.

(2) Semipublic uses.

(3) Clubs, lodges and meeting halls.

(4) Two-family and multiple-family dwellings (see Subsection K for requirements).

C. Minimum lot area: [Amended 8-24-1993; 8-2-2005; 4-4-2006]

(1) Single-family with sewer: 25,000 square feet with a minimum width of 100 feet and minimum depth of 250 feet.

(2) Single-family without sewer: one acre with a minimum width of 100 feet and minimum depth of 250 feet.

(3) Two-family/duplex with sewer: 50,000 square feet with a minimum width of 200 feet and minimum depth of 250 feet.

(4) Two-family/duplex without sewer: two acres with a minimum width of 200 feet and a minimum depth of 250 feet.

(5) Wetlands, wetland buffer areas, ponds (both retention and detention) and easement areas are excluded in calculating minimum square foot, lot width and lot depth requirements.

(6) Lot width measurement: 100 feet measured from side lot line to side lot line following the street line and 100 feet measured using the shortest distance from side lot line to side lot line at the minimum front yard setback line.

D. Minimum and maximum front yard setbacks: [Amended 2-4-2003; 7-5-2005]

(1) Minimum front yard setback of 60 feet for main structures, 100 feet for detached garages. See § 247-34 for accessory structures.

(2) Exception for minimum front yard setback. Where the front setbacks have been previously established by existing structures, the required minimum front

yard setback shall be determined by averaging the front setback for all principal structures located within 400 feet from either side of the property.

- (3) Maximum front yard setback of 250 feet for main structures.
- E. Minimum side yard setback: 15 feet for dwelling and garages. See § 247-34 for accessory structures. [Amended 2-4-2003]
- F. Minimum rear yard setback: 50 feet for primary structure; 15 feet for detached garage. See § 247-34 for accessory structures. [Amended 2-4-2003]
- G. Maximum height:
  - (1) Dwelling: 35 feet.
  - (2) Detached garage: 20 feet but not to exceed the height of the primary structure. [Amended 2-4-2003]
  - (3) See § 247-34 for accessory structures. [Added 2-4-2003]
- H. Minimum size of primary dwellings: [Amended 8-24-1993]
  - (1) One-story dwellings: 1,000 square feet living area.
  - (2) One-and-one-half story dwellings: 1,000 square feet living area.
  - (3) Two-story dwellings: 1,200 square feet living area.
  - (4) Two-family/duplex: 1,000 square feet living area per unit.
- I. Maximum size of detached or attached garages shall be no more than 50% of the floor area of the primary structure, not to exceed 1,200 square feet. Only one garage is allowed per building lot. [Amended 2-4-2003]
- J. Structures used in customary farming. [Amended 2-4-2003; 6-3-2008]
  - (1) Customary farm and/or agricultural buildings on lots (parcels) of seven acres and over may be allowed for customary farming and/or agriculture use.
- K. Multiple-family dwellings (consisting of three- or four-family dwelling units) shall be subject to the following restrictions: [Amended 8-24-1993; 6-4-1996 by L.L. No. 1-1996; 9-3-1996]
  - (1) Maximum four dwelling units per structure.
  - (2) Minimum (of record or planning) lot area for a three-dwelling-unit multifamily building: 75,000 square feet immediately contiguous to footprint of structure with a minimum width of 300 feet and a minimum depth of 250 feet if the lot of record or planning lot is served by public sewers. If not served by public sewers, a minimum of three acres is required. (NOTE: Wetlands are excluded in calculating minimum square foot requirements.)
  - (3) Minimum (of record or planning) lot area for a four-dwelling-unit multifamily building: 100,000 square feet immediately contiguous to footprint of structure with a minimum width of 400 feet and a minimum depth of 250 feet if the lot

of record or planning lot is served by public sewers. If not served by public sewers, a minimum of four acres is required. (NOTE: Wetlands are excluded in calculating minimum square foot requirements per dwelling unit.)

- (4) Of record or planning lot width is measured perpendicular to the side lot line of recorded or planning lot at the street/road and/or driveway line except for cul-de-sac layouts which shall meet the minimum width requirements at the building line.
- (5) Minimum front yard setback for all buildings and/or structures, with the exception of accessory structures, is 60 feet as measured to the front lot line of the recorded or planning lot.
- (6) Minimum side yard setback for all buildings/structures is 30 feet as measured to the side lot lines of the recorded or planning lot.
- (7) Minimum rear yard setback for all buildings/structures, except accessory structures, is 50 feet as measured to the rear line of the recorded or planning lot.
- (8) Maximum recorded or planning lot coverage with buildings and/or structures is 15% of recorded or planning lot area.
- (9) Maximum building height: 35 feet.
- (10) Minimum floor area per dwelling unit: 900 square feet, excluding garages, accessory structures and porches.
- (11) Minimum of four parking spaces per dwelling unit, including allotted spaces in a garage.
- (12) Maximum garage size: establish via site review.
- (13) Accessory structures.
  - (a) One accessory structure may be allowed per dwelling unit subject to site review. (Intent, i.e.: If association takes care of grounds, none required. If dwelling units are such an exceptional size that a large garage area could be provided and still blend in, none required. The square foot area allowed per accessory structure could be accumulated to allow for a community storage/clubhouse structure.) The following setbacks are recommended for accessory-type structures:
    - [1] Front yard: 100 feet.
    - [2] Side yard: 30 feet.
    - [3] Back yard: 30 feet.
  - (b) Size shall be determined by site review (maximum 600 square feet).
- (14) Handicapped access shall meet New York State Uniform Fire Prevention and Building Code standards.

- (15) All utilities and roadways (dedicated and private) shall meet Town standards as provided in the Code of the Town of Pendleton, Chapter 220, Subdivision of Land, Article V.
- (16) Multiple-family dwelling proposals shall be treated as subdivisions relative to the property, structures and/or buildings subject to site review, both of which are to be reviewed by the Planning Board of the Town of Pendleton. Property proposed for said dwellings are subject to review under the provisions of the Code of the Town of Pendleton, Chapter 220, Subdivision of Land.
- (17) Upon completion of final plat review by the Planning Board, a recommendation will be forwarded to the Town Board for consideration in granting or denying a special exception permit which is required prior to the issuance of a building permit.

- L. Also see Article VI, General Regulations, and Article VII, Supplemental Regulations. [Added 8-24-1994]
- M. Commercial vehicles, other than pickup trucks, weighing in excess of 10,000 pounds GVW shall not be parked on a less than 1 1/2 acre residentially zoned lot. [Added 8-21-2001; amended 12-2003]

**§ 247-12. CO1 District: Light Commercial.** [Amended 8-24-1994]

- A. No new residential construction shall be allowed in any commercial district, except multiple-family dwellings as allowed in § 247-11K and by special exception.
- B. New construction and any modification, alteration or addition to an existing structure shall be subject to site plan review by the Planning Board before any building permit is issued.
- C. Uses permitted by right:
  - (1) Farms, limited agriculture and unlimited agriculture.<sup>6</sup> [Added 6-3-2008]
  - (2) Antique and art shops.
  - (3) Baker, confectionery and ice cream shops, including the baking and processing of food products when prepared for retail use on premises only.
  - (4) Banks and financial institutions.
  - (5) Beverage stores, including the sale of beer and liquor.
  - (6) Catalog stores.
  - (7) Clubs, lodges or meeting halls.
  - (8) Drug stores.

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<sup>6</sup>. Editor's Note: With the addition of this subsection, former Subsection C(1) through (28) were renumbered as Subsection C(2) through (29), respectively.

- (9) Eating and drinking establishments.
- (10) Florist shops.
- (11) Gift and novelty stores.
- (12) Hardware, paint, glass and wallpaper stores.
- (13) Laundries, laundrettes and cleaning and pressing establishments.
- (14) Mortuaries and funeral parlors.
- (15) Motor vehicle service stations in accordance with § 247-50 of this chapter.
- (16) Newsstands.
- (17) Nurseries, greenhouses and garden supplies.
- (18) Offices.
- (19) Off-street parking.
- (20) Pet stores.
- (21) Personal services.
- (22) Photography studios.
- (23) Rental stores.
- (24) Repair services of household items.
- (25) Retail sales and service establishments not more objectionable by reason of noise, fumes, vibration or lights than any permitted use listed above.
- (26) Schools or places of instruction for music, dancing, reading, languages, elocution and similar subjects.
- (27) Stores selling convenience goods, including food products, hardware, newspapers, magazines, drugs, variety items, apparel, beer and liquor.
- (28) Essential services.
- (29) Accessory uses.
- (30) Semipublic and public uses. [Added 5-3-2011]

D. Minimum lot area: 50,000 square feet.

E. Minimum lot width: 200 feet.

F. Maximum lot coverage by buildings: 45%.

G. Minimum front yard setback:

- (1) Thirty feet if no parking lot is in front of the building.
- (2) Fifty feet if a parking lot is in front of the building.

- H. Minimum side yard setback:
  - (1) Twenty feet adjacent to nonresidential zones.
  - (2) One hundred feet adjacent to any residential zone or use.
- I. Minimum rear yard setback: 50 feet.
- J. Maximum building height: 35 feet.
- K. Also see Article VI, General Regulations, and Article VII, Supplemental Regulations.

**§ 247-13. CO2 District: Medium Commercial.** [Added 8-24-1994]

- A. No new residential construction shall be allowed in any commercial district, except multifamily dwellings as allowed in § 247-11K and by special exception.
- B. New construction and any modification, alteration or addition to an existing structure shall be subject to site plan review by the Planning Board before any building permit is issued.
- C. Uses permitted by right:
  - (1) All uses listed in the CO1 District.
  - (2) Agricultural implement sales and service.
  - (3) Automobile sales and related sales or service facilities.
  - (4) Building materials and retail sales.
  - (5) Department and variety stores.
  - (6) Feed and seed stores.
  - (7) Food stores and food lockers.
  - (8) Furniture and appliance sales and service, but not including assembly or manufacture.
  - (9) Hotels and motels.
  - (10) Indoor and outdoor recreation, including bowling alleys, pool halls, dance halls, amusement centers, amusement parks, miniature golf and driving ranges.
  - (11) Mobile home and trailer sales and service.
  - (12) Monument sales.
  - (13) Plumbing, heating and roofing supply retail sales.
  - (14) Public uses, excluding the storage of road materials, road equipment and garages, incinerators and landfills of any type.

- (15) Theaters.
- (16) Veterinary centers. [Added 4-5-2005<sup>7</sup> ]
- (17) Essential services.
- (18) Accessory uses.
- D. Minimum lot area: 50,000 square feet.
- E. Minimum lot width: 200 feet.
- F. Maximum lot coverage by building: 45%.
- G. Minimum front yard setback:
  - (1) Thirty feet if no parking lot is in front of the building.
  - (2) Fifty feet if a parking lot in in front of the building.
- H. Minimum side yard setback:
  - (1) Twenty feet adjacent to nonresidential zones.
  - (2) One hundred feet adjacent to any residential zone or use.
- I. Minimum rear yard setback: 50 feet.
- J. Maximum building height: 35 feet.
- K. Also see Article VI, General Regulations, and Article VII, Supplemental Regulations.

**§ 247-14. LI District: Light Industrial.**

- A. No new residential construction shall be allowed in any Light Industrial Zone, except by special exception. [Added 8-24-1994]
- B. All new construction and any modification, alteration or addition to an existing structure shall be subject to site plan review by the Planning Board before any building permit is issued. [Added 8-24-1994]
- C. Uses permitted by right:
  - (1) Farms, limited agriculture and unlimited agriculture.<sup>8</sup> [Added 6-3-2008]
  - (2) Animal shelters and facilities for raising insects and birds. [Amended 4-5-2005]
  - (3) Automobile painting, upholstering, motor and body work.
  - (4) Bottling works.

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<sup>7</sup>. Editor's Note: This ordinance also renumbered former Subsection C(16) and (17) and C(17) and (18), respectively.

<sup>8</sup>. Editor's Note: With the addition of this subsection, former Subsection C(1) through (21) were renumbered as Subsection C(2) through (22), respectively.

- (5) Building materials sales yard.
  - (6) Building contractor shops.
  - (7) Carpenter and cabinet maker.
  - (8) Electronic and small parts assembly and/or manufacture.
  - (9) Laboratories and research facilities.
  - (10) Locksmiths.
  - (11) Machine shops.
  - (12) Manufacture, compounding, processing or treatment of such products as bakery goods, confectionaries, cosmetics, dairy products, drugs, ice, perfumes, pharmaceuticals, toiletries and food products (except the following: fish, sauerkraut, pickles, vinegar, yeast and the rendering of oils and fats).
  - (13) Manufacture, fabrication, compounding, assembling, treatment and processing of articles of merchandise from the following previously prepared materials: cellophane, ceramics, cloth, film, fiber, glass, leather, paper and paper board, plastic, precious textiles, yarn or paint or wood. [Amended 8-24-1994]
  - (14) Metalsmiths.
  - (15) Off-street parking.
  - (16) Public uses.
  - (17) Radio and television towers.
  - (18) Repair shop.
  - (19) Storage of materials, supplies and equipment in accordance with § 247-54. [Amended 8-24-1994]
  - (20) Wholesale businesses.
  - (21) Essential services.
  - (22) Accessory uses.
  - (23) Semipublic uses. [Added 5-3-2011]
- D. Uses permitted by special exception: [Amended 8-24-1994]
- (1) Airports or airstrips.
  - (2) Dog kennels.
  - (3) Public stables.
- E. Minimum lot area: 50,000 square feet.
- F. Minimum lot width: 200 feet.

- G. Maximum lot coverage: 50%.
- H. Minimum front yard setback: [Amended 8-24-1994]
  - (1) Thirty feet if no parking lot is in front of the building.
  - (2) Fifty feet if a parking lot is in front of the building.
- I. Minimum side yard setback: [Amended 8-24-1994]
  - (1) Twenty feet adjacent to nonresidential zones.
  - (2) One hundred feet adjacent to residential zones or uses.
- J. Minimum rear yard setback: 50 feet.
- K. Maximum building height: 35 feet.
- L. Also see Article VI, General Regulations, and Article VII, Supplemental Regulations.

**§ 247-15. SLI District: Special Light Industrial.** [Added 8-30-1982; amended 8-24-1994]

- A. No new residential construction shall be allowed in any Special Light Industrial Zone, except in a designated mobile home park or by special exception.
- B. All new construction and any modification, alteration or addition to an existing structure shall be subject to site plan review by the Planning Board before any building permit is issued.
- C. Uses permitted by right: same as provided in § 247-14C. [Amended 6-3-2008]
- D. Uses permitted by special exception:
  - (1) Same as provided in § 247-14A. [Amended 6-3-2008]
  - (2) Mobile home parks (see § 247-49).
  - (3) Adult uses: adult bookstores, adult entertainment cabarets, adult mini-motion-picture theater and adult motion-picture as defined in Chapter 97, Adult Uses.
- E. Minimum lot area: 50,000 square feet.
- F. Minimum lot width: 200 feet.
- G. Maximum lot coverage: 50%.
- H. Minimum front yard setback: 100 feet.
- I. Minimum side setback:
  - (1) The same as provided in § 247-14I.
  - (2) In addition to the above side setback requirements, adult uses shall be permitted subject to the additional restrictions of § 97-3 of Chapter 97, Adult Uses.

- J. Minimum rear yard setback: 50 feet.
- K. Maximum building height: 35 feet.
- L. See also regulations in Chapter 97, Adult Uses, and Article VI, General Regulations, and Article VII, Supplemental Regulations.

ARTICLE V  
**Special Exceptions**

**§ 247-16. General provisions.** [Amended 8-24-1994]

The special exception uses for which conformance with additional standards is required shall be deemed to be permitted uses in their respective districts if they satisfy the special requirements and standards set forth in this Article as well as all the other regular requirements of this chapter. All special exception uses are hereby declared to possess characteristics of such a unique and special form that each specific use shall be considered as an individual case. The Town Board shall not grant any special exception permit without receiving a recommendation from the Planning Board.

**§ 247-17. Interpretation of permitted uses.**

When a use is not specifically listed as a use by right or a use by special exception within any zoning district, it shall be assumed to be a prohibited use unless it is determined in a written decision by the Town Board that said use is similar to permitted uses and not inherently a nuisance, menace or danger to the health, safety or welfare of the residents of the Town of Pendleton.

**§ 247-18. Required plan.**

A plan for the proposed development of a site for a special exception shall be submitted with an application for a special exception permit, and such a plan shall show the location of all buildings, lots, parking areas, traffic access and circulation drives, open spaces, landscaping and any other pertinent information that the Town Board deems necessary.

**§ 247-19. Standards.**

- A. The location and size of the special exception use, the nature and intensity of the operations involved and the size and the location of the site with respect to the existing or future streets giving access to it shall be in harmony with the orderly development of the zoning district.
- B. The location, nature and height of buildings, walls and fences shall not discourage the appropriate development and use of adjacent land and buildings nor impair the value of such adjacent land or buildings.
- C. Operations in connection with any special exception use shall not be more objectionable to nearby properties by reason of noise, fumes, vibration or light than would be associated with the operations of any permitted use in the zoning district.

**§ 247-20. Conditions.**

In granting the special exception permits, the Town Board may attach such conditions and safeguards as it deems appropriate under this chapter.

**§ 247-21. Expiration.**

A special exception permit shall be deemed to authorize only one particular use. The special exception permit is revocable for violation of the terms under which it was granted. The permit shall expire if the special exception use shall cease for more than six months for any reason.

**§ 247-22. Existing violations.**

No permit shall be issued for a special exception use for a property where there is an existing violation of this chapter. (See Article VIII, Nonconforming Uses and Structures).

ARTICLE VI  
**General Regulations**

**§ 247-23. Access to public street.**

Every building shall be constructed or erected upon a lot or parcel of land which abuts upon a public street unless a permanent easement of access to a public street was of record prior to the adoption of this chapter.

**§ 247-24. Contiguous parcels.** [Amended 8-24-1994]

Two or more contiguous parcels of land (held in one ownership) shall be used as a lot for only one permitted use if each separate parcel is too small to meet the area or dimension requirements of the zoning district. These lots must be combined into one parcel before any building permit is issued.

**§ 247-25. Lots or parcels of land of record.** [Amended 7-6-1999]

- A. Any single lot or parcel of land which was approved by the Planning Board as a lot of record or a legal building lot at the time of adoption of this chapter (December 15, 1992) shall continue to be a buildable lot.
- B. Any other parcel of land that does not meet the requirements for minimum lot width and area may be utilized for a permitted use, provided that approval is granted by the Board of Appeals.

**§ 247-26. Corner lots.** [Amended 8-2-1994]

- A. Both street sides of a corner lot shall be treated as front yards and shall maintain front yard setbacks from both streets, except that where the rear lot line of a corner lot coincides with the rear lot line of an adjoining corner lot, the exterior side yard setback for each shall be greater than 50% of the front yard setback. In this case, both yards are still considered as front yards.

- B. When a right-of-way to back lands is reserved in developing lots on an existing road, the lots adjoining the right-of-way will be treated as a corner lot and must be large enough to maintain front yard setbacks from the existing road and from the right-of-way.
- C. Any proposed street adjoining an existing building lot must have at least an additional 15 feet of width from the edge of the street right-of-way adjoining the side lot of that building lot.

**§ 247-27. Visibility.**

On a corner lot in any residential district, no fence, well, hedge or other structure or planting more than 31/2 feet in height shall be erected, placed or maintained within the triangle area formed by the intersecting right-of-way lines and a straight line joining the right-of-way lines at points measured 30 feet along each right-of-way line from their point of intersection. The requirements of this section shall not be deemed to prohibit the construction of any necessary retaining wall.

**§ 247-28. Height.**

- A. The height limitation of this chapter shall not apply to church spires, belfries, cupolas, penthouses and domes (not used for human occupancy), nor to chimneys, ventilators, skylights, water tanks, bulk heads, similar features and necessary mechanical appurtenances usually carried above the roofline. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve and shall not exceed in area the cross-sectional area of 20% of the ground floor area of the building.
- B. The provisions of this chapter shall not prevent the erection above the building height limit of a parapet wall or cornice for ornament (and without windows) extending above such height limit not more than five feet.

**§ 247-29. Yards.** [Amended 8-24-1994]

- A. Any open or enclosed porch, deck or terrace shall be considered as part of the building in the determination of the size of yard or lot coverage.
- B. The space in any required yard shall be open and unobstructed, except for the ordinary projection of windowsills, brick courses, cornices, eaves and other architectural features; provided, however, that such features shall not project more than two feet into any required yard.
- C. Bay windows, including their cornices and eaves, may project into any required yard no more than two feet.
- D. The front yard shall not be used for storage purposes.<sup>9</sup>

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<sup>9</sup>. Editor's Note: Former Section 709, Interpretation of permitted uses, which immediately followed this section, was renumbered 8-24-1994. See now § 247-17.

**§ 247-30. Fences and walls.** [Amended 8-24-1993]

- A. No fences shall be erected without first obtaining a permit from the Code Enforcement Officer.
- B. Except as otherwise provided in this chapter, fences or walls shall be permitted in any district, but not to exceed the following heights: seven feet where located in the back of the front wall of the principal building and three feet in front of the front wall, subject to conformance with visibility provisions (§ 247-27).
- C. The good side of the fence must face towards the outside of the fenced enclosure, and all mounting rails and posts must be on the inside of the fenced enclosure.
- D. Any fence or wall which may cause a fire hazard or a dangerous condition shall be prohibited.
- E. Fences shall be a permanent-type and well maintained.
- F. Snow fences and other such types shall not be permitted as permanent fences or remain more than six months.
- G. No barbed wire shall be permitted between residences. This does not include customary farm fencing used for confining livestock.

**§ 247-31. Antennas, towers and dishes.** [Added 8-24-1994]

- A. A building permit must be obtained before erecting any antenna tower.
- B. No antenna tower shall be located on the roof of a structure without design and certification by a New York State licensed professional engineer.
- C. No antenna tower shall be erected in a front yard.
- D. All antenna towers shall be erected in a free-fall zone entirely on the owner's property (if the tower were to fall, it must land entirely on the owner's property).

**§ 247-32. Glare, noise, odor and other nuisances.** [Amended 8-24-1994]

- A. All exterior lighting shall be directed away from adjacent properties and/or shielded in such a way that no direct glare shall be visible from adjoining public streets or adjacent lots when viewed by a person standing on ground level.
- B. There shall be no vibration or noise level at the property line greater than the average noise level occurring on adjacent streets between the hours of 9:00 p.m. and 7:00 a.m.
- C. There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive on adjoining streets or adjacent lots.
- D. The erection or use of any building or structure or the use of any land for any purpose which shall be noxious or injurious by the reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration or similar substances or conditions shall be prohibited.

**§ 247-33. Temporary stands.**

Temporary stands (to be used exclusively for the sale of agricultural or garden products produced in or upon the property) may be erected, used and maintained by the owner or bona fide lessee of the property. Such stands shall be kept orderly, sightly and sanitary. Proper and adequate driveways for off-street parking shall be constructed to the street or highway. All such stands and any signs in connection with such stands shall be removed when not in use for a period of 30 days.

**§ 247-34. Accessory structures.** [Amended 2-4-2003]

- A. An accessory structure is:
- (1) Subordinate to and serves a principal residence.
  - (2) Subordinate in area, extent and/or purpose to the principal residence.
  - (3) Located on the same lot as the principal residence.
- B. An accessory structure shall not be used as a residence.
- C. Multiple structures. Two accessory structures will be allowed per building lot. The combined square footage of the accessory structures shall not exceed the maximum size allowable as stated in § 247-34E. In addition, the applicant shall produce a current stamped survey of the property showing all structures on said property with sizes and setbacks at the time of filing an application for a building permit. [Amended 10-7-2008]
- D. Accessory structures cannot be built on any easement.
- E. Maximum size.
- (1) On residential lots up to and including two acres: maximum size of 600 square feet.
  - (2) On residential lots of more than two acres, up to and including seven acres: maximum size of 1,200 square feet. Also see Section § 247-34F(4).
  - (3) On residential lots of more than seven acres: maximum size of 2,000 square feet. Also see § 247-34F(4).
- F. Minimum setbacks; maximum heights.
- (1) Structures of a size of 50 square feet and under in area and under eight feet in height are not considered to be accessory structures.

However, a ten-foot setback must be maintained from all lot lines.

- (2) Accessory structure of a size of up to 600 square feet:
  - (a) Front yard: 150 feet.
  - (b) Side yard: 15 feet.

- (c) Rear yard: 20 feet.
- (d) Height not to exceed 16 feet.
- (3) Accessory structure of a size over over 600 square feet, up to and including 2,000 square feet:
  - (a) Front yard: 150 feet.
  - (b) Side yard: 15 feet.
  - (c) Rear yard: 20 feet.
  - (d) Height not to exceed 20 feet.
- (4) Structures over 1,800 square feet require a full site plan review by the Planning Board. The site plan review will involve the following: [Amended 10-7-2008]
  - (a) Drainage.
  - (b) Adjoining property impact.
  - (c) Means of access.
  - (d) Architectural features.
  - (e) Lighting.
  - (f) Location of structure on property or parcel of land.
- (5) If animals are housed in accessory structure, see § 247-40.

**§ 247-35. Unsafe structures (conforming use).**

Any building damaged by fire (or other causes) shall be repaired or demolished, the site cleared of all debris and all hazards removed within 12 months of the fire (or other cause).

**§ 247-36. Storage of trailers, mobile homes, recreational vehicles and boats.** [Amended 10-4-1994]

- A. "Storage" is defined in this section as the presence of a trailer, mobile home, recreational vehicle and/or boat on a lot for a period of seven days or longer.
- B. Every stored trailer, mobile home, recreational vehicle and/or boat must be owned by the person or persons residing at the lot on which the item is stored.
- C. No stored item shall be permanently serviced by any utilities. It shall be unlawful to permanently remove the wheels or permanently affix the vehicle to the ground.
- D. Every stored item shall be located to maintain the following setbacks: [Amended 2-4-2003]
  - (1) Front yard: same as residence.

- (2) Side yard: 10 feet.
- (3) Rear yard: 10 feet.

**§ 247-37. Golf courses.**

The Town Board may grant a special permit for a public golf course, private golf course, nonprofit golf course, commercial golf course or country club on a site of not less than 50 acres in any district, subject to the following conditions and such other conditions as shall be found necessary or desirable:

- A. Provisions for sanitary facilities shall have prior approval from the Town and County Health Departments.
- B. All buildings, parking areas, greens, tees, swimming pools and similar sources of noise shall be sufficiently removed from all property lines to assure the quiet enjoyment of adjacent properties and shall not be less than 100 feet from an adjacent property line.
- C. Any artificial lighting shall be shielded so as not to create conditions harmful or annoying to neighbors.
- D. Any signs shall be limited to identifying the use and shall be expressly approved by the Board.
- E. Suitable provision shall be made that any sales or services shall be incidental to the recreation use.
- F. Appropriate control of hours of operation shall be taken where considered necessary.
- G. Not more than 5% of the site shall be covered by buildings.
- H. Location and design of entrance drives shall be such as to minimize traffic hazard and nuisance factors.

**§ 247-38. Rod and gun clubs.** [Added 8-24-1994]

The Town Board may grant a special permit for a private rod and gun club on a site of not less than 150 acres in any district, subject to the following conditions and such other conditions as shall be found necessary or desirable:

- A. Provisions for sanitary facilities shall have prior approval from the Town and County Health Departments.
- B. All building parking areas and similar sources of noise shall be sufficiently removed from all property lines to assure the quiet enjoyment of adjacent properties and shall not be less than 100 feet from an adjacent property line. Firing lines shall be no closer than 200 feet from any lot line.
- C. Any artificial lighting shall be shielded so as not to create conditions harmful or annoying to neighbors.

- D. Any signs shall be limited to identifying the use and shall be expressly approved by the Town Board.
- E. Suitable provision shall be made that any sales or services shall be incidental to the recreational use.
- F. Appropriate control of hours of operation shall be taken where considered necessary. Shooting hours shall be restricted to 10:00 a.m. to sunset. Extra hours shall be approved by the Town Board.
- G. Not more than 5% of the site shall be covered by buildings.
- H. Location and design of entrance drives shall be such as to minimize traffic hazard and nuisance factors.

**§ 247-39. Home occupations.** [Amended 3-24-1992; 8-24-1994; 2-4-1997; 9-4-2001; 9-3-2002]

It is the intent of home occupation ordinances to regulate the conduct of business activities in residentially zoned areas (R1 and R2) in order to limit the intrusion of commercial activity upon the tranquility of residential neighborhoods. Two distinct classifications of home occupations are permitted in residential areas. Home occupation Type A shall not require the issuance of a permit by the town, while Home occupation Type B shall require an annual permit.

- A. Home occupation Type A. A commercial, not-for-profit or professional activity (hereafter "activity"), which is conducted wholly within a dwelling unit or within an accessory structure located on the same parcel of land as the dwelling unit at which such person conducting the activity resides. A Type A activity cannot impact the health, safety, welfare or comfort of the residents of the neighborhood where the activity takes place.

(1) The following restrictions shall also apply:

- (a) The activity shall be conducted only by a person residing at the premises.
- (b) There shall be no alteration of the exterior of the premises, with the exception of an unlighted sign not to exceed four square feet in total exterior dimensions.
- (c) No vehicles used in such activity shall be parked outside at the premises if such vehicles display either advertising or information concerning such activity or are used, other than incidentally, to conduct such activity.
- (d) There shall be no significant increase in traffic resulting from the activity nor parking of more than one customer vehicle at a time.
- (e) There shall be no outdoor storage of materials, inventory, products or merchandise used in such activity.
- (f) (Reserved)

- (g) Deliveries to the premises shall be made during the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday. No deliveries shall be made by vehicles having a gross weight in excess of 15,000 pounds.
  - (h) Tenants or persons not having title to the premises shall obtain the express, written approval of the owner prior to commencing such activity.
- (2) The activities of the following shall constitute a home occupation Type A, subject to the above restrictions:
- (a) Physician.
  - (b) Attorney.
  - (c) Dentist.
  - (d) Music teacher.
  - (e) Dressmaker/seamstress.
  - (f) Real estate broker and/or appraiser.
  - (g) Insurance salesperson and/or appraiser.
  - (h) Manufacturer's representative.
  - (i) Tax preparer.
  - (j) Accountant.
  - (k) Tutor.
  - (l) Architect, engineer or surveyor.
  - (m) Snow plow contractor/lawn maintenance contractor, provided that no equipment is parked outside on premises except for one pickup-type truck with attached snow plow or plow brackets.
  - (n) Cosmetologist or beautician.
  - (o) Hairdresser/barber.
  - (p) Animal groomer (provided that no harboring nor boarding of animals shall be permitted).
  - (q) Bakery.
  - (r) Antique sales.
  - (s) Florist shop.
  - (t) Taxidermist.
  - (u) Any occupation, business or profession that offers skilled services, other than automotive services or child care services, that meets the criteria as

stated in the Town Code or ordinances of the Town of Pendleton.

B. Home occupation Type B. A commercial, not-for-profit or professional activity (hereafter "activity"), which is conducted wholly within a dwelling unit or within an accessory structure located on the same parcel of land as the dwelling unit at which such person conducting the activity resides. A Type B activity may not significantly impact the health, safety, welfare or comfort of the residents of the neighborhood.

(1) The following restrictions shall also apply:

- (a) The activity shall be conducted primarily by a person residing at the premises;
- (b) A maximum of two persons who do not reside at the premises may also work on-premises at the activity;
- (c) Inventory of goods and products for sale may be stored on-site, provided that such storage takes place in a safe manner and wholly within an enclosed building or structure;
- (d) There shall be no alteration of the exterior of the premises, with the exception of an unlighted sign not to exceed four square feet in total exterior areas;
- (e) No vehicles used in such activity shall be parked outside at the premises if such vehicles display either advertising or information concerning such activity or are used, other than incidentally, to conduct such activity;
- (f) No significant increase in traffic resulting from the activity shall be permitted;
- (g) (Reserved)
- (h) Deliveries to the premises shall be made during the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday. No deliveries shall be made by vehicles having a gross weight in excess of 15,000 pounds;
- (i) Tenants or persons not having title to the premises shall obtain the express, written approval of the owner prior to commencing such activity.

(2) The activities as stated in Type A [Subsection A(2)(a) through (u)] shall constitute a home occupation Type B, subject to the above restrictions (Subsection B(1)(a) through (h)).

C. Permits.

(1) Application for Type B permits shall be available at the office of the Building Inspector. No use of a residential dwelling, accessory structures on residential property or residential property for a home occupation Type B as described in this chapter shall be established until the issuance of an annual permit by the

Town of Pendleton. Application for such a Type B permit shall be made to the Building Inspector and must conform with all ordinances of the Town of Pendleton. The application shall be in writing to the Building Inspector and consist of a description of the premises for which the permit is sought, a plain, concise statement of the use which is proposed, and such additional information as shall be required by the Town.

- (2) At least 30 days prior to the expiration of the annual Type B permit, the permittee shall notify the office of the Building Inspectors, in writing, if a one-year renewal of the permit is sought.
- (3) All permittees must immediately notify the Office of the Building Inspectors of any changes or circumstances which may effect the classification of the activity as a home occupation under this chapter.
- (4) If, during the application process, it is determined that the intended use would be in violation of the Town Code, the application shall be denied. The applicant may seek recourse through the Zoning Board of Appeals pursuant to Article X, §§ 247-75 and 247-76 of the Code of the Town of Pendleton.
- (5) The fee for a home occupation Type B Permit has been established by the Town Board as set forth in Chapter 131 of the Town Code (Fees).
- (6) Type B permits issued under the provisions of this section shall not be transferable.

D. Penalties for offenses.

- (1) It shall be a violation of this section if a home occupation is conducted contrary to the terms or requirements set forth above. Any violation of this section or of any regulation or provision thereof shall be an offense punishable by a fine of not exceeding \$250 or imprisonment for not more than fifteen days, or both. Each and every week that a violation of this section is permitted to exist shall constitute a separate offense. This penalty shall be in addition to any other penalties or other remedies as may be provided by law.
- (2) The Building Inspector shall be responsible for enforcement of the provisions of this section and may issue stop-work orders to restrain further activity at the home occupation site pending resolution of any violations.

**§ 247-40. Livestock and livestock buildings.** [Amended 8-24-1994]

- A. No building in which farm animals are kept shall be less than 100 feet from any lot line or less than 250 feet from the street line. No storage of manure or odor- or dust-producing substance shall be permitted within 100 feet from any lot line or 250 feet of the street line.
- B. The housing of livestock in an existing barn, stable or pen less than 100 feet from any lot line or less than 250 feet from the street line shall not be permitted if the use ceases, is abandoned or is discontinued for a period of one year (unless granted a special exception by the Town Board).

- C. No livestock pasture shall be permitted within 50 feet of any residential lot line in R1 or R2 Districts. The depth not to exceed 250 feet or 65 feet from a residential dwelling, whichever is greater. Beyond 250 feet from the street line and 65 feet from any residential dwelling, a pasture may extend to the lot line.
- D. Livestock shall be kept in accordance with the provisions of § 247-41, Domestic animals and livestock.

**§ 247-41. Domestic animals and livestock.** [Added 8-24-1994]

A. Purpose.

- (1) It is the purpose of this section to allow the raising and keeping of animals, livestock, poultry and rabbits within the Town of Pendleton pursuant to certain limitations and regulations intended to ensure that the raising and keeping of such animals, livestock, poultry or rabbits will not disrupt, disturb or harm the nature of residential areas within the Town or constitute a nuisance to any neighboring landowners and also to ensure that any such raising or keeping of animals, livestock, poultry or rabbits will be in conformance with the intent of this chapter.
- (2) This section does not apply to property 10 acres or more.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

**ANIMALS OR LIVESTOCK** — Includes burros, cows, donkeys, goats, horses, mules, swine, hogs, pigs, sheep and/or any other brute or beast as distinguished from man, and shall not be construed to apply to dogs and cats.

**DOMESTIC USE** — The raising or keeping of animals, livestock, poultry or rabbits by the owner of the property on which such animals, livestock, poultry or rabbits are raised or kept for hobby purposes or for consumption or associated use by the owner of such premises and his immediate family only.

**POULTRY** — Chickens, ducks, geese, guinea hens, turkeys, pigeons and/or any other fowl.

**RABBITS** — Any small animal of the hare family.

C. Domestic use; authorized restrictions. The raising or keeping of animals, livestock, poultry or rabbits for domestic use is hereby allowed in all zoning districts, subject to the following restrictions:

- (1) No animals or livestock are permitted on less than five acres.
- (2) For all animals and livestock, five acres of contiguous land or part thereof must be provided for every one animal or livestock kept or raised. The general provisions of § 247-40 shall also apply to domestic animals and livestock.
- (3) For all poultry and rabbits, a maximum of 12 of any combinations shall be allowed to be raised or kept on each one contiguous acre of land or part

thereof with a minimum of two acres.

- (4) For all swine, hogs and pigs, 10 acres of contiguous land must be provided to allow the raising or keeping of the same.
- (5) Any person raising or keeping animals, livestock, poultry or rabbits must also comply fully with the New York State Agriculture and Markets Law, the Niagara County Health Codes and applicable ordinances of the Town of Pendleton, including any setback or building requirements.
- (6) Such raising or keeping of animals, livestock, poultry or rabbits must not cause a nuisance to any adjoining property which would annoy, alarm or render an inconvenience to such property owner.
- (7) All animals, livestock, poultry or rabbits must be confined so as not to cause damage to neighboring property. Any damage done by animals, livestock, poultry or rabbits shall cause the owner of such animals, livestock, poultry or rabbits to be responsible for the damage.

**§ 247-42. Excavations.** [Amended 8-24-1994; 11-8-2000]

Before any excavation for a pond, pool, basin or similar project (excluding the construction of a wall, building or part thereof) is commenced, the owner or lessee of the premises or agent of either shall obtain a written permit and for that purpose shall file with the Code Enforcement Officer of the Town of Pendleton an application for a permit containing a detailed statement of the proposed work. Such statement and plan shall show the exact condition of the premises before and after the proposed excavation. No such excavation shall be permitted in a front yard, and all side and rear setbacks shall be observed.

**§ 247-43. Gravel and sand operations.** [Added 8-24-1994; amended 11-8-2000]

No gravel or sand operations shall be permitted unless such operations adhere to the following regulations:

- A. No excavation or stockpiling of materials shall be located within 150 feet of any public road or property line, unless a permit is granted by the Town Board for the improvement of the property.
- B. No power-activated sorting machinery or equipment shall be located with 600 feet of any occupied dwelling, and all such machinery shall be equipped with satisfactory dust-elimination devices.
- C. All excavation slopes shall be adequately fenced as determined by the Code Enforcement Officer.

**§ 247-44. Topsoil and overburden.** [Amended 8-24-1994; 11-8-2000]

A person, firm or corporation shall not strip, excavate or otherwise remove topsoil for use other than on the premises, except as allowed under Chapter 220, Subdivision of Land.

**§ 247-45. Road debris.**

Any person, officer or contractor causing dirt, stone or other material to be tracked, dumped or otherwise deposited on a public road or right-of-way within the Town of Pendleton shall remove the same at the end of each work day or upon termination of work for any one day.

**§ 247-46. Ponds; decorative/ornamental ponds.** [Added 8-24-1994; amended 4-6-1999; 7-6-1999; 11-2-2000; 9-7-2010]

- A. Pond: a man-made body of water adhering to state standards for depth, berms (if applicable), stocked with fish, not to exceed 10% of the parcel on which it is located or five acres, whichever is smaller, and approved by the Planning Board. Safety precautions must be adhered to, and at least three signs, six feet in height and legible from a distance of 30 feet, must be located at 120° around the circumference of the pond. This section is subject to a final site plan review under § 247-54 by the Planning Board.
- (1) Minimum side yard setback: 100 feet.
  - (2) Minimum front yard setback: 250 feet.
  - (3) Minimum rear yard setback: 50 feet.
- B. Decorative/ornamental pond: a man-made body of water retained by means of a liner (waterproof material) and kept aerated by means of a pump and filtering device or pump with an aerating system. The distance across the widest part is not to exceed 50 feet and the total square foot area is not to exceed 2,500 square feet. Total area cannot exceed 10% of the parcel of land on which it is constructed. Permit to construct is required.
- C. Stormwater management area, to benefit the greater good: for use during excessive rainfall or water runoff conditions to prevent property damage and/or soil erosion; must be approved by Stormwater Management Officer and Town Engineer. This section is subject to a final site plan review under § 247-54 by the Planning Board

**§ 247-47. Swimming pools, spas and hot tubs.** [Added 8-24-1994]

Swimming pools, spas and hot tubs shall all be considered as swimming pools. Their construction and maintenance is regulated by Chapter 222, Swimming Pools.

**§ 247-48. Garbage and refuse.** [Added 8-24-1994]

- A. The Town will provide, through a contractual relation with independent contractors, for the pickup and removal of garbage and refuse for one- and two-family residences.
- B. All multiple dwellings, mobile home parks and commercial and industrial users will be required to contract their garbage and refuse disposal independently. "Commercial" includes builders and developers.

- C. Contractors and developers will be required to provide on-site dumpsters during construction.
- D. Medical waste must be disposed of by the generators of the waste according to current state and federal regulations.

ARTICLE VII  
**Supplemental Regulations**

**§ 247-49. Mobile home parks.** [Amended 8-24-1994]

- A. No mobile home shall be located within the town, except in a designated mobile home park.
- B. A mobile home park cannot be established or created except upon a tract of land used or intended to be used for the parking of at least 50 mobile homes, together with the necessary improvements and facilities upon the land. No lot or berth shall be rented or leased for residential uses of a mobile home in any such park except for periods of 30 days or more and no mobile home shall be admitted to any park unless it can be demonstrated that it meets the requirements of applicable local codes and ordinances and the state code for construction and installation of mobile homes.
- C. The following standards shall be applicable in all mobile home parks:
  - (1) Area and bulk. Each mobile home lot shall meet the minimum lot area of 25,000 square feet. The minimum lot width shall be 100 feet; the minimum front yard setback shall be 60 feet; the minimum side yard dimension shall be 15 feet each side; the minimum rear yard dimension shall be 50 feet; and the maximum building height for structures shall be 35 feet.
  - (2) Electric. Each mobile home berth shall be provided with an approved electrical connection system. Underground cables are required. All electrical wiring within the mobile home park shall meet all Underwriters Code requirements [Amended 6-4-1996 by L.L. No. 1-1996]
  - (3) Fire protection. The mobile home park (including all mobile homes and all other structures within the mobile home park) shall be subject to the rules and regulations of the fire protection district authorities.
  - (4) Fires. Fires shall be allowed only in equipment specifically designed for such purposes. Open fires are not permitted.
  - (5) Fuel supply and storage. All fuel oil storage tanks or cylinders shall be securely fastened in place and shall be located at the rear of the mobile home and not located less than 10 feet from any mobile home exit. Supports or stands for fuel oil storage tanks must be of a noncombustible material. Installation must follow state and other generally accepted standards.
  - (6) General provisions and supplemental regulations. Also see Article VI and the other sections of this Article.

- (7) Green belt. A mobile home park shall be surrounded by a landscaped green belt of at least 100 feet from each property line. The required green belt shall not be included in the yard requirements for the individual mobile home lot or berth.
- (8) Interior drives. Interior drives shall be designed so as to prevent blockage of vehicles entering or leaving the site. All drives shall be two-way. All accessways to any public street or highway shall be located at least 200 feet from the intersection of any street lines and shall be designed with clear visibility and shall be maintained in a manner conducive to safe ingress and egress.
- (9) Lights. All driveways and walkways shall be lighted at night with shielded electric lamps of not less than 100 watts each, spaced at intervals of not more than 100 feet.
- (10) Mobile home support systems. Each mobile home lot or berth shall contain a mobile home stand which shall be constructed to the standards of the appropriate state code.
- (11) Recreation. A recreational area equal to at least 800 square feet for each mobile home berth shall be set aside and improved according to an approved recreation plan and shall not be located in any required setback, yard or green belt area. A recreation fee (see fee schedule) per lot may be charged in lieu of the recreation area as determined by the Town Board.
- (12) Roadway width. All mobile home lots or berths within the park shall abut upon a road with a right-of-way of 60 feet having a paved all-weather roadway of not less than 28 feet in width. The entrance to any mobile home park shall have a right-of-way width of at least 90 feet.
- (13) Rubbish. All organic rubbish or storage shall be contained in vermin-proof containers which shall be screened from view of any public right-of-way or abutting property. Refuse containers shall be located not more than 150 feet away from any mobile home berth. Rubbish collection must be not less than once weekly and contracted privately by the mobile home park owner.
- (14) Service buildings. All accessory service buildings on the mobile home park site shall be connected to all mobile home berths by a walkway of not less than three feet in width. Service buildings shall be provided with emergency sanitary facilities of one lavatory and one flush toilet for each sex for each 20 mobile home sites. All maintenance equipment shall be housed within a service building. All utilities shall be connected to mobile home sites through a service building.
- (15) Sewage. No on-lot sewage disposal systems shall be permitted. All waste from showers, bathtubs, flush toilets, urinals, lavatories, washing machines and slop sinks in mobile homes and service buildings shall be discharged into a public sewerage system.

- (16) Skirting. Each mobile home owner shall be required to enclose the bottom portion of the mobile home with a metal or other nonflammable material skirt, properly ventilated, within 60 days after arrival in the park.
- (17) Soil and ground cover requirement. Exposed ground surfaces in all parts of every mobile home park shall be paved or covered with stone screenings or other solid material or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.
- (18) Stabilizing devices. Each mobile home shall be tied down to prevent wind damage and shall follow the appropriate state code.
- (19) Water. All mobile homes and service and accessory buildings shall be connected to a central water system. Fire hydrants shall be located at least within 500 feet of all mobile homes, service buildings or accessory structures.

D. Permits.

- (1) It shall be unlawful for any person to construct, alter or extend any mobile home park unless he holds a valid permit issued by the Code Enforcement Officer in the name of the person for whom the specific construction, alteration or extension is proposed.
- (2) All applications for permits shall be made to the Code Enforcement Officer and shall contain the following:
  - (a) The name and address of the applicant.
  - (b) Interest of the applicant in the mobile home park.
  - (c) Location and legal description of the mobile home park, including a map showing the physical characteristics of the property (i.e., topography, vegetation and wetlands).
  - (d) Complete plans and specifications of the proposed park showing:
    - [1] The area and dimensions of the tract of land.
    - [2] The number, location and size of all mobile home lots.
    - [3] The location of service buildings and any other proposed structures.
    - [4] The location and width of roadways and walkways.
    - [5] The location of water and sewer lines and riser pipes.
    - [6] Plans and specifications of all buildings constructed or to be constructed within the mobile home park.
    - [7] Plans and specifications of the water supply, refuse disposal and sewer disposal facilities.
    - [8] The location and details of lighting and electrical systems.

[9] The phasing of the development, if any.

[10] Such other information as may be required by the Planning Board.

(e) A SWPPP, if required for the proposed land development activity under Article XIV of this chapter, together with the recommendation of the SMO to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-88D. If a SWPPP is submitted together with the application to construct, alter or extend any mobile home park pursuant to this section, such SWPPP and application shall comply with the requirements of Article XIV of this chapter. [Added 10-2-2007 by L.L. No. 2-2007]

(3) All applications shall be accompanied by a deposit of a fee per lot (see fee schedule). The Town Board, upon review by the Planning Board, shall approve, approve with modifications or disapprove such application and shall report its reasoned decision to the Code Enforcement Officer. When, upon review of the application, the Town Board and the Code Enforcement Officer are satisfied that the proposed plan meets the requirements of this chapter, a permit shall be issued.

E. Performance bond. Each application shall be accompanied by a performance bond or other satisfactory instrument (in the amount required by the Town Board and not less than the total estimated value of the improvements within the mobile home park) guaranteeing the satisfactory performance of the obligations and conditions set forth in this Article. No permit hereunder shall become effective until such bond is furnished and approved by the Town Attorney.

F. Licenses.

(1) It shall be unlawful for any person to operate any mobile home park within the limits of the Town of Pendleton unless he holds a valid license issued annually by the Code Enforcement Officer in the name of such person for the specific mobile home park. All applications for licenses shall be made to the Code Enforcement Officer, who shall issue a license upon compliance by the applicant with the provisions of this chapter and of other applicable legal requirements.

(2) Every person holding a license shall give notice, in writing, to the Code Enforcement Officer within 24 hours after having sold, transferred, given away or otherwise disposed of interest in or control of any mobile home park. Such notice shall include the name and address of the person succeeding to the ownership or control of such mobile home park. Upon application, in writing, for transfer of the license and deposit of a fee (see fee schedule), the license shall be transferred if the mobile home park is in compliance with all applicable provisions of this chapter.

(3) Application for original licenses shall be in writing, signed by the applicant, accompanied by an affidavit of the applicant as to the truth of the application and by a deposit (see fee schedule) and shall contain the location and legal

description of the mobile home park and a site plan of the mobile home park showing all mobile home lots, structures, roads, walkways and other service facilities.

- (4) Applications for renewals of licenses shall be made in writing by the holders of the licenses, shall be accompanied by the deposit fee (see fee schedule) and shall contain any change in the information submitted since the original license was issued or the latest renewal was granted.
- (5) Whenever, upon inspection of any mobile home park, the Code Enforcement Officer finds that conditions or practices exist which are in violation of any provision of this chapter or its amendments, the Code Enforcement Officer shall give written notice to the person to whom the license was issued that such conditions or practices shall be corrected within the time specified in the notice. At the end of such time period, the Code Enforcement Officer shall reinspect the mobile home park. If the conditions or practices have not been corrected, the Town shall correct the violation and the cost of the correction shall be placed on the owner's tax bill.
- (6) Any person who has received notice from the Code Enforcement Officer that he is in violation of his license because of conditions or practices at the mobile home park may request and be granted a hearing on the matter before the Town Board. If, however, no petition for such hearing shall have been filed within 10 days following the day on which the notice of violation was served, the Town Board shall cause corrections to be made.

G. Inspection of mobile home parks.

- (1) The Code Enforcement Officer shall make any inspections that are necessary to determine satisfactory compliance with this chapter and regulations issued hereunder. The Code Enforcement Officer shall have the power to enter upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter and regulations issued hereunder. The Code Enforcement Officer shall have the power to inspect the register containing a record of all residents of the mobile home park.
- (2) It shall be the duty of the owners or occupants of mobile home parks and mobile homes contained therein, or of the person in charge thereof, to give the Code Enforcement Officer free access to such premises at reasonable times for the purpose of inspection.
- (3) It shall be the duty of every occupant of a mobile home park to give the owner thereof or his agent or employee access to any part of such mobile home park or its premises at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this chapter and regulations issued hereunder or with any lawful order issued pursuant to the provisions of this chapter, or with the requirements of the state code for construction and installation of mobile homes.

H. Miscellaneous requirements.

- (1) Responsibilities of the park management.
  - (a) The person to whom a license for a mobile home park is issued shall operate the park in compliance with this chapter and regulations issued hereunder and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.
  - (b) It shall be the responsibility of the park management to notify park occupants of all applicable provisions of this chapter and inform them of their duties and responsibilities under this chapter and regulations issued hereunder.
  - (c) The park management shall supervise the placement of each mobile home on its mobile home stand, which includes installing all utility connections.
- (2) Responsibilities of park occupants.
  - (a) The park occupant shall comply with all applicable requirements of this chapter and regulations issued hereunder and shall maintain his mobile home lot, its facilities and equipment in good repair and in a clean and sanitary condition.
  - (b) The park occupant shall be responsible for proper placement of his mobile home on its mobile home stand and proper installation of all utility connections in accordance with the instructions of the park management.
- (3) Restrictions on occupancy. A mobile home shall not be occupied for dwelling purposes unless it is properly placed on a mobile home support system and connected to water, sewage and electrical facilities and receives a certificate of occupancy from the Code Enforcement Officer for each new connection.<sup>10</sup>

**§ 247-50. Public garages and motor vehicle service stations.**

- A. No public garage or motor vehicle service station or private garage for more than five cars shall have a vehicular entrance closer than 200 feet to an entrance to a church, school, theater, hospital, public park, playground or fire station. Such measurement shall be taken as the shortest distance between such entrances across the street, if the entrances are on opposite sides of the street and along the street frontage, if both entrances are on the same side of the street or within the same block.
- B. All motor vehicle service stations shall be so arranged and all gasoline pumps shall be so placed as to provide all required servicing on the premises and outside the public way. No gasoline pump shall be placed closer to any side property line than

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<sup>10</sup>. Editor's Note: Former Section 802, Private Swimming Pools, which immediately followed this section, was repealed 8-24-1994. See now § 247-47, Swimming pools, spas and hot tubs.

50 feet.

- C. Pumps, lubricating or other devices are to be located at least 20 feet from any street line or highway right-of-way.
- D. All fuel, oil or similar substances shall be stored at least 50 feet distant from any street line or lot line.
- E. No repair work shall be performed out-of-doors.
- F. No inoperative motor vehicles shall be kept on the premises of motor vehicle service stations for longer than two weeks.
- G. All waste material, motors and motor parts will be stored within a structure or enclosed within fencing so as not to be visible from off the property.
- H. All flammable materials must be stored and handled in accordance with National Fire Protection Agency standards. [Added 8-24-1994]

**§ 247-51. Off-street parking.**

- A. Off-street parking space(s) with a proper and safe access shall be provided within a structure or in the open to serve adequately the uses on each lot within the district. Any application for a building permit for a new or enlarged building, structure or change in use shall include with it a plot plan drawn to scale and fully dimensioned showing any parking or loading and unloading facilities in compliance with the regulations of this chapter. Handicapped facilities shall be provided as required by state regulations. [Amended 8-24-1994]
- B. A required off-street parking space shall be an area of not less than 170 square feet, nor less than eight and one-half (8 1/2) feet wide by 20 feet long (exclusive of access drives or aisles, ramps, columns or office and work areas) accessible from streets or alleys for the storage or parking of passenger automobiles or commercial vehicles under one and one-half (1 1/2) tons' capacity. Aisles between vehicular parking spaces shall not be less than 25 feet in width when serving automobiles parked perpendicular to the aisles and accommodating two-way traffic. [Amended 8-24-1994]
- C. Parking facilities shall be designed with appropriate means of vehicular access to a street or alley in such a manner as will least interfere with the movement of traffic. [Amended 8-24-1994]
- D. No parking space (nor portion thereof) established on the same zoning lot with a building shall be located within a required front yard area except in an established driveway. No parking spaces nor portion thereof established on a lot without a building shall be located closer to any street line than the front yard setback required for the zoning district in which it is located.
- E. All open off-street parking spaces, except those accessory to single-family dwellings, shall be improved with a compacted macadam base or surfaced with some all-weather dustless materials.

- F. All open off-street parking areas and loading and unloading areas shall be so graded and drained as to dispose of all surface water accumulation, as approved by the Code Enforcement Officer. [Amended 8-24-1994]
- G. Open off-street parking, loading and unloading areas and business and industrial buildings shall be screened from all adjoining residential districts by either a strip four feet wide, densely planted with shrubs or trees or a fence, screen or masonry wall three feet high from the street line to the front line and seven feet high for the remaining distance. Such screening shall be properly maintained. Also the better side of such fencing shall face the residential side.
- H. Any illumination of off-street parking, loading or unloading areas, buildings or signs or illumination for yards shall be so arranged as to direct the light away from the street and from adjoining premises.
- I. See also Chapter 235, Vehicles and Traffic, Article III, Parking. [Added 8-24-1994]

**§ 247-52. Loading and unloading.**

- A. Off-street loading and/or unloading spaces for commercial and/or industrial vehicles shall be provided on each lot where it is deemed that such facilities are necessary to serve the use or uses on the lot. The number of loading and/or unloading spaces required for commercial and/or industrial vehicles shall be in addition to the off-street parking requirements. Each loading and/or unloading space shall be at least 14 feet wide and 60 feet long, shall have at least a fifteen-foot vertical clearance, shall have a sixty-foot maneuvering area, shall have an all-weather surface to provide safe and convenient access during all seasons and shall not be constructed between the street right-of-way line and the building setback line.
- B. Required off-street parking space shall not be used for loading and/or unloading purposes, except during hours when business operations are suspended.
- C. Loading and/or unloading facilities shall be designed so that trucks must not back in or out of nor park in any public right-of-way. [Amended 8-24-1994]
- D. No truck shall be allowed to block a right-of-way or an automobile parking area or in any way prohibit the effective flow of persons or vehicles.
- E. At least one off-street loading and/or unloading space shall be provided for all commercial and industrial establishments in excess of 3,500 square feet of floor area.

**§ 247-53. Signs.** [Amended 8-24-1994; 4-6-2004]

- A. Intent.
  - (1) The purpose of this section is to protect the public health, welfare and safety by regulating existing and proposed outdoor advertising and outdoor signs of all types. It is intended to protect property values, create a more attractive economic and business climate and protect the physical appearance of the

community. It is further intended to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents and to reduce the adverse effects of signage on natural beauty and on the environment in general.

- (2) No signs shall be erected, altered, moved or used except in conformance with this section and then, except for off-premises signs, only as an accessory use.

B. General provisions.

- (1) No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights. Any illuminated sign or lighting device shall employ only lights emitting a perceived constant intensity. All signs containing electrical wiring shall be subject to the provisions of the Underwriter's Laboratory (UL), and the electrical components used shall bear the label of an approved testing agency.
- (2) No illuminated sign or lighting device shall be so placed or directed so as to permit the beams and illumination thereof to be directed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance.
- (3) No sign shall attempt (or appear to attempt) to direct movement of traffic or imitate or resemble an official sign, signal or device.
- (4) No sign shall prevent a driver of a vehicle from having a clear and unobstructed view of any official sign or entrance or exit roadway or intersection or approaching or merging traffic.
- (5) No permanent sign or part thereof shall contain and/or consist of pinwheels, posters, ribbons, or other similar moving or revolving devices.
- (6) No signs, except such directional devices as may be required by the Federal Aviation Administration, shall be placed, inscribed or supported upon or above the highest part of the roofline or parapet.
- (7) Every sign shall at all times be maintained in a neat, safe and structurally sound condition and maintained by replacement of defective or worn parts, painting and cleaning.
- (8) No sign on rocks, trees and other parts of the natural landscape, or signs on vehicles, parking lots, driveways, fences, etc. shall be allowed, except for permanent commercial advertising on trucks or vehicles temporarily in transit through the Town of Pendleton.
- (9) Face area: the area defined by the outermost portion of the frame, support or edge of a sign (including roof, enhancement, etc.). Where there is not a geometric frame or edge of a sign, the sign area shall be defined by a projected, enclosed four-sided (straight sides) geometric shape, which most closely outlines the sign. Only one face of a sign shall be used in measuring the sign area.

C. Signs allowed in all districts; no sign permit required:

- (1) One sign for each building or lot advertising the sale, rental or lease of the premises or part thereof on which the sign is displayed, not exceeding four square feet in residential districts and 32 square feet in commercial and industrial districts.
- (2) Official signs, notices or direction devices erected or maintained by a federal, state, county or local government or agency thereof.
- (3) One sign denoting the name and address of the occupants of the premises, which shall not exceed two square feet in face area.
- (4) One sign denoting the architect, engineer or contractor placed on the premises where construction, repair or renovation is in progress, which sign shall not exceed 32 square feet in face area. The sign must be removed from the premises within seven days after such construction, repair or renovation is completed.
- (5) Directional signs, entrance and exit signs and other such signs which are erected on the premises, which shall not exceed four square feet in face area and shall not contain any advertising of the use of the premises.
- (6) Home occupation signs. See § 247-39.

D. Signs allowed in all districts; sign permit required:

- (1) One freestanding sign, or one building sign, either of which may be illuminated, neither of which shall exceed 32 square feet in face area, located on the premises of a public or quasi-public organization or institution and not less than 10 feet from any lot line, and not more than six feet in height above the finished grade (churches, fire departments, cemeteries, etc.).
- (2) Signs advertising subdivision lots, not to exceed 32 square feet or eight feet in height above finished grade, shall be permitted at each entrance (collector) to the subdivision.
- (3) Signs identifying residential areas shall not be permitted.

E. Signs allowed in nonresidential districts; sign permit required:

- (1) Building signs.
  - (a) Number: except for canopy signs, two per each individual establishment.
  - (b) Maximum face area: except for canopy signs, 30% of building frontage wall area, up to 15 feet in height, not to exceed 200 square feet.
  - (c) General regulations.
    - [1] Wall signs shall not project above or beyond the ends of the building or its parapet or the highest point of the roof, whichever is higher.
    - [2] Canopy signs shall not exceed nine square feet in face area, shall

not have any members less than eight feet above finished grade and shall not have a vertical dimension exceeding 12 inches.

- (2) Freestanding signs.
  - (a) Number: one per each individual establishment.
  - (b) Maximum face area: 100 square feet.
  - (c) General provisions.
    - [1] Signs shall not exceed 100 square feet in face area, shall not exceed eight feet in height and shall be located not less than four feet from any adjacent business or industrial lot or 15 feet from an adjacent residential lot or street right-of-way. The minimum front yard setback shall equal 10 feet.
    - [2] Pole signs shall not exceed 100 square feet in face area and shall not exceed 25 feet in height, nor shall the lowest member, excluding the pole, be less than eight feet from the finished grade. They shall be located not less than 15 feet from an adjacent residential lot line and shall not project over any public right-of-way or encroach upon the property of another. The minimum front yard setback shall equal 10 feet.
- (3) Temporary signs.
  - (a) Temporary signs may consist of portable signs, banners, A-frame signs, pennants or streamers.
    - [1] Portable signs shall not exceed 24 square feet per face.
    - [2] Banners shall not exceed 50 square feet.
    - [3] A-frame signs shall not exceed eight square feet per face.
  - (b) Temporary signs may be used for a period not to exceed 90 days.
  - (c) All other provisions of this chapter shall also pertain to temporary signs.
  - (d) A sign shall be considered permanent and presumed to be permanent when it is attached below grade or to a structure above or below grade either mechanically or physically and is not capable of being readily removed; any sign in existence over 90 days, regardless of the manner of attachment, shall be considered and presumed to be a permanent sign and must comply with all requirements of this chapter which apply to permanent signs.
  - (e) Temporary signs in residential areas. Temporary signs may be erected advertising special events of churches, fire departments and organizations, i.e., Boy Scouts, Lions, Historical Society, etc.
- (4) Multiple developments.

- (a) Signage in multiple developments, such as shopping areas, office parks and industrial parks, shall exhibit a degree of uniformity so as to impart a sense of unity and harmony to the development. A coordinated signage plan shall be required and approved by the Planning Board.
- (b) Each individual establishment shall be permitted to have one building sign and one canopy sign.
- (c) The multiple development may have one freestanding sign. Additional signage may be granted by the Planning Board if justified by a coordinated signage plan presented during the site plan review process.
- (d) No owner, tenant or other user shall deviate from the coordinated signage plan.

(5) Billboards.

- (a) Billboards, due to issues of traffic safety and the visual landscape, shall not be allowed in any district, except upon issuance of a permit. Locations of billboards shall be limited to light industrial zoned areas and prohibited from the remainder of the Town. Billboards shall not exceed 400 square feet per face, shall maintain a minimum distance of 2,000 feet from any other billboard, shall observe the same height requirements as for pole signs and shall not be located closer than 50 feet to a residential district.
- (b) Billboards shall be subject to any additional conditions deemed necessary during the review process.

F. Permit procedures.

- (1) Application. Application for a sign permit shall be made to the Building Inspector upon prescribed forms and shall contain the following information:
  - (a) Name, address and telephone number of the applicant.
  - (b) Location of the building, structure or land to which or upon which the sign is to be erected.
  - (c) Scale drawings, including dimensions, showing lettering and/or pictorial of lighting or other extraneous devices; and a location plan showing the position of the sign on any building and its position in relation to nearby buildings, structures or existing signs and to any private or public street or highway.
  - (d) For multiple developments, a coordinated signage plan must be submitted to the Planning Board, in addition to the application procedure.
- (2) Review.
  - (a) The Building Inspector shall review the completed application and, at

his or her discretion, may refer it to the Planning Board.

- (b) For multiple developments, the Planning Board shall review coordinated signage plans and approve the locations, sizes and number of permitted signs.
- (3) Issuance of permits.
  - (a) Upon application approval, the Building Inspector shall issue a sign permit.
  - (b) For multiple developments, Planning Board approval of the coordinated signage plan must be obtained prior to the issuance of any permits.
- G. Revocation of permit and removal of certain signs.
  - (1) General conditions.
    - (a) All signs shall be kept clean, neatly painted and free from all hazards, including faulty wiring and loose fastenings, and shall be maintained at all times in such a tidy and safe condition so as not to disserve the public health, safety and general welfare. Any sign found unsafe and insecure, or that is a menace to the public, shall be suitably repaired or removed. Said removal includes foundation and supporting structure.
    - (b) Any sign no longer performing its original function due to vacancy or other change on the premises shall be removed within one year of said condition.
  - (2) Enforcement. In the event of a violation of any of the conditions hereof, the Code Enforcement Officer shall give written notice to the named owner of the sign and/or the named owner of the land on which the sign is located, either to conform or to remove such sign within 30 days of such notice. Upon failure to comply with such notice, the Code Enforcement Officer shall revoke the sign permit and may remove or repair such sign, assessing all incurred costs and expenses against the owner. The Code Enforcement Officer may cause any sign, which is a source of immediate peril to a persons or property, to be removed summarily and without notice.
- H. Nonconforming signs.
  - (1) Permanent signs. To avoid hardship, owners shall be allowed to use nonconforming signs permanently affixed to a structure or foundation which have been in existence prior to the effective date of this chapter.
  - (2) Replacement. A nonconforming sign which is destroyed or which is damaged to an extent in excess of 50% of its value shall not be replaced except by a sign which conforms to this chapter.
  - (3) Alteration. A nonconforming sign, which existed on the effective date of this chapter, shall not be enlarged, structurally altered or relocated, except in accordance with the provisions of this section.

- I. Political signs. See Chapter 196 (Political Advertising).
- J. Penalties for offenses. Any person who violates any provision of this section is guilty of a violation punishable by a fine not exceeding \$350 for the first violation; a minimum of \$350 and a maximum of \$700 for a second violation within five years; and a minimum of \$700 and a maximum of \$1,000 for a third or subsequent violation within five years; or imprisonment for a period not to exceed six months, or both. Each week's continued violation shall constitute a separate violation.
- K. Enforcement. The Building Inspector shall be empowered to enforce this section.

**§ 247-54. Site plan review; performance and design standards.** [Amended 8-24-1994; 9-2-1997; 11-8-2000; 8-2-2005; 10-2-2007 by L.L. No. 2-2007; 9-7-2010]

- A. Intent. The intent of site plan review is to evaluate specified land uses in terms of their suitability to natural site conditions, their compatibility with surrounding land uses and their conformance with overall plans for the community, thus minimizing possible adverse effects on the health, safety and welfare of local residents.
- B. Applicability. All applications for building permits, including change of use, shall be accompanied by an approved site plan, except for the following: single- and two-family dwellings, including permitted accessory uses and additions and general farming use.
- C. Reviewing agency. The final site plan shall be subject to the approval of the Planning Board.
- D. Review procedures.
  - (1) Planning Board review; sketch plan.
    - (a) A preliminary sketch plan conference shall be held between the Planning Board and the applicant prior to the preparation and submission of the final 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 prior to incurring design costs, and for the Planning Board to review the basic site design concept, advise the applicant as to potential problems and concerns and generally determine the information to be required on the site plan. The project's status under State Environmental Quality Review (SEQR) will be determined at this time.
    - (b) In order to accomplish these objectives, the applicant shall provide sketches of the proposed development, together with an area map showing the location of the site in the general area. This step is designed to save the applicant from possible future delays. A sketch plan application must be filed and a sketch plan fee must be paid to the Town Clerk prior to the preliminary sketch plan conference with the Planning Board.
    - (c) The Planning Board will review the site plan sketch and advise the

applicant on whether to proceed with a final site plan review. If the project does not warrant final site plan action, the Planning Board will take action without a public hearing.

- (d) If a final site plan is required, the applicant should proceed to Subsection D(2) below.
- (2) Final site plan review.
- (a) The applicant shall submit to the Planning Board an application for final site plan review approval, which shall be accompanied by 15 copies of the following:
    - [1] A copy of the final plat application form.
    - [2] A boundary survey.
    - [3] A topographical survey based on United States Geological Survey (USGS) data to extend a reasonable distance beyond the site.
    - [4] The location of existing and proposed easements.
    - [5] Existing natural features, such as watercourses, water bodies, wetlands, wooded areas, individual large trees and flood hazard areas. Features to be retained in the development should be indicated.
    - [6] Soil characteristics, regarding capabilities and/or limitations for development if required.
    - [7] The location and design of all existing on-site or nearby improvements, including drains, culverts, water lines, sewers, gas/electric lines and poles, bridges, retaining walls, fences and stormwater management areas.
    - [8] The location and design of proposed utilities, including water, sanitary and storm sewer systems.
    - [9] The location and design of all streets, parking and service areas, access drives and bicycle and pedestrian ways within and immediately adjoining the site.
    - [10] The location and height of proposed buildings, structures and enclosures.
    - [11] The location and proposed development of all open space, including parks, playgrounds, screen plantings and other landscaping.
    - [12] The location, size and design of all proposed signs and lighting facilities.
    - [13] Building elevation drawings.

- [14] A grading and drainage plan showing existing and proposed contours at intervals not exceeding 2.5 feet.
  - [15] Other elements integral to the proposed development as considered necessary by the Planning Board.
  - [16] Map, plan and report with all legal documentation submitted to create a stormwater drainage district or districts for this site. A district shall be defined as the watershed area for a specified location under post-development conditions where stormwater is discharged from this site on the public right-of-way.
  - [17] A SWPPP, if required for the proposed land development activity under Article XIV of this chapter, together with the recommendation of the SMO to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-88D. If a SWPPP is submitted pursuant to this section, such SWPPP and site plan shall comply with the requirements of Article XIV of this chapter.
- (b) Drawings, documents and information are to be prepared by a qualified professional engineer, architect, planner or surveyor, as appropriate and as determined necessary by the Planning Board. This must be submitted within six months of the sketch plan acceptance.
- (c) Distribution of final site plan. One copy to:
- [1] Each Planning Board member.
  - [2] The Town Board.
  - [3] The Town Engineer.
  - [4] The Highway Superintendent.
  - [5] The Stormwater Management Officer.
  - [6] The Town Assessor.
  - [7] The Town Clerk.
  - [8] The Code Enforcement Officer.
  - [9] The County Planning Board.
- (3) Public hearing. The Planning Board shall conduct a public hearing on the final site plan review within 62 days of receipt of a complete final site plan. This hearing shall be advertised at least once in the official newspaper of the Town at least five days before such hearing. Notification of public hearing shall be sent to all property owners within 400 feet of the site plan review property.
- (4) Referrals. Prior to taking action on the site plan, the Planning Board shall review the recommendations received from the Town Board, Town Engineer,

Highway Superintendent, Code Enforcement Officer, Assessor, County Planning Board and all other officials and agencies deemed necessary.

- E. Review standards. The Planning Board's review of the final site plan shall include as appropriate but is not limited to the following considerations:
- (1) Zoning compliance and compatibility with the Master Plan.
  - (2) The location, arrangement, size, design and general site compatibility of buildings, lighting and signs; the adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic control.
  - (3) The location, arrangement, appearance and sufficiency of off-street parking and loading.
  - (4) The adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
  - (5) The adequacy of stormwater management facilities and drainage facilities; the adequacy of water supply and sewage disposal facilities.
  - (6) The adequacy, type and arrangement of trees, shrubs and other landscape constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation. The Planning Board will have authority to determine the need, size, placement and type of buffer and/or barrier.
  - (7) The adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
  - (8) Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
  - (9) The overall impact on the neighborhood, including compatibility of design considerations.
- F. Performance and design standards.
- (1) Fire and explosive hazards. All activities and all storage of flammable and explosive material shall be provided with adequate safety devices against the hazards of fire and explosion, and adequate fire-fighting and fire-suppression equipment and devices shall be required.
  - (2) Radioactivity or electrical disturbances. There shall be no activities which emit radioactivity onto adjoining properties. There shall be no electrical disturbance adversely affecting the operation of any equipment other than that of the creator of the disturbance.
  - (3) Smoke. There shall be no emission from a chimney or other device for longer than five minutes in any hour of visible gray or visible smoke of any other

color with a shade darker than No. 3 of the standard Ringelmann Smoke Chart as issued by the United States Bureau of Mines.

- (4) Smoke, ash, dust, fumes, vapor, gases and other forms of air pollution.
  - (a) There shall be no emission at any point from any chimney or other device which can cause any damage to health, to animals, to vegetation or to other forms of property or which causes any excessive soiling at any point.
  - (b) The erection or use of any building or structure or the use of any land for any purpose which shall be noxious or injurious by the reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration or similar substances or conditions shall be prohibited.
- (5) Liquid and soil wastes. There shall be no discharge at any point into any public sewerage system or stream or into the ground of any materials in such a way or of such a nature as can contaminate or otherwise cause the emission of hazardous materials.
- (6) Noise and vibration. There shall be no vibration or noise level at the property line greater than the average noise level occurring on adjacent streets.
- (7) Glare. No direct glare, whether from floodlights or from high-temperature process, shall be visible from adjoining public streets or adjacent lots when viewed by a person standing on ground level.
- (8) Odor. There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive on adjoining streets or adjacent lots.
- (9) Storage. All materials will be stored inside an enclosed (but not necessarily roofed) structure. All organic rubbish or storage shall be contained in verminproof containers, which shall also be screened from public view.
- (10) Shopping cart storage. Any establishment which furnishes carts or mobile baskets as an adjunct to shopping shall provide definite areas within the required parking space areas for storage of said carts. Each designed storage area shall be clearly marked for storage of shopping carts.
- (11) Lighting. All parking areas, driveways and loading areas shall be provided with an adequate lighting system. All lighting shall be completely shielded from traffic on any public right-of-way and from any residential district.
- (12) Building design. Buildings shall be designed to take advantage of the natural terrain and shall not be physically located to unnecessarily concentrate activity in one portion of the lot. At least one entrance shall be at ground level. All pedestrian entrances shall be paved with an all-weather surface. A curbing strip shall be provided to separate parking areas, streets and driveways.
- (13) Vehicles. Any movable structure, trailer, automobile, truck or parts of these items or any other items of similar nature allowed to remain on the premises a longer time than that required to unload or otherwise discharge its normal

functions shall be considered subject to all regulations set forth in this chapter.

- (14) Change in occupancy. Any change in occupancy and/or use in an existing building which is used for commercial and/or industrial purposes will require an inspection by the Code Enforcement Officer and a new certificate of occupancy issued for the intended use. If external changes to the structure are required, a site sketch plan will be required before a building permit and/or certificate of occupancy is issued.
- G. Planning Board action. Within 62 days of the public hearing for final site plan approval, the Planning Board shall either approve or disapprove the final site plan and notify the applicant, stating the basis if not approved. This time period may be extended by mutual consent of the Planning Board and the applicant to allow all interested parties to comment on or modify the proposal.
- H. Code Enforcement Officers. Upon approval by the Planning Board, a complete final site plan review package will be sent to the Code Enforcement Officers before a building permit is issued.
- I. Fee. An application for the final site plan review shall be accompanied by a fee in an amount as determined by the Town Board.
- J. Reimbursable costs. Costs incurred by the Planning Board for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant.
- K. Improvements.
- (1) No certificate of occupancy 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.
  - (2) The Code Enforcement Officer shall be responsible for the overall inspection of site improvements, including coordination with other officials and agencies as appropriate.
  - (3) The applicant shall provide a map satisfactory to the Code Enforcement Officer indicating locations of monuments marking all underground utilities as actually installed. No performance bonds shall be released nor certificates of occupancy issued until such map is provided by the developer.
- L. Approvals. Approvals granted by the Planning Board of the Town of Pendleton will be honored for one year from the date of approval. A building permit for the project must be procured from the Code Enforcement Officer within the one-year limitation period. Applicants seeking to restart their project subsequent to the one-year limitation period will be referred back to the Planning Board for a new site plan review.

**§ 247-55. Oil and gas wells.** [Amended 8-24-1994; 6-4-1996 by L.L. No. 1-1996]

All oil or gas wells and gas and oil storage facilities shall be located in accordance with

the yard requirements of this chapter. They shall not be nearer than 150 feet to any public building or area which may be used as a place of assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic or occupancy by the public. They should not be nearer than 75 feet to the traveled part of any public street, road or highway and/or closer than 100 feet to any public stream, river or other body of water. In addition, all laws and regulations enforced by the Oil and Gas Division of the New York State Department of Environmental Conservation shall be observed.<sup>11</sup>

**§ 247-56. Airports and airstrips.**

- A. It shall be unlawful for any person to construct, maintain or operate, within the limits of the Town of Pendleton, any airport unless such person shall first obtain a permit therefor. Such permit shall be issued by the Town Board after a public hearing.
- B. A permit shall be valid for a period of three years. Application for a renewal shall be filed with the Town Board not less than 60 days before expiration of the current permit. Any permit not renewed within 60 days after the expiration date shall become null and void. A renewal shall not require a public hearing. A change of ownership and/or operating personnel shall require a new permit.
- C. Application for a permit for an airstrip shall be accompanied by a fee (see fee schedule) and also any engineering costs. A renewal fee (see fee schedule) shall be collected every three years. [Amended 8-24-1994]
- D. Applications for permits shall be accompanied by a plan of the airport showing the size of the field, position and size of buildings or structures, runways, number of planes permanently stationed or housed thereon, etc. It shall show the location of the airport from two intersecting streets. Any alteration or changes in the length or direction of runways shall require a new permit.
- E. If, for any reason, the Town Board shall order an airport to cease operation as such, the airport may be granted a period of up to three years to comply with the order of the Town Board.
- F. No plane other than the applicant's may be based permanently at a private airstrip. [Amended 8-24-1994]
- G. Spacing requirements between existing and proposed airports shall be the sum of the following radii prescribed for each airport, in accordance with its size classification as defined in this section.

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<sup>11</sup>. Editor's Note: Former Section 809, Gravel and Sand Operations, which immediately followed this section, was repealed 8-24-1994. For current provisions, see § 247-43.

<b>Class</b>	<b>Radius (miles)</b>
I or smaller	1
II	2
III	3
IV or larger	4

H. The size classification of airports under this section shall be in accordance with the standards as established by the Federal Aviation Administration or its successor. [Amended 8-24-1994]

**§ 247-57. Dumps, junkyards and auto wrecking yards.**

A. No dump is allowed in town. [Added 8-24-1994]

B. All junkyards shall conform to the following regulations:

- (1) Requirement for operation or maintenance. No person shall operate or maintain a junkyard or auto wrecking yard until he has obtained a permit from the Town Board to operate or maintain said junkyard or auto wrecking yard. Permits shall be issued on a calendar basis.
- (2) Application for permit. Application for the permit shall be made in writing to the Town Board. The application shall contain a description of the land to be included within said junkyard or auto wrecking yard.
- (3) Hearing. A hearing on the application shall be held not less than two nor more than four weeks from the date of the receipt of the application by the Town Board. Notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address given in the application and shall be published once in a newspaper having a circulation within the town, which publication shall be not less than seven days before the date of the hearing.
- (4) Permit requirement. At the time and place set for hearing, the Town Board shall hear the applicant and all other persons wishing to be heard on the application for a permit to operate or maintain the junkyard or auto wrecking yard. In considering such application, the Town Board shall take into account the suitability of the applicant, with reference to his ability to comply with the fencing requirements or other reasonable regulations concerning the junkyard or auto wrecking yard, to any record of convictions or any type of larceny or receiving of stolen goods and to any other matter within the purposes of this section.
- (5) Location requirements. At the time and place set for hearing, the Town Board shall hear the applicant and all other persons wishing to be heard on the application for the permit as to the location of the junk yard or auto wrecking

yard. In passing upon same, it shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of the surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering and whether or not the location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke or of other causes.

- (6) Aesthetic considerations. At the hearing regarding location of the junkyard or auto wrecking yard, the Town Board may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the location can be reasonably protected from having an unfavorable effect thereon. In this connection, the Town Board may consider collectively the type of road servicing the junkyard or auto wrecking yard or from which the junkyard or auto wrecking yard may be seen, the natural or artificial barriers protecting the junkyard or auto wrecking yard to residential and recreational areas or main access routes thereto, as well as the reasonable availability of other sites for the junkyard or auto wrecking yard.
- (7) Grant or denial of applications. After the hearing the Town Board shall, within two weeks, make a finding as to whether or not application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application. If approved, the permit shall be forthwith issued to remain in effect until the following December 31st. Approval shall be personal to the applicant and not assignable. Permits may be renewed upon submission of an application for said renewal. Renewal permits shall not be issued unless all of the provisions of this chapter are complied with during the prior license period, the junkyard or auto wrecking yard does not become a public nuisance under the common law and the applicant is not convicted of any type of larceny or the receiving of stolen goods.
- (8) Permit fees: see fee schedule. In the event that the permit is not granted, the fee shall be returned to the applicant. The applicant shall pay the cost of advertising such application and such other reasonable costs incident to the hearing as are clearly attributable thereto and said permit shall not be issued until payment of the same. [Amended 8-24-1994]
- (9) Fencing.
  - (a) The junkyard or auto wrecking yard shall be completely surrounded with a fence at least eight and no more than 10 feet in height which substantially screens and with a suitable gate which shall be closed and locked except during the working hours or when the applicant or his agent shall be within. Such fence shall be erected not nearer than 125 feet to a public highway and not nearer than 100 feet to the side and rear lot lines.
  - (b) All motor vehicles and parts thereof stored on deposited by the applicant

shall be kept within the enclosure of the junkyard or auto wrecking yard, except as removal shall be necessary for the transportation of the same in the reasonable course of the business. All wrecking or other work on such motor vehicles and parts shall be accomplished within the enclosure.

- (c) No vehicles shall be placed above the top of said fence. No storage of junk outside of fence shall be permitted.
  - (d) All buildings and grounds must be maintained in a neat and orderly manner.
- (10) Signs. No signs shall be painted, posted or otherwise displayed on the outside of the above mentioned fence, except that the one sign not to exceed 32 square feet setting forth the names of the business and the owner may be displayed. "No trespassing" signs may be displayed notwithstanding the above.

**§ 247-58. Garage sales, lawn sales and similar sales.**

- A. Garage sales may be conducted once or twice a year subject to the following rules and regulations:
  - (1) All sales shall be conducted during daylight hours.
  - (2) A sign no greater than two feet by two feet may be installed on the property where the sale is being conducted, which sign shall be removed within 24 hours after completion of the sale.
  - (3) The person conducting the sale shall be responsible for the maintenance of good order on the premises during all hours of the sale or activity.
- B. Permit.
  - (1) A permit must be obtained if more than two sales are conducted in one year.
  - (2) When applying for a permit, the applicant shall state the location and number of days of the sale and obey the above rules and regulations.

**ARTICLE VIII  
Nonconforming Uses and Structures**

**§ 247-59. Continuation.** [Amended 8-24-1994]

The nonconforming use of any building or land existing at the time of the enactment of this chapter may be continued unchanged although such does not conform with the provisions of this chapter.

**§ 247-60. Unsafe structures.** [Amended 8-24-1994]

Any structure or portion thereof (containing a nonconforming use) declared unsafe by a proper authority may be restored to a safe condition or removed according to the restrictions in § 247-35.

**§ 247-61. Alteration of a nonconforming building.**

A nonconforming building may not be constructed or structurally altered during its life to an extent in excess of the cost of 50% of the market value of the building, unless said building is changed to comply with all provisions of this chapter.

**§ 247-62. Extension of a nonconforming use.**

A nonconforming use shall not be expanded and must remain within the structure or on the lot where it existed at the time of the adoption of this chapter. (The extension of a lawful use to any portion of a nonconforming building which existed prior to the enactment of this chapter shall not be deemed an extension of a nonconforming use.)

**§ 247-63. Construction previously approved.**

Nothing herein contained shall require any change in plan, construction or designated use of a building for which a building permit has been issued and the construction of which shall have been diligently prosecuted within three months of the date of such permit.

**§ 247-64. Restoration.**

No nonconforming building damaged by fire (or other causes) to the extent of more than 75% of its market value shall be repaired or rebuilt, except in conformity with the bulk and area regulations of this chapter. The building can be rebuilt for the use it contained prior to the damage by fire (or other causes) if a building permit is obtained from the Town Board within 12 months of the destruction by fire or other calamity. Such damaged building shall be repaired or demolished within 12 months of the date of the fire (or other causes).

**§ 247-65. Abandonment.**

Whenever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be reestablished and any future use shall be in conformity with the provisions of this chapter.

**§ 247-66. Change of use.**

Once changed to a conforming use or a conforming building, no building or use of land shall be permitted to revert to a nonconforming use or nonconforming building.

**§ 247-67. Displacement.**

No nonconforming use shall be extended to displace a conforming use.

**§ 247-68. District change.**

Whenever the boundaries of a district or zone shall be changed so as to transfer an area from one district or zone to another district or zone of a different classification, the foregoing provisions (of this Article) shall apply to any new or preexisting

nonconforming uses therein.

ARTICLE VIIIA  
**Cellular Telecommunications Facilities**  
[Added 2-18-1997]

**§ 247-68.1. Use regulations.**

- A. The following provisions are the use regulations for a cellular telecommunications facility. The Town will permit no more than four towers in the existing boundaries of the Town of Pendleton. This number can be increased by special exception or by existing laws.
- (1) Section 247-68.1C(1) below applies to all districts.
  - (2) Section 247-68.1C(2) below applies to commercial and light industrial districts.
  - (3) Section 247-68.1C(3) below applies to residential districts.
- B. This article recommends that a cellular telecommunication facility be permitted in all districts by special exception or conditional use, with the Planning Board and Town Board deciding which is most appropriate.
- C. The special exception/conditional use format allows our Town to deal with each application on a case-by-case basis, and through the process will be able to attach reasonable conditions to the granting of the special exception or conditional use permit.
- (1) The following general provisions apply to all cellular telecommunications facilities which include tower and antenna. These general standards are in addition to the provisions for the particular applications specified in Subsections C(2) and C(3) below:
    - (a) The location of the tower and equipment building shall comply with all natural resource protection standards of this chapter.
    - (b) All applicants must provide for collocation on their tower and to provide a base of sufficient size, strength and structure to support a one-hundred-sixty-foot tower.
    - (c) A six-to-eight-foot-high security fence shall completely surround the tower and guy wires if used. The equipment and/or equipment building should be located inside the security fence.
    - (d) The following buffer plantings shall be located around the perimeter of the security fence:
      - [1] An evergreen screen that consist of either a hedge variety, planted three feet on center maximum, or a row of evergreen trees planted 10 feet on center maximum.
      - [2] Existing vegetation (trees and shrubs) shall be preserved to the

maximum extent possible.

- (e) Tower height. Not to exceed 160 feet in total from ground level or 735 feet above sea level.
  - (f) Towers and antennae shall be designed to withstand inclement weather conditions indigenous of this area, i.e. wind gusts, icing caused by freezing rain or melting snow, etc.
  - (g) The cellular telecommunications facility shall be fully automated and unattended on a daily basis and shall be visited only for periodic maintenance.
- (2) Nonresidential districts. A cellular telecommunications facility shall be permitted in the following zoning districts; Light Industrial, Special Light Industrial, Light Commercial (CO1) and Medium Commercial (CO2), subject to the following conditions:
- (a) Sole use on a lot subject to the following:
    - [1] Minimum area required: radius of 160 feet.
    - [2] Maximum height:
      - [a] Tower: 160 feet.
      - [b] Equipment building: 35 feet.
  - (b) Combined with another use. A cellular telecommunications facility is permitted on a property with an existing use.
    - [1] The existing use on the property may be any permitted use in the Town or any lawful nonconforming use and need not be affiliated with the cellular telecommunications provider.
    - [2] Minimum lot area. The minimum lot area shall be the area needed to accommodate the tower (guy wires if used), the equipment and/or the equipment building, a fall zone, security fence and evergreen plantings.
    - [3] Access. The vehicular access to the equipment building and tower shall be provided and maintained by the tower owner and be of sufficient width and thickness to provide access to emergency vehicles.
- (3) Residential districts. A cellular telecommunications facility may be located in a residential district subject to the following conditions:
- (a) Antenna only:
    - [1] Combined with a nonresidential use. An antenna may be attached to a nonresidential building or a structure that is a permitted use in the district. This includes but is not limited to a place of assembly,

a municipal or governmental building or facility, agricultural building or a building or structure owned by a utility. If the applicant proposes to locate the telecommunications equipment in a separate building, the building shall comply with all requirements as set forth for that given zone.

[2] Vehicular access to the building shall not interfere with the parking or vehicular traffic required for the principal use.

(b) Tower and antenna.

[1] All provisions as stated in Subsection C(1).

[2] All provisions as stated in Subsection C(2).

[3] Vehicular access to the building shall not interfere with the parking or vehicular traffic required for the principal use.

**§ 247-68.2. Tower permit application.**

Any company or governmental agency considered to be an essential service by federal definition may apply to the Town for a special exception permit to construct a tower. Application shall include the following:

- A. Town-supplied site plan review application (associated fee).
- B. Environmental assessment form (SEQR).
- C. Proof of the landowner's consent as demonstrated by lease agreement or equivalent if the applicant will not own the property. The stated lease agreement or equivalent must be approved by the Town Attorney of the Town of Pendleton.
- D. A survey of the property which includes all structures, easements, waterways, ditches (open or piped) on the property on the day of application. The survey should also include:
  - (1) Exact location of tower.
  - (2) Surface dimensions of tower base.
  - (3) Location of guy anchors if applicable.
  - (4) Location with dimensions of any proposed structures and/or equipment.
  - (5) Location and dimension of driveway and/or walkway.
  - (6) Proposed location of any utilities and proposed construction (under ground or aboveground).
- E. A detail of the tower including:
  - (1) Type.
  - (2) Color.

- (3) Lighting, if any, including location and intensity.
- (4) Initial height and maximum height.

**§ 247-68.3. Tower location requirements.**

All towers must follow the following order of requirements:

- A. Colocate on existing tower.
- B. Town-owned property.
- C. County-owned property.
- D. State-owned property.
- E. Light Industrial District.
- F. All others.

**§ 247-68.4. Restrictions.**

- A. No tower shall be used for signs or displays of any type.
- B. The Town may require a sufficient distance, in addition to the fall zone, from adjacent property lines and/or structures to prevent damage from falling ice.

**§ 247-68.5. Permits.**

Permits shall be:

- A. Subject to recommendation by the Planning Board.
- B. Approved by the Town Board.
- C. Issued by the Code Enforcement Officer.

**§ 247-68.6. Safety.**

Upon written request from the town, the applicant shall provide certification from a qualified licensed engineer that the tower meets all applicable structural safety standards.

**§ 247-68.7. Removal.**

- A. The applicant will agree to remove the tower in total which includes the base, guy anchors, equipment and/or buildings within a one-year time frame commensurate with the date said tower ceases to be used and/or termination of aforementioned lease (or equivalent), if applicable.
- B. A demolition or removal bond, or equivalent, will be required at the time of installation.
- C. Prior to removal, a demolition permit must be obtained from the Code Enforcement Officer.

ARTICLE IX  
**Administration**  
[Amended 3-6-1984; 8-24-1994]

**§ 247-69. Enforcement.**

This chapter shall be enforced by the Code Enforcement Officer who shall be appointed by the governing body of the Town of Pendleton. No building permit or certificate of occupancy shall be issued by the Code Enforcement Officer except where there is compliance with all provisions of this chapter.

**§ 247-70. Duties of the Code Enforcement Officer.**

It shall be the duty of the Code Enforcement Officer in connection with this chapter to do the following:

- A. Make a record of nonconforming uses.
- B. Issue building permits and certificates of occupancy or refuse to issue the same and give the reasons for such refusal, in writing, to the applicant.
- C. Keep a record of all applications for building permits and a record of all building permits issued with a notation of all special conditions involved.
- D. Keep the Town Board informed and advised of all matters, other than routine matters, in connection with this chapter.
- E. Submit such reports as may be deemed necessary by the Town Board.
- F. Whenever possible, advise and assist persons applying for building permits with the preparation of their applications.
- G. Secure warrants and prosecute violators of the provisions of this chapter.
- H. Serve all notices that may be required to be served in connection with this chapter.
- I. Make recommendations for keeping this chapter and the accompanying Zoning Map up to date.<sup>12</sup>
- J. Bring all applications for mobile home parks to the Planning Board for its review and recommendation, prior to the issuance of a building permit.
- K. Inspect new construction during and/or after construction and inspect changes of use to ensure conformity with the provisions of this chapter.

**§ 247-71. Building permits.**

- A. No excavation for a building or structure shall be made, no building materials shall be stored on the premises, nor shall any building or structure be erected, added to or structurally altered until a building permit has been issued by the Code Enforcement Officer. No building permit shall be issued for any building where such

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12. Editor's Note: The Zoning Map is on file in the office of the Town Clerk.

construction, additions, alteration or use would be in violation of any provision of this chapter or the New York State Uniform Fire Prevention and Building Code for up to 30 days after a written variance is granted by the Board of Appeals and filed in the office of the Town Clerk. The Code Enforcement Officer may delay issuing the building permit for up to 30 days if an appeal of the variance action is pending.

- B. The application for a building permit shall be made on a form obtained from the Code Enforcement Officer. It shall include a statement of the material to be used, an estimate of the cost, the location, the proposed use, and the sanitation facilities to be provided (if any are needed). Such permit shall be valid for a one-year period only. The fee for renewal of the permit shall be defined as the original application fee. [Amended 6-7-2005]
- C. All applications for building permits for mobile home parks along with two copies of a layout or plot plan, drawn to scale and showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of all existing buildings and accessory buildings, the size and location of all new buildings that are to be erected and the location of adjoining street right-of-way lines and such other information as may be necessary to determine and provide for the enforcement of this chapter shall be transmitted by the Code Enforcement Officer to the Planning Board for its review and recommendation. The sanitation, sewerage and waste disposal facilities shall comply with the standards approved by the County and State Health Departments.
- D. One copy of the layout or plot plan shall be returned to the applicant when approved, in writing, by the Planning Board, and a building permit shall then be granted by the Code Enforcement Officer after the receipt of the appropriate fee (see fee schedule).
- E. All building permit fees shall be doubled when excavation for a building or structure is made without a permit or when building materials are stored on the premises without a permit or when any building or structure is erected, added to or structurally altered without a permit.
- F. The Code Enforcement Officer shall attempt to notify at least two adjacent property owners when an application for a building permit has been filed. Failure of such adjacent property owners to receive such notice prior to the Planning Board's review shall not be a basis for invalidating the building permit nor be a basis for contesting the actions of the Code Enforcement Officer, Town Clerk, Planning Board, Board of Appeals or the Town Board in regard to the issuance or withholding of the building permit. (This does not apply to single-family detached dwellings or two-family dwellings.)

**§ 247-72. Certificate of occupancy.**

- A. No building hereafter erected, altered or extended shall be used, occupied or changed in use nor shall any land hereafter be occupied if changed in use until a certificate of occupancy has been issued by the Code Enforcement Officer stating that the building or proposed use complies with the provisions of this chapter and

the New York State Uniform Fire Prevention and Building Code.

- B. No nonconforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the Code Enforcement Officer.
- C. Certificates of occupancy shall be issued within 10 days after the erection, alteration or change in use has been inspected and approved by the Code Enforcement Officer as complying with the provisions of this chapter.
- D. The Code Enforcement Officer shall maintain a record of all certificates of occupancy and copies be furnished upon request to any person having a proprietary or tenancy interest in the building or land affected.

**§ 247-73. Temporary certificate of occupancy.**

A temporary certificate of occupancy for not more than 60 days for a part of a building may be issued by the Code Enforcement Officer.

ARTICLE X  
**Zoning Board of Appeals**

**§ 247-74. Appointment and organization.**

The Board of Appeals shall be appointed and shall function in accordance with enabling law. The Board of Appeals shall consist of five members. No appointment shall be valid unless the appointee is a resident of the Town of Pendleton. The Board may prescribe rules for its affairs.

**§ 247-75. Powers and duties.**

The Board of Appeals shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:

- A. Interpretation. To decide any question involving the interpretation of any provision of this chapter following an appeal filed by the aggrieved landowner from a decision made by the Code Enforcement Officer or the Planning Board. This includes the determination of the exact location of any district boundary, if there is uncertainty with respect thereto. [Amended 8-24-1994]
- B. Variances. To vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions whereby such strict application would result in practical difficulty or unnecessary hardship and would deprive the owner of the reasonable use of the land or building involved, but for no other reason. No variance in the strict application of any provision of this chapter shall be granted by the Board of Appeals unless it finds:
  - (1) That there are special circumstances or conditions fully described in the findings of the Board of Appeals applying to such land or building and not applying generally to land or buildings in the neighborhood. The

circumstances or conditions are such that strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or buildings for permitted uses in the zoning district.

- (2) That, for reasons fully set forth in the findings of the Board of Appeals, the granting of the variance is necessary for the reasonable use of the land or building and that the variance will accomplish this purpose.
- (3) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In granting any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable.

**§ 247-76. Procedure.**

- A. The Board of Appeals shall act in strict accordance with procedure specified by law and by this chapter. All meetings shall be open to the public. All appeals and applications made to the Board of Appeals shall be in writing on forms prescribed by the Board of Appeals. Every appeal or application shall:
  - (1) Refer to the specific provision of this ordinance involved.
  - (2) Exactly set forth the interpretation that is claimed.
  - (3) Be for the use for which the special exception permit is sought.
  - (4) State the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted.
- B. At least 10 days before the date of the hearing required by law on an application or appeal to the Board of Appeals, the Secretary of said Board shall transmit to the Planning Board a copy of the application or appeal. The Planning Board shall submit a report of an advisory opinion prior to the date of the Board of Appeals' hearing. Upon failure to submit such report, the Planning Board shall be deemed to have approved the application or appeal. Every decision of the Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board of Appeals on the particular case. [Amended 8-24-1994]
- C. In addition to giving public notice as prescribed by Town Law, the Board of Appeals shall send notice by mail, phone or personal contact to all property owners as shown on the tax rolls of the Town of Pendleton who reside within 250 feet of all boundary lines of the premises on which application is made. In the absence of bad faith or deliberate intent, the failure to send such notice to less than 50% of the property owners shall not invalidate the action of the Board of Appeals.
- D. If the applicant files with the Board of Appeals a signed consent for such special permit or variance signed by more than 50% of the affected property owners or if the applicant files an affidavit stating that he has served notice by mail or in person to all such property owners, the Board of Appeals shall be relieved of the duty to mail or send notice to such property owners.

**§ 247-77. Referral to Niagara County Planning Board.**

- A. A referral shall be made to the Niagara County Planning Board before issuing a special exception permit or granting a variance affecting real property within a distance of 500 feet from a boundary of the Town of Pendleton; or from the boundary of any existing or proposed county or state park or other recreation area; or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or from the existing or proposed right-of-way of any stream or drainage channel owned by the county (or for which the county has established channel lines); or from the existing or proposed boundary or any county or state owned land on which a public building or institution is situated.
- B. Within 30 days after receipt of a full statement of such referred matter, the Niagara County Planning Board or an authorized agent of said Planning Board shall report its recommendations to the Board of Appeals, accompanied by a full statement of the reasons for such recommendations. If the Niagara County Planning Board fails to report within such period of 30 days or such longer period as may have been agreed upon by it and the Board of Appeals, the Board of Appeals may act without such report. If the Niagara County Planning Board disapproves the proposal or recommends modification thereof, the Board of Appeals shall not act contrary to such disapproval or recommendation, except by a vote of a majority plus one of all the members of the Board of Appeals and after the adoption of a resolution fully setting the reasons for such contrary action.
- C. Within seven days after final action on a referral by the Board of Appeals, the Board of Appeals shall file a report of the final action with the Niagara County Planning Board.

**§ 247-78. Fees.** [Amended 8-24-1994]

Any application for an amendment or variance filed by or on behalf of the owner or owners of the property affected shall be accompanied by a fee designated in the fee schedule.

ARTICLE XI  
**Planning Board**

**§ 247-79. Appointment.**

The Town Board shall appoint a Planning Board consisting of seven members as prescribed (§ 271 of the Town Law). No appointment shall be valid unless the appointee is a resident of the Town of Pendleton.

**§ 247-80. Duties.**

The Planning Board of the Town of Pendleton shall have the following duties:

- A. To investigate, study, hold hearings upon and submit reports on all appeals and matters referred to it by the Board of Appeals, Code Enforcement Officer and/or Town Board. [Amended 8-24-1994]

- B. To submit reports within 30 days after reference to it of any appeal or other matter, unless the time shall be extended by the Code Enforcement Officer or agency making the reference. [Amended 8-24-1994]
- C. To hold monthly meetings on a regularly prescribed date and time and at such other times as the Chairman of the Planning Board may deem necessary. All meetings of the Planning Board shall be open to the public. The Secretary of the Planning Board shall keep minutes of all meetings.
- D. To prepare and change the comprehensive master plan and map for the development of the entire area of the Town of Pendleton.
- E. To review, recommend and approve (prior to the issuance of a building permit or occupancy permit) site plans for mobile home parks. Such site plans shall be submitted through the Code Enforcement Officer to the Planning Board at least 10 days prior to its next scheduled meeting and shall consist of the following: [Amended 8-24-1994]
  - (1) A survey drawn to scale prepared by an engineer or surveyor (registered by the State of New York) showing the exact size, shape and dimensions of the lot to be built upon.
  - (2) The exact size and location on the lot of all existing buildings and structures.
  - (3) The exact size and location on the lot of the structure or building proposed to be erected, moved, repaired or altered.
  - (4) All adjacent streets or alleys with traffic flow patterns.
  - (5) Areas to be utilized for storage of materials and type of architectural screen to be used.
  - (6) Such other information as may be required by the Planning Board to determine its recommendation or decision.
- F. To review, recommend and approve subdivision plans. [Amended 8-24-1994]
- G. To review, recommend and approve site plans for commercial and industrial development. [Amended 8-24-1994]

## ARTICLE XII

### **Penalties; Amendments; Construal of Provisions**

#### **§ 247-81. Complaints.** [Amended 8-24-1994]

Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer, who shall properly record such complaint and immediately investigate.

#### **§ 247-82. Penalties for offenses.**

Any violation of this chapter or of any regulation or provision thereof shall be an offense punishable by a fine of not exceeding \$250 or imprisonment for not more than 15 days, or both. Each and every week that a violation of this chapter is permitted to exist shall constitute a separate offense. This penalty shall be in addition to any other penalties or other remedies as may be provided by law.

**§ 247-83. Amendments.**

- A. The regulations, restrictions and boundaries established by this chapter may (from time to time) be amended, supplemented, changed, modified or repealed by ordinance in accordance with procedures provided in the Town Law. Such amendment, supplement, change, modification or repeal can be made on a motion by the Town Board or on the recommendation of the Planning Board or the Board of Appeals after a public hearing and due notice thereof. Every such proposed amendment shall be submitted to the Planning Board for a report and recommendation prior to the public hearing on the amendment(s).
- B. Amendments shall be referred to the Niagara County Planning Board for recommendation if the amendment to this chapter would change the district classification or the regulations applying to real property lying within a distance of 500 feet from any boundary of the Town of Pendleton; or from the boundary of any existing or proposed county or state park or other recreation area; or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or from the existing or proposed right-of-way of any stream or drainage channel owned by the county (or for which the county has established channel lines); or from the existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated.
- C. Within 30 days after receipt of a full statement of such referred matter, the Niagara County Planning Board to which referral is made, or an authorized agent of said agency, shall report its recommendations to the referring municipal agency, accompanied by a full statement of the reasons for such recommendations. If the Niagara County Planning Board fails to report within such period of 30 days or such longer period as may have been agreed upon by it and the referring agency, the municipal body having jurisdiction to act may do so without such report. If the Niagara County Planning Board disapproves the proposal or recommends modification thereof, the municipal agency having jurisdiction shall not act contrary to such disapproval or recommendation, except by vote of a majority plus one of all the members of the municipal agency and after the adoption of a resolution fully setting the reasons for such contrary action.
- D. Within seven days after final action by the municipal agency having jurisdiction on the recommendations, modifications or disapproval of a referred matter, such municipal agency shall file a report of the final action it has taken with the Niagara County Planning Board.

**§ 247-84. Construal of provisions; conflicts.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety or the general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the highest standards, shall govern.

ARTICLE XIII  
**Excavations**  
[Adopted 11-8-2000]

**§ 247-85. Excavations restricted.**

Excavations for the removal of topsoil, except as stated in Chapter 220, and/or mining of any type, are not permitted by right in the Town of Pendleton.

ARTICLE XIV  
**Stormwater Management**  
[Added 10-2-2007 by L.L. No. 2-2007]

**§ 247-86. Findings; purpose.**

A. Findings. It is hereby determined that:

- (1) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- (2) This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing streambank erosion and sedimentation;
- (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- (6) Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- (7) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- (8) The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates

and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety;

- (9) Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

B. Purpose. The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § 247-86A of this article. This article seeks to meet those purposes by achieving the following objectives:

- (1) Meet the requirements of minimum measures 4 and 5 of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- (2) Require land development activities to conform to the substantive requirements of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, Permit No. GP-02-01, or as amended or revised;
- (3) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- (4) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- (5) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- (6) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and ensure that these management practices are properly maintained and eliminate threats to public safety.

**§ 247-87. Applicability; exemptions; requirements.**

- A. Applicability. This article shall be applicable to all land development activities.
- B. Exemptions. The following activities shall be exempt from review under this article:

- (1) Agriculture, except that the construction of new structures associated with unlimited agriculture and the operation of a dude ranch or similar operation shall not be exempt from review under this article;
  - (2) Silvicultural activity, except that landing areas and log haul roads are subject to this article;
  - (3) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility;
  - (4) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer;
  - (5) Any part of a subdivision if a plat for the subdivision has been approved by the Town of Pendleton on or before the effective date of this article;
  - (6) Land development activities for which a building permit has been approved on or before the effective date of this article;
  - (7) Cemetery graves;
  - (8) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles;
  - (9) Emergency activity immediately necessary to protect life, property or natural resources;
  - (10) Activities of an individual engaging in home gardening by growing flowers, vegetables or other plants primarily for use by that person and his or her family;
  - (11) Landscaping and horticultural activities in connection with an existing structure.
- C. Conflict. Where the conditions imposed by any provisions of this article are either more restrictive or less restrictive than comparable conditions imposed by any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- D. All land development activities subject to review and approval by the Building Inspector, Town Highway Superintendent, Code Enforcement Officer, Planning Board, or Town Board of the Town of Pendleton under floodplain development permit, public improvement permit, mobile home park development, subdivision, drainage or site plan regulations shall be reviewed subject to the standards contained in this article. The applicant shall submit a SWPPP prepared in accordance with the standards contained in this article to the SMO, who shall forward the SWPPP, together with his or her written recommendation to approve, approve with modifications, or disapprove the SWPPP, to such agency, committee, employee or board of the Town of Pendleton which may be reviewing any application for approval of a land development activity requiring submission of a

SWPPP. Approval shall only be given if the SWPPP meets the requirements of this article. In making a recommendation to approve with modifications or disapprove the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.

- E. For all land development activities not subject to review by the Building Inspector, Town Highway Superintendent, Code Enforcement Officer, Planning Board, or Town Board of the Town of Pendleton as stated in § 247-87B of this article, the applicant or developer shall be required to submit a SWPPP prepared in accordance with the standards contained in this article to the SMO. The SMO shall approve, conditionally approve, or disapprove the SWPPP. Approval shall only be given if the SWPPP meets the requirements of this article. In conditionally approving or disapproving the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a conditionally approved or disapproved SWPPP in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.

**§ 247-88. Stormwater pollution prevention plans.**

- A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the SMO or such agency, committee, employee, or board of the Town of Pendleton which may be reviewing any application for approval of a land development activity requiring submission of a SWPPP has received a SWPPP prepared in accordance with the specifications in this article.
- B. Contents of stormwater pollution prevention plans.
  - (1) All SWPPPs shall provide the following background information and erosion and sediment controls:
    - (a) Background information about the scope of the project, including the location, type and size of the project.
    - (b) Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale of no smaller than one inch to 100 feet. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the land development activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);
    - (c) Description of the soil(s) present at the site;
    - (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and

grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the Erosion Control Manual, not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;

- (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
  - (f) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill-prevention and response;
  - (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project, from initial land clearing and grubbing to project closeout;
  - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
  - (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
  - (j) Temporary practices that will be converted to permanent control measures;
  - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
  - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
  - (m) Name(s) of the receiving water(s);
  - (n) Delineation of SWPPP implementation responsibilities for each part of the site;
  - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
  - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth in § 247-88B(3) of this article, as applicable:

- (a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
    - (b) Condition B: stormwater runoff from land development activities disturbing five or more acres.
    - (c) Condition C: stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.
  - (3) SWPPP requirements for Conditions A, B or C:
    - (a) All information in § 247-88B(1) of this article;
    - (b) Description of each postconstruction stormwater management practice;
    - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice;
    - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
    - (e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions;
    - (f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice;
    - (g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice;
    - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
    - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 247-91 of this article; and
  - (4) The SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this article.
- C. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

D. Contractor certification.

- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
- (2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- (3) The certification statement(s) shall be included with and become part of the SWPPP for the land development activity.

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

**§ 247-89. Performance and design criteria.**

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

- A. Technical standards. For the purpose of this section, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this section:
  - (1) The Design Manual; and
  - (2) The Erosion Control Manual.
- B. Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in § 247-89A of this article.
- C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

**§ 247-90. Maintenance, inspection and repair of stormwater facilities.**

- A. Maintenance and inspection during construction.
  - (1) The applicant or developer of the land development activity or his or her

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

- (2) For land development activities meeting Condition A, B or C in § 247-88B(2) of the this article, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.
- B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town of Pendleton to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this section. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town of Pendleton.
- C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. Proper operation and maintenance also includes, as a minimum, the following:
- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this article.
  - (2) Written procedures for operation and maintenance and training new maintenance personnel.
  - (3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 247-89 of this article.
  - (4) Maintenance agreements. The Town of Pendleton shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Appendix B of this chapter, entitled "Sample Stormwater Control Facility Maintenance Agreement."<sup>13</sup> The Town of Pendleton, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future

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13. Editor's Note: Said appendix is included at the end of this chapter.

stormwater management facility, provided such facility meets all the requirements of this section and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

**§ 247-91. Administration and enforcement.**

A. Construction inspection.

(1) Erosion and sediment control inspection.

(a) The SMO may require such inspections as necessary to determine compliance with this article and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this article and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, as required by the SMO:

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

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

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

(3) Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type

associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

- (4) Submission of reports. The SMO may require monitoring and reporting from entities subject to this article as are necessary to determine compliance with this article.
- (5) Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the Town of Pendleton the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in § 247-91A(3) of this article.

B. Performance guarantee.

- (1) Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Pendleton in its approval of the SWPPP, the Town of Pendleton may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Pendleton as the beneficiary. The security shall be in an amount to be determined by the Town of Pendleton based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Pendleton, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to Town of Pendleton. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.
- (2) Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Pendleton with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after

construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Pendleton may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

- (3) Recordkeeping. The Town of Pendleton may require entities subject to this article to maintain records demonstrating compliance with this article.

C. Enforcement and penalties.

- (1) Notice of violation. When the Town of Pendleton determines that a land development activity is not being carried out in accordance with the requirements of this article, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
  - (a) The name and address of the landowner, developer or applicant;
  - (b) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
  - (c) A statement specifying the nature of the violation;
  - (d) A description of the remedial measures necessary to bring the land development activity into compliance with this article and a time schedule for the completion of such remedial action;
  - (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and
  - (f) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.
- (2) Stop-work orders. The Town of Pendleton may issue a stop-work order for violations of this article. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town of Pendleton confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.
- (3) Violations. Any land development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.
- (4) Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for

conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

- (5) Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this article, the SMO may prevent the occupancy of said building or land.
  - (6) Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Pendleton may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- D. Fees for services. The Town of Pendleton may require any person undertaking land development activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town of Pendleton or performed by a third party for the Town of Pendleton. The fee shall be set by the Town Board by resolution.