

# **CODE UPDATE BLUE #1** **SEQR COORDINATED REVIEW**

## **Summary**

<b>Item 1 - Article V Section 247</b>	Special Uses/Special Use Permit
<b>Item 2 - Section 247-86</b>	Drainage
<b>Item 3 –Section 247-87</b>	Excavation & Fill
<b>Item 4 - Section 247-92</b>	Property Maintenances & Safety – Residential Construction
<b>Item 5 - Section 247- 12 M</b>	Small Retail Business/Businesses in Small Contractor Shop
<b>Item 6 - Section 247-10 E</b>	Driveway Side Yard Setback
<b>Item 7 - Section 247-11 E</b>	Driveway Side Yard Setback

## **ITEM #1 ORDINANCE UPDATE:**

### Article V **Section 247** Special Uses/Special Use Permit

#### **§ 247-16 Special Use**

(Note: Replaces the term Special Exception)

#### **A. General provisions.**

The **Special 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 requirements **and restrictions set forth for each Special Use**. All **Special 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. **Special Use Permits may be issued by the Planning Board on a Special Use as specified in pertinent Town Zoning Code sections.**

#### **B. Interpretation of permitted uses.**

When a use is not specifically listed as a Use by Right or allowable by **Special Use** within any zoning district, it shall be assumed to be a prohibited use unless it is determined in a written decision by the **Town Building Inspector/Code Enforcement Officer/Ordinance Enforcement Office** 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.

#### **C. Required Site Plan Review.**

- (1) All Special Use Permit Applications shall be subject to Planning Board Site Plan Review per Section 247-54.
  - (a) Environmental Review (SEQR) is required.
  - (b) Public Hearing is required.
    - (1) 400 feet notification
    - (2) A Special Use Permit issued by the Planning Board is required upon approval of the Site Plan and is subject to an annual review by the Planning Board. Planning Board Review will be undertaken to insure that all above listed provisions are being adhered to. The Planning Board will have discretion to revoke the Special Use Permit due to noncompliance and establish a time frame to correct the violation(s).

#### **D. General Standards.**

- (1) The location and size of the **Special 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.
- (2) 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.
- (3) 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.

#### **E. Conditions.**

In granting the **Special Use Permits**, the Planning Board may attach such conditions and safeguards as it deems appropriate under this chapter. **Issuance of Special Use Permit** shall be deemed to authorize only one particular use. **The Special Use Permit** is revocable for violation of the terms under which it was granted. **The Special Use Permit** shall expire if the **Special Use** shall cease for more than six months for any reason.

#### **F. Existing violations.**

No **Special Use Permit** shall be issued for a **Special Use** for a property where there is an existing violation of this chapter. (See Article **VIII**, Nonconforming Uses and Structures).

Sections 247-17 thru 247-21 Reserved

**ITEM #2** **ORDINANCE UPDATE:**

**§247-86 Drainage**

**A. Prohibited acts.**

It shall be unlawful for any person, firm, entity or corporation without a Drainage Permit issued by the Town Building Inspector/Code Enforcement Officer to:

- (1) Place, deposit or permit to be placed or deposited any debris, fill, sand, stone or other solid materials of any kind or nature or construction of any kind into or across any stream, ditch, culvert, pipe, watercourse or other drainage system.
- (2) Construct and/or place any ditch, pipe, culvert or artificial watercourse of any kind or nature which shall collect and direct the flow of natural surface waters or drainage or increase in intensity or quantity the flow of surface waters or drainage from paved surfaces, structures, roads or improvements directly into any stream, ditch, culvert, pipe or watercourse or other drainage system.
- (3) Fill, obstruct, dam, divert or otherwise change or alter the natural or artificial flow of waters or drainage or the intensity or quantity of flows through any stream, ditch, pipe, culvert, watercourse or other improvement of drainage system.
- (4) Construct, erect or replace bridges and culverts on all watercourse ditches, streams or sluices which affect adjoining properties.
- (5) Do any construction, soil movement and/or regrading where alteration of the natural drainage pattern results.

**B. Exceptions.**

The above restrictions shall not apply to work or construction done under a permit issued by the State of New York or County of Niagara.

**C. Application and Plans to be submitted.**

All applicants for a Drainage Permit to do any of the acts set forth above shall present plans to the Town Building Inspector/Code Enforcement Officer which plans shall be inclusive of, but not limited to, a description of the existing and subsequent drainage patterns together with a description of the affected adjoining properties. Such plans shall be accompanied by a Stormwater Pollution Prevention Plan (SWPPP), if required for the proposed land development activity under Article **XIII** of Chapter **247**, Zoning, of the Town Code, together with the written recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § **247-85C(3)** of the Town Code. After review of the complete Drainage Permit Application package the Town Building Inspector/Code Enforcement Officer will make a determination if the Application reflects a minor or major drainage impact.

- (1) If minor the Town Building Inspector/Code Enforcement Officer will have the responsibility of handling the Drainage Permit Application process.

- (2) If major the Town Building Inspector/Code Enforcement Officer will forward the Drainage Permit Package to the Town Planning Board for Site Plan Review in accordance with Section 247-54 of the Town Code.
  - (a) State Environmental Review (SEQR) required.
  - (b) Public Hearing requires 400-foot notification.

The Town Building Inspector/Code Enforcement Officer or Planning Board (if Site Plan Review is warranted) may solicit the help and or expertise of the Town Highway Superintendent to aid in the Drainage Permit Application process and or for post construction inspection.

#### **D. Effect of permit issuance.**

The issuance of a Drainage Permit by the Town shall not obligate the town to any costs in connection with the work performed under the permit and shall not obligate the Town to maintain any such improvements.

#### **E. Duties of Town Building Inspector/Code Enforcement Officer and Highway Superintendent.**

In the exercise of his/her discretion to grant or deny the Drainage Permit, the Town Building Inspector/Code Enforcement Officer in conjunction with the Town Highway Superintendent when warranted shall give consideration to the effect such proposed construction may have on the drainage, health, beauty, preservation of natural resources and control of pollution and welfare of the Town of Pendleton and shall deny any such Drainage Permit where in his judgment he determines such proposed construction is detrimental to the drainage, health, beauty, preservation of natural resources and control of pollution and welfare in the Town of Pendleton. If the plans submitted pursuant to § 247-86C above were accompanied by a SWPPP, the Town Highway Superintendent shall deny the Drainage Permit if such SWPPP and plans do not comply with the requirements of Article XIII of Chapter 247, Zoning, of the Town Code. Furthermore, the Town Building Inspector/Code Enforcement Officer and or the Highway Superintendent shall limit the installation of bridges and culverts along Town highways to a length not to exceed 40 feet, in the interest of ensuring adequate road drainage maintenance.

#### **F. Enforcement; penalties for offenses.**

- (1) Any person, firm entity or corporation found to be violating any provisions of this chapter shall be served with a written notice at the direction of the Town Building Inspector/Code Enforcement Officer stating the nature of the violation and providing for a thirty-day time limit for the satisfactory correction thereof. The offender shall, within the period stated in such notice, correct or remove all violations.
- (2) Any person, firm, entity or corporation who or which shall continue any violation beyond the time limit provided for in Subsection A above shall be guilty of a violation and, upon conviction thereof, be fined in an amount not exceeding \$2,500 or imprisoned for a term not exceeding 15 days, or both, for each violation. Each week in which such violation shall continue shall be deemed a separate offense.
- (3) In the event that any person, firm, entity or corporation shall continue any violation beyond the time limit provided for in Subsection A above, the Town Board may direct

the Town Attorney to apply to the Supreme Court for any order directing that the violation be corrected or removed and that all costs and expenses incurred by the Town of Pendleton in connection with the proceedings, including the actual cost of correction or removal, shall be assessed against the offenders.

- (4) Any person, firm, entity or corporation violating any of the provisions of this chapter shall become liable to the town for any expense or loss or damage occasioned by the town by reason of such violation.

#### **G. Fees**

See Chapter 131 for appropriate fees.

**ITEM #3** **ORDINANCE UPDATE:**

247-87 EXCAVATION & FILL

The following Code Sections are no longer needed and will be repealed when new Excavation Ordinance is acted on by the Town Board:

1. 247-42 Excavations
2. 247-43 Gravel and Sand Operations
3. 247-44 Topsoil and Overburden
4. 247-45 Road Debris
5. 247-85 Excavations Restricted (Deleted as part of Red Update #1)

Chapter 247

Article XIV

EXCAVATION & FILL and PROPERTY MAINTENANCE

GENERAL REFERENCES

Ponds – See Ch. 247-46

Subdivision of Land - See Ch. 220

**§ 247-87 Excavation and Fill**

**A. Findings. It is hereby determined that:**

- (1) Excavation and/or fill activities creates pits, holes or hollows in the earth, leaving it in a hazardous or dangerous state, or causes soil erosion, which deletes the land of its natural vegetative cover and supply of organic materials, and renders such land unproductive and unsuitable for agricultural purposes or undesirable for building homes.
- (2) Excavation and/or fill activities can be controlled and their impacts minimized through the regulation of these activities.

**B. Purpose.** The purpose of this article is to establish the management of excavation and/or fill activities within the Town boundaries and to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction. This section seeks to meet those purposes by achieving the following objectives:

- (1) The orderly operation of all excavations and/or fill activities and related soil disturbances;
- (2) The restoration of affected lands;
- (3) The retention of taxable value of property;
- (4) The retention of natural beauty and aesthetic values in the affected areas;
- (5) The preservation of the quality of life for residents;
- (6) The retention of topsoil with the Town of Pendleton.

### **C. Definitions:**

- (1) Applicant: That person making application for a permit and who is responsible for fulfilling the requirements for the restoration plan and all rules and regulations promulgated hereunder. If the applicant is other than the property owner, written proof must be presented showing authorization from the property owner the applicant.
- (2) Excavation: A cavity, hole, or pit on land formed by digging, for the purpose of extracting clay, stone, gravel, sand, or other natural materials or the topsoil therefrom.
- (3) Fill: The placement of natural materials on any land surface.
- (4) 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.
- (5) Topsoil: Surface earth, including the organic layer in which most plants have their roots.

### **D. Prohibited acts:**

- (1) The following are prohibited acts and are not to be considered a Use by Right or allowable by Special Use in any Zoning District within the Town of Pendleton.
  - a) Place, deposit or permit to be placed or deposited any debris, fill, sand, stone or other solid materials of any kind or nature or construction of any kind into or across any stream, ditch, culvert, pipe, watercourse or other drainage system which result in an adverse impact.
  - b) Do any construction, soil movement and/or regrading where alteration of the natural drainage patterns which result in an adverse impact.
  - c) Conduct excavation as defined in Section 247-87C(4) of this Ordinance for purposes of Mining.

### **E. Exceptions:** The following operations and uses are hereby accepted from the application of this Ordinance:

- (1) Excavations or removal of stone, gravel, clay, sand, shale or other natural materials, subsoil or topsoil incident to highway, sidewalk, or driveway construction to the extent that said material are removed solely from the bed of said, highway, sidewalk or driveway.
- (2) Excavations or removal of stone, gravel, clay, sand or other natural materials, subsoil or topsoil from one part of the same premises incident to the construction of a building or other improvement of land or incident to landscaping. The moving in excess of one hundred (100) yards or more of such materials will be subject to approval by the Building

Inspector/Code Enforcement Officer.

- (3) Removal of excess stone, gravel, clay, sand or other natural materials, subsoil or topsoil from the area of a subdivision granted final approval by the Planning Board of the Town of Pendleton, provided any such removal is in accordance with the plans and specifications approved by said Planning Board. (See Chapter 220 Subdivision of Land).
- (4) Excavations or removal of stone, gravel, clay, sand or other natural materials, subsoil or topsoil incident to the construction and/or repair of privately owned water, sanitary or storm sewer systems.
- (5) The above restrictions shall not apply to work or construction done under a permit issued by the State of New York or County of Niagara.

**F. Application:** All applicants for a permit to do any of the acts set forth above shall present plans to the Town of Pendleton Building Inspector/Code Enforcement Officer which plans shall be inclusive of, but not limited to, the following:

- (1) Application form
- (2) A narrative description of the proposed excavation and/or fill activities including a restoration plan for the disturbed area. For fill activities, the source of the natural material must be identified
- (3) A duly acknowledges notarized consent in writing of the owner of the premises, including his address.
- (4) Certificate from the receiver of taxes of the Town and the County Treasurer showing payment of all taxes or assessments to date against the property described in the application.
- (5) A certified estimate, prepared by a professional engineer or land surveyor licensed in the state, showing the total number of cubic yards of materials to be generally regraded, excavated, removed from or brought to the property during each of the described stages or the proposed operation and time schedule.
- (6) A drawing at a scale of one hundred (100) feet to an inch or larger on a sheet not larger than thirty-six (36) by forty-eight (48) inches prepared by a professional engineer or land surveyor licensed in the stat showing the following information:
  - a) The location and survey data of the premises where it is proposed to generally regrade, excavate, remove, or fill earth products.
  - b) All streets adjoining and within two hundred (200) feet of the premises.
  - c) All existing buildings or structures on the premises or within two hundred (200) feet of the premises.
  - d) Existing and proposed elevations at each described stage in the proposed operation for the premises and all land within two hundred (200) feet of its boundaries, shown on a horizontal grid system with a fifty-foot interval, and also on a cross section derived from that grid system. Additional elevations shall be shown at each break in the grades and along the center line of all adjoining streets.



- e) Present and proposed surface water drainage and natural drainage features.
  - f) A key map at the scale of six hundred (600) feet to one (1) inch indicating the relationship to the highway pattern, school and town boundaries and zoning districts.
- (7) A certification by a duly licensed professional engineer or land surveyor in the state that the existing grades and elevations are based on an actual field survey.
- (8) Any project, including excavation and/or fill activities, which will disturb greater than one (1) acre of surface area, shall comply with the regulations under Article XIII Stormwater Management Refulations of Chapter 247, Zoning, of the Town Code and requires the preparation of a SWPPP as defined in that article and section. If coverage under the NYS SPDES permit program and preparation of a SWPPP is required, then application for site plan review and approval by the Planning Board is required.
- (9) The Building Inspector/Code Enforcement Officer may require additional data or waive any requirements in appropriate cases.
- a) After receipt and review of the complete Application package, the Town Building Inspector/Code Enforcement Officer will make a determination if the Application reflects a minor or major impact.
    - i. If determined as minor the Town Building Inspector/Code Enforcement Officer will have the responsibility of handling the Application process.
    - ii. If determined major the Town Building Inspector/Code Enforcement Officer will forward the Application Package to the Town Planning Board for Site Plan Review in accordance with Section 247-54 of the Town Code:
      - i. State Environmental Review (SEQR) required
      - ii. Public Hearing Requires 400-foot notification
  - b) The Town Building Inspector/Code Enforcement Office or Planning Board (if Site Plan Review is warranted) may solicit the help and or expertise of the Town Highway Superintendent to aid in the process and or for post construction inspection.)

**G. Application:** See chapter 131 Miscellaneous Excavation and grading appropriate fees.

**H. Effect of permit issuance:** The issuance of a permit by the Town shall not obligate the town to any costs in connection with the work performed under the permit and shall not obligate the Town to maintain any such improvements.

**I. Duties of Building Inspector/Code Enforcement Officer:** In the exercise of his discretion to grant or deny any permit, the Town Building Inspector/ Code Enforcement Officer shall give consideration to the effect such proposed construction may have on the drainage, health, beauty, preservation of natural resources and control of pollution and welfare of the Town of Pendleton and shall deny any such permit where in his judgment he determines such proposed construction is detrimental to the drainage, health, beauty, preservation of natural resources and control of pollution and welfare in the Town of Pendleton. If the plans submitted pursuant to §247-87F. above were accompanied by a SWPPP, the Town Building Inspector/ Code Enforcement Officer shall deny the permit if such SWPPP and plans do not comply with the requirements of Article XIII of Chapter 247 Stormwater Management of the Town Code.

**J. Expiration; renewal:** Excavation and/or fill permits, other than those for topsoil stripping and removal only, shall expire by limitation one (1) year from the date of issuance unless extended by the Town Board.

- (1) Permits for topsoil stripping and removal only shall expire by limitation sixty (6) days from the issuance unless extended by the Town Board.
- (2) The renewal of an expired permit for topsoil stripping and removal without change in the extent of the work may be approved by the Town Board.
- (3) The renewal of expired permit for other excavation and/or fill projects without change in the extent of the work may be approved by the Town Board with the payment of a permit fee (same as original Application Fee) as described in Section 247-87L Fees).
- (4) The renewal of any permit, which extends the project scope of the work, shall be processed as a new application.

**K. Enforcement; penalties for offenses:**

- (1) Any person, firm entity or corporation found to be violating any provisions of this chapter shall be served with a written notice at the direction of the Town Board stating the nature of the violation and providing for a thirty-day time limit for the satisfactory correction thereof. The offender shall, within the period stated in such notice, correct or remove all violations.
- (2) Any person, firm, entity or corporation who or which shall continue any violation beyond the time limit provided for in Subsection A above shall be guilty of a violation and, upon conviction thereof, be fined in an amount not exceeding \$2500 or imprisoned for a term not exceeding 15 days, or both, for each violation. Each week in which such violation shall continue shall be deemed a separate offense.
- (3) In the event that any person, firm, entity or corporation shall continue any violation beyond the time limit provided for in Subsection A above, the Town Board may direct the Town Attorney to apply to the Supreme Court for any order directing that the violation be corrected or removed and that all costs and expenses incurred by the Town of Pendleton in connection with the proceedings, including the actual cost of correction or removal, shall be assessed against the offenders.
- (4) Any person, firm, entity or corporation violating any of the provisions of this chapter shall become liable to the town for any expense or loss or damage occasioned by the town by reason of such violation.

**L. Fees:** See Chapter 131 Miscellaneous Excavation and grading for application fee.  
See Chapter 131 Planning Board Site Plan Review Fees if Site Plan required  
See Chapter 131 SWPPP Fee if more than an acre disturbance

## **ITEM #4 ORDINANCE UPDATE**

### **THIS IS A NEW ORDINANCE TO BE KNOWN AS:** **Property Maintenances & Safety –Residential Construction**

*NOTE: The addition of new Section 247-92 Property Maintenance & Safety – Residential Construction to the Town Code will be helpful in maintaining orderly and timely Residential Building Construction.*

#### Section 247-92 Property Maintenances & Safety –Residential Construction

##### **A. Findings and determination**

- (1) The Town Board of the Town of Pendleton hereby finds that it is very much aware of the importance and impact the construction of new Homes and improvement of existing Homes have on the orderly growth of the Town. The Town Board is also aware that proper maintenance and safety along with consideration to nearby property owners are an important part of all new residential construction.
- (2) The Town Board hereby determines that in order to ensure that the Town grows with minimal impacts to the existing neighborhood, it is necessary to monitor all residential construction requiring a Building Permit to be sure that the owner is performing proper property maintenance and adhering to standard safety practices so that the construction site does not become a public nuisance.

##### **B. Required upon making Building Permit Application**

- (1) Tentative Time Schedule for completion of Residential Building Construction along with related Residential Construction as follows:
  - a) Installation of a traditional Driveway (Concrete, Blacktop, Stone).
    - i. Installation of a traditional driveway will be completed within a reasonable time after procurement of a Building permit and or Curb Cut Permit. Weather as a factor will be taken into consideration.
  - b) Grading and Seeding of lot in accordance with an approved drainage plan.
    - i. Grading and Seeding will be done within a reasonable time after completion of digging and pouring the foundation. Weather as a factor will be taken into consideration.
  - c) Home, garage and/or accessory structure completion.
    - i. Owner has an obligation to commence and complete construction in a reasonable time frame in order to minimize adverse impacts on the neighborhood.
- (2) All Residential Building Permit Application also require the submittal of a Drainage Plan subject to the approval of the Building Inspector/Code Enforcement Officer. Also see Drainage Section/Sections in the Town Code.

### **C. Maintenance and Safety**

- (1) This ordinance applies to all residential buildings and land under construction or demolition. Buildings will include Single Family, Duplex and Multifamily along with Garages and Accessory Structures.
- (2) Grass, weeds or other plant growth must be cut on a regular basis.
  - a) Also see Property Maintenance Section/Sections in the Town Code.
- (3) Steps, walks and driveways must be maintained for safe passage and access.
- (4) Accumulations of garbage, trash and construction debris must be controlled and disposed of. Care must be taken to assure that such accumulations are not unsightly and must be removed/disposed of expeditiously.

### **D. Inspection and report.**

- (1) Whenever it shall appear that the provisions of this chapter are violated, the Building Inspector/Code Enforcement Officer is authorized to make an inspection of the property involved and prepare a written report of the conditions found. If at the discretion of the Building Inspector/Code Enforcement Officer abuse of the submitted Tentative Time Schedule is determined the original Building Permit can be found to be void and a new Building Permit required. The fee for the New Building Permit can be up to ten times the fee charged on the original Building Permit based on the severity of the abuse.

### **E. Notice of violation.**

- (1) If conditions existing on the inspected property violate the provisions of this chapter, the Building Inspector/Code Enforcement Officer is authorized to serve or cause to be served a written notice of such violation, either personally or by certified mail, upon the owner or owner's agent as well as upon the lessee or occupant of said premises. Failure to serve either an owner or an occupant or lessee shall not prevent enforcement against any party served.
- (2) Said written notice shall contain substantially the following: the name of the owner, lessee or occupant of the premises, if known; the address or location of the premises; the identification of the premises as the same appears on the current assessment roll; a statement of the conditions on the property deemed upon inspection to be in violation of this chapter; a demand that the solid waste, rubbish, or debris, weeds or vegetation determined to be in violation of this chapter be removed from the property on or before five days after the service or mailing of such notice; and a statement that a failure or refusal to comply with the provisions of this chapter and the notice given pursuant thereto within the time specified may result in the Building Inspector/Code Enforcement Officer, or any authorized officer, agent or employee of the Town, to enter the property and remove such motor vehicle, solid waste, rubbish or debris, weeds or vegetation, and cause the same to be disposed of or otherwise destroyed. The Town department, officer or designee performing such work shall keep an accurate and itemized account of the expenses incurred for all labor, equipment and materials furnished plus any other incidental costs. All bills shall reflect work completed on property, plus a charge of 20% to cover the costs and disbursements and administrative handling.

- (3) The water billing clerk, upon receiving the invoice/invoices described in Subsection B above regarding a property, shall be responsible to charge the unpaid bill to the most current water bill for that property. In the event that collection is not made within 30 days, the water billing clerk shall forward the unpaid account to the Town Assessor, who shall charge the cost of such expenditure against the owner or owners of said property on the next regular tax bill.
- (4) The Building Inspector/Code Enforcement Officer or any authorized Town employee shall have the right, at reasonable times, upon notification, to enter upon lands within the Town for the purpose of inspection to determine compliance with this section. The right of inspection herein granted shall apply to the exterior of the buildings and grounds only.

#### **F. Emergency actions.**

- (1) Nothing in this chapter shall prohibit a municipality from entering onto private property to remove any solid waste, rubbish or debris, weeds or vegetation whenever an imminent threat to the life or safety of persons does exist. Municipal authority pursuant to this section may only be exercised where there is an immediate necessity to protect life and safety. Any municipal action taken pursuant to this section must be reasonably calculated to alleviate or prevent the crisis condition.
- (2) A property owner shall be given notice and an opportunity to be heard prior to any costs and expenses incurred pursuant to this section being placed on the property's tax bill.

#### **G. Penalties for offenses; enforcement.**

- (1) See Property Maintenance Section/Sections in the Town Code for Penalties. Also see Section 247-89(4) above.

#### **H. Conflicts with other laws.**

When the provisions of this chapter conflict with the provisions of any other local law or ordinance of the Town of Pendleton, the provisions of this chapter shall prevail.

**ITEM #5** **ORDINANCE UPDATE**

*1. See new zoning code addition in Blue Type below.*

*2. The new addition will be known as:*

247- 12 M Small Retail Business/Businesses in Conjunction with Small Contractor Shop

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

- A. No new single- or two-family/duplex residential construction shall be allowed in any commercial districts. [Amended 2-23-2015]**
- 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. [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.
  - (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) Multifamily dwellings. [Added 2-23-2015]
- (17) Newsstands.
- (18) Nurseries, greenhouses and garden supplies.
- (19) Offices.
- (20) Off-street parking.
- (21) Pet stores.
- (22) Personal services.
- (23) Photography studios.
- (24) Rental stores.
- (25) Repair services of household items.
- (26) Retail sales and service establishments not more objectionable by reason of noise, fumes, vibration or lights than any permitted use listed above.
- (27) Schools or places of instruction for music, dancing, reading, languages, elocution and similar subjects.
- (28) Stores selling convenience goods, including food products, hardware, newspapers, magazines, drugs, variety items, apparel, beer and liquor.
- (29) Essential services.
- (30) Accessory uses.
- (31) 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. Multifamily dwellings (consisting of three or more dwelling units) shall be subject to the following restrictions: [Added 2-23-2015]**

- (1) Minimum lot width: 200 feet.
- (2) Minimum lot square footage: 50,000 square feet.
- (3) Maximum lot coverage by buildings, includes garages: 35%.
- (4) Minimum side yard setbacks:
  - a) Adjacent to nonresidential zones: 20 feet.
  - b) When a lot in a commercial district abuts to a residential district: 50 feet. A greenbelt (open space) shall serve as a buffer.
- (5) Minimum front yard setback: 60 feet.
- (6) Minimum rear yard setback: 50 feet.
- (7) Maximum height: 35 feet.
- (8) Minimum floor area per dwelling unit:
  - a) One-bedroom unit: 675 square feet.
  - b) Two-bedroom unit: 850 square feet.
  - c) Three-bedroom unit 1,000 square feet.
  - d) When any units are more than 3 bedrooms, the minimum square footage shall be determined at the Planning Board's discretion.
  - e) No more than 20% of the total units within a multifamily dwelling development shall be three-bedroom units.
  - f) All stairways to the second floor shall be located inside the building.
- (9) Maximum building length: 75 feet. The wall for a structure or parallel walls of adjacent structures shall not continue in the same place for a length of more than 25 feet without an offset of at least 4 feet.
- (10) Minimum space between buildings: 25 feet.
- (11) Building grouping or cluster and access. Each group or cluster shall have access to a public or private road. If there are more than 12 dwelling units, direct access must be provided to a public road. Within a group or cluster, each dwelling unit is accessible by



means of a private road or driveway. Standards of this road shall meet Planning Board specifications. If there are more than 50 dwelling units, the Planning Board may require additional access to a public road.

(12) Sanitary sewer systems.

- a) No private sanitary sewer systems allowed.
- b) If public sewers, the developer shall complete a downstream sewer capacity analysis.

(13) Planted buffer strip between parking area or accessway and the adjoining property.

(14) No asphalt to the property line:

- a) Side line: 10 feet.
- b) Rear yard: 20 feet.

(15) Storage area: 200 cubic feet for each dwelling unit.

(16) Every building shall be provided with garbage and refuse storage and collection areas enclosed and screened from view and away from the front of the buildings.

(17) Every structure shall have a minimum setback of 15 feet from all interior roads, driveways and parking areas. The entire area of a multifamily development not improved for driveways, parking areas or covered by buildings or walkways shall be landscaped and properly maintained at all times.

(18) Parking.

- a) Parking areas shall be subject to site plan review.
- b) No driveways along the property line.
- c) Minimum parking spaces: three parking spaces per unit.

(19) Cellar occupancy prohibited.

(20) All multifamily dwelling projects shall be subject to Planning Board review.

**L. Also see Article VI, General Regulations, and Article VII, Supplemental Regulations.**

### **M. Permitted by Special Use**

**Small Retail Business/Businesses in Conjunction with Small Contractor Shop**

(1) Subject to all of the following listed requirements and restrictions:

- a) All general setback, area, height, width and depth restrictions found in Section 247-12 applies.
- b) Small Retail Businesses must constitute a minimum of 2,500 square feet of the floor space of the Primary Building of the total Small Business.
- c) Retail Space must be in front of Primary Building and separated from the Contractor Shop with a permanent wall.

- d) If the Contractor Shop has a retail business related to the Contractor Shop, all or part of the required 2,500 square feet of retail space can be utilized by that retail business.
- e) Restroom Facility must be made available for Retail Shop Owner and or Employee use.
- f) Retail Space must be aggressively advertised/promoted by use of traditional methods such as Signs, Media and Internet.
- g) No outside storage of inventory, equipment or other materials used in conjunction with the Small Contractor Shop.
- h) No outdoor overnight parking of Small Contractor Shop Vehicles and or Equipment.
- i) Adequate paved parking in front of the Small Retail Shop/Shops must be provided for Small Retail Shop employees and customers.
- j) Adequate paved parking must be provided for Small Contractor Shop employees and customers.
- k) Site Plan Review is required per Section 245-54 of the Town Zoning Code
  - i. Environmental Review (SEQR) is required per Section 247=54 of the Town Zoning Code.
  - ii. Public Hearing is required per Section 247-54 of the Town Zoning Code. 400' notification
- l) A Special Use Permit issued by the Planning Board is required upon approval of the Site Plan and is subject to an annual review and renewal by the Planning Board. Planning Board Review will be undertaken to insure that all above listed provisions are being adhered to. The Planning Board will have discretion to revoke the Special Use Permit due to noncompliance and establish a time frame to correct the violation/violations.

**ITEM #6 ORDINANCE UPDATE**

**Section 247-10 E DRIVEWAY SIDE YARD SETBACK**

- 1. Resolution to amend Section 247-10 to include the new Section 247-10E "Driveway Minimum Setback".*
- 2. This will add a Driveway Setback of 5' to R-1 Zoning Districts.*
- 3. See Amendment in Blue Type*

**§ 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).

- (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]**

(1) Driveway Minimum Side Yard Setback.

- a) A minimum side yard setback of five feet (5') is required for all driveways. The minimum side yard setback for driveways is measured from the edge of the driveway to the nearest property line.
- b) The intent of the minimum driveway setback is as follows:
  - i. To allow for orderly snow removal and maintenances of driveway without impacting adjacent property.
  - ii. "Sharing" a driveway with an adjacent property owner will no longer be an option.
- c) A drawing depicting the location, width and distance to nearest property line must be presented to the Town Building Inspector/Code Enforcement Office prior to issuance of a Curb Cut Permit and or a Building Permit.

**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]**

**ITEM #7 ORDINANCE UPDATE**

**Section 247-11 E DRIVEWAY SIDE YARD SETBACK**

- 1. Resolution to amend Section 247-11 to include the new Section 247-11E “Driveway Minimum Setback”.*
- 2. This will add a Driveway Setback of 5’ to R-2 Zoning Districts.*
- 3. See Amendment – in Blue Type*

**§ 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]**

**(1) Driveway Minimum Side Yard Setback.**

- a) A minimum side yard setback of five feet (5') is required for all driveways. The minimum side yard setback for driveways is measured from the edge of the driveway to the nearest property line.
- b) The intent of the minimum driveway setback is as follows:
  - i. To allow for orderly snow removal and maintenances of driveway without impacting adjacent property.
  - ii. "Sharing" a driveway with an adjacent property owner will no longer be an option.
- c) A drawing depicting the location, width and distance to nearest property line must be presented to the Town Building Inspector/Code Enforcement Office prior to issuance of a Curb Cut Permit and or a Building Permit.

**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:
    - i. Front yard: 100 feet.
    - ii. Side yard: 30 feet.
    - iii. 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]**