

TOWN OF MARTINSBURG DEVELOPMENT LAW

**Adopted as Town of Martinsburg Rural Development Code
Local Law No. 1 of 1980**

**Amended by Local Law No. 1 of 1998
April 15, 1998**

and amended by
Local Law #2 of 1993
Local Law #4 of 2001
Local Law #2 of 2004
Local Law #3 of 2004
Local Law #4 of 2004
Local Law #2 of 2005
Local Law #3 of 2005
Local Law #4 of 2005

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ARTICLE 1. INTRODUCTION

Section 110. Enacting Clause

Pursuant to the authority conferred by Article 16 of the Town Law and Articles 2 and 3 of Municipal Home Rule Law of the State of New York, the Town Board of the Town of Martinsburg hereby adopts and enacts the following law.

Section 120. Title

This law shall be known as "The Town of Martinsburg Development Law."

Section 130. Purpose

The objectives of this Development Law are to:

1. Protect the open and natural character of the land;
2. Provide for the controlled growth of residential and commercial use of land consistent with the economic and social needs of the community without interfering with existing land use;
3. Preserve the Town's natural resources, particularly the water supply;
4. Promote the health, safety and general welfare of the community consistent with the objectives of Article 16 of the Town Law;
5. Be aware of and consistent with the goals and policies common to adjacent communities;
6. To make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor;
7. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and to promote the health, safety, and general welfare of the public;

This development law has been made with reasonable consideration, among other things, as to the character of each district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town of Martinsburg.

Section 140. Applicability

The development of property which started prior to the effective date of this local law, or any enacted revisions, and which complied with all applicable laws and permits in effect at the time it was begun, may be completed provided that such completion takes place no later than one year from the effective date of this local law. If not completed within one year, such development shall comply with the provisions of this local law.

Section 150. Rural Development Code

This law shall replace and supersede **Part I, Land Use Regulations, Part III, Natural Resource Regulations, Part V, Sewage and Waste Disposal Standards, and Part VI, Administration** of the Town of Martinsburg Rural Development Code, Local Law No. 1 of 1980, as subsequently amended.

ARTICLE 2. DEFINITIONS

Section 210. General

Except where specifically defined herein, all words used in this law carry their customary meanings. Words in the present tense include the future, words in the singular include the plural and the plural the singular, and the word “shall” is intended to be mandatory.

Section 220. Specific Definitions

Above Ground Level (AGL): A measurement of height from the natural grade of a site to the highest point of a structure.

Accessory Apartment: A second dwelling unit located on the same lot as a principal single-family dwelling located either within the principal dwelling or within an accessory building, which is subordinate to the principal dwelling in terms of size, location and appearance. Such a dwelling is an accessory use to the principal dwelling.

Accessory Building: A building which is an accessory structure.

Accessory Structure: A structure incidental and subordinate to the principal structure and located on the same lot with such principal structure. Where an accessory structure is attached to the principal structure in a substantial manner, as by a wall or roof, such accessory structure shall be considered part of the main structure.

Accessory Use: A use incidental and subordinate to the principal use and located on the same lot with such principal use

Acre: A measure of land area containing 43,560 square feet.

Active Recreation: Any form of recreation requiring significant levels of organization, buildings or large numbers of persons. (NOTE: small groups of persons using snowmobiles or trail bikes are considered forms of passive recreation; however, a snowmobile race or a motor-cross race, for example, are considered active forms of recreation).

Adequate Coverage: Coverage for wireless communications facilities is considered to be “adequate” within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is greater than -90 dbm for at least 80 percent of the intended coverage area. It is acceptable for there to be holes within the area of adequate coverage where the signal strength declines further away from the base station (e.g. -95 dbm rather than -90 dbm). For the limited purpose of determining whether the use of a repeater is necessary, there shall be deemed to be inadequate coverage within said holes. The outer boundary of the area of adequate coverage is that location past which the signal does not regain a strength equal to or greater than -90 dbm.

Advertising Sign: see **Sign, Advertising.**

Agriculture: The raising of crops, animals or animal products, the selling of products grown on premises, incidental mechanical processing of products, and any other commonly accepted agricultural operations. The definition for agriculture shall include forestry related uses such as logging

Agricultural Structure: Barns, silos, storage buildings, equipment sheds, and other structures customarily used for agricultural purposes.

Alteration: The structural change or change in use of any principal or special use which results in any of the following:

1. Increase in size by 50% or more;
2. Increase in the amount of sewage created at the site;
3. Change in use;
4. Change that would not meet the dimensional requirements of this law.

Animal Care Facility. A building, structure, or portion thereof, used principally for the business of providing health care, temporary shelter, training, and/or breeding service for animals. The term includes, but is not limited to, animal hospital, kennel, and boarding stable.

Average Tree Canopy: The average height of a stand of trees. For the purpose of determining the maximum height of a wireless communications facility to be installed on a wooded lot having at least 20 trees within 100 feet of the proposed site, the average height of the trees located within 200 feet of the proposed site shall be used to determine the average tree canopy.

Building: Shelter having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals, or property.

Building Permit: A permit issued by the appropriate officer enforcing the New York State Uniform Fire Prevention and Building Code.

Camouflaged: A wireless communications facility that is disguised, hidden, part of an existing or proposed structure, placed within an existing or proposed structure, or completely hidden by surrounding vegetation is considered “camouflaged.” When facilities include a new tower or other tall structure, camouflage will conceal both the tall structure and the accompanying antennas and other equipment through the use of technology which gives these facilities the appearance of structures which are compatible with the surrounding area.

Campground: Land on which two or more campsites are located, established, or maintained for occupancy by camping units of the general public as temporary living quarters for recreation, education or vacation purposes. A “camping unit” shall be considered any tent, lean-to, cabin or similar structure, or recreational camping vehicle, excluding mobile homes, established or maintained and operated in a campground as temporary living quarters for recreation, education or vacation purposes.

Carrier: A company, licensed by the FCC, that provides wireless services to customers.

Certificate of Compliance: A certification by the enforcement officer that a lot, structure, or use of land has been developed in conformity with an approved development permit and/or complies with the provisions of this law, and may be occupied and used for the purposes specified in such development permit and/or certificate of compliance.

Co-location: The use of a single wireless communications facility, either on the ground or on an existing building or structure, by more than one wireless communications carrier.

Commercial Use: Retail and wholesales, offices, personal and consumer services, manufacturing, hotels, motels, boarding houses, restaurants, and bed and breakfast inns.

DBM: Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to one milliwatt.

Dead End Road: A road with only one outlet for vehicles.

Deicing Compounds: Any bulk quantities of chloride compounds and/or other deicing compounds intended for application to roads, including mixtures of sand and chloride compounds in any proportion where the chloride compounds constitute over eight percent of the mixture. Bulk quantity of deicing compounds means any quantity, but does not include any chloride compounds in a solid form that are packaged in waterproof bags or containers that do not exceed one hundred pounds each.

Development Permit: A permit issued by the enforcement officer certifying that all plans for the use and development of land comply with the regulations of this law, and granting permission to commence development activities in conformity with the conditions of the approved permit. A development permit should not be confused with a building permit issued by the appropriate officer enforcing the New York State Uniform Fire Prevention and Building Code.

Directional Sign: see **Sign, Directional.**

Disposal: The abandonment, burial, discharge, deposit, injection, dumping, spilling, spreading, leaking, or release by any other means of a substance to the land surface, subsurface, surface water, or ground water.

Dwelling: Buildings designed as the permanent living quarters for one or more families.

Dwelling, Multi-Family: A building designed or altered for use as a permanent dwelling for three or more families.

Dwelling, Seasonal (Camp): A building designed as a part-time dwelling for a family, usually inaccessible by automobile during several months of the year and lacking improvements necessary for permanent use as a dwelling.

Dwelling, Single-Family: A detached building designed to be used as living quarters by one family.

Dwelling, Two-Family: A building containing only two dwelling units, and occupied by only two families.

Easement: Authorization by a property owner for the use by another, for a specified purpose, of any designated part of his property.

Equipment Shelter: An enclosed structure, cabinet, shed or box at the base of the mount within which are housed the electronic receiving and relay equipment for a wireless communications facility. Associated equipment may include air conditioning and emergency generators. This term does not include offices, long-term storage of vehicles or other equipment storage, or broadcast studios.

Essential Facilities: The operation or maintenance by municipal agencies or public utilities of telephone dial equipment centers; electrical or gas substations; water treatment, storage and transmission facilities; pumping stations; telecommunications towers and similar facilities.

Exempt Use: A use listed in a land use district which requires neither special use permit nor a development permit.

Fall Zone: The area on the ground within a prescribed radius from the base of a wireless communications facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

Family: One or more persons occupying a dwelling unit and living as a single housekeeping unit.

Fertilizers: Any commercially produced mixture generally containing phosphorous, nitrogen, and potassium that is applied to the ground to increase nutrients from plants.

Front Lot Line: see **Lot Line, Front.**

Functionally Equivalent Services: Services include but are not limited to Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio, and Paging.

Garbage: Animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking and/or serving of food.

Ground Water: Any water beneath the land surface in the zone of saturation. The zone of saturation is where water fills all available pore spaces.

Guyed Tower: A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

Hazardous Substance: Any substance which: (1) because of its quantity, concentration, or physical, chemical, or infectious characteristics poses a significant hazard to human health or safety if improperly treated, stored,

transported, disposed of, or otherwise managed; (2) poses a present or potential hazard to the environment when improperly treated, stored.

Home-based Business: A nonresidential activity conducted for financial gain that is clearly incidental and secondary to a residential use.

Junk: Any scrap, waste, reclaimable material, or debris, whether or not stored, for sale or in the process of being dismantled, destroyed, processed, salvaged, stored, baled, disposed, or other use or disposition, including tires, vehicle parts, equipment, paper, rags, metal, glass, building materials, household appliances, machinery, brush, wood, and lumber.

Junkyard: The outdoor storage or deposit of any of the following:

1. Two or more junk vehicles;
2. One or more abandoned mobile homes or recreational camping vehicles;
3. Two or more abandoned all-terrain vehicles or snowmobiles (as defined in the NYS Vehicle and Traffic Law);
4. Two or more inoperable appliances including, but not limited to, lawn and garden machines, washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions;
5. Two or more inoperable pieces of equipment;
6. Any combination of the above, or parts of the above, that total two or more items.

Junk Vehicle: Any motor vehicle, whether all-terrain vehicles, automobile, bus, trailer, truck, tractor, motor home, motorcycle, mini-bicycle, or snowmobile, or any other device originally intended for travel on the public highways, which meets all of the following conditions:

1. It is unregistered;
2. It is not in any condition for legal use upon the public highway.

With respect to any motor vehicle not required to be licensed or motor vehicle not usually used on public highways, the fact that such motor vehicle has remained unused for more than six months and is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk vehicle.

kennel. A lot or a building or a structure located thereon where four or more dogs six months of age or older are housed, boarded, groomed, bred, and /or traded.

Lattice Tower: A self-supporting mount constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

Licensed Carrier: A company authorized by the FCC to construct and operate a commercial mobile radio services system.

Lot: A parcel of land considered as a unit, occupied or capable of being occupied by a structure or use and accessory structures or uses, or by a group of buildings united by a common use or interest; and including such open spaces as are required by this law, and having its principal frontage on a public road or an officially approved place.

Lot Line: A line of record bounding a lot which divides one lot from another lot or from a public or private road or any other public space.

Lot Line, Front: The lot line separating a lot from a road right-of-way.

Lot Line, Rear: The lot line opposite and most distant from the front lot line. In the case of triangular or otherwise irregularly shaped lots, a line [ten] feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

Lot Line, Side: Any lot line other than a front or rear lot line.

Lot Frontage: The length of the front lot line measured at the road right-of-way line.

Lot of Record: A lot for which a valid conveyance has been recorded in the County Clerk's office prior to the effective date of these regulations.

Major Excavation: Any area of land used for the purpose of extracting stone, sand, gravel or soil for sale, as a commercial operation which consists of more than 1000 tons or 750 yards of material per year.

Manufacturing: Any land or structures used for the mechanical or chemical transformation of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

Mobile Home: A structure, transportable in one or more sections, which is at least 8 feet in width and 32 feet in length, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. A mobile home shall be construed to remain a mobile home, subject to all regulations applying thereto, whether or not wheels, axles, hitch, or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. This term shall not include factory manufactured homes known as "modular homes" bearing an insignia issued by the State Fire Prevention and Building Code Council as required in 9 NYCRR 1212.

Mobile Home Park: Land on which are located, or which is maintained for use by two or more mobile homes.

Monopole: A self-supporting mount constructed of a single shaft of wood, steel or concrete with below grade foundations and a platform (or racks) for panel antennas arrayed at the top.

Motor Vehicle Repair Shop: A building or a portion of a building which is arranged, intended or designed to be used commercially for making repairs to motor vehicles.

Mount: The structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Roof-mounted. Mounted on the roof of a building.
2. Side-mounted. Mounted on the side of a building.
3. Structure-mounted. Mounted on a structure other than a building.
4. Ground-mounted. Mounted on the ground.

Multi-Family Dwelling: see **Dwelling, Multi-Family.**

Nonconformity: A lot, structure or use of land lawfully existing at the time of enactment of this law which does not conform to the regulations of the district in which it is situated.

Outdoor Furnace: An outdoor furnace shall be a self contained unit designed to provide heating to a building or a structure which unit is located outside of the building or structure.

Overlay District: A district that encompasses one or more underlying districts and that imposes additional requirements above that required by the underlying district.

Park Unit: The lot or space in any mobile home park which shall be assigned to or used and occupied by any one mobile home.

Passive Recreation: Hunting, fishing, hiking and other similar activities not requiring structures or special supervision.

Principal Structure: A structure through which the principal use of the lot on which it is located is conducted.

Principal Use: The primary or predominant use of any lot.

Professional Engineer: A certified or licensed Radio Frequency Engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

Public and Semi-Public Facility: Any one or more of the following uses, including grounds and accessory buildings necessary for their use: religious institutions; public parks, playgrounds and recreational areas; schools; public libraries; fire, ambulance and public safety buildings; and public meeting halls and community centers.

Radio Frequency Radiation: The emissions from wireless communications facilities.

Rear Lot Line: See Lot Line, Rear.

Refuse: Useless, unwanted or discard material.

Repeater: A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage directly from a primary sending and receiving site in a wireless communications network.

Retail Gasoline and Diesel Outlet: Any establishment that sells gasoline and diesel for automobiles and trucks to the public. This includes service stations, convenience stores, car washes or any other facility that sells gasoline.

Road Width: Width of right-of-way measured at right angles to the center of the road.

Seasonal Dwelling (Camp): see Dwelling, Seasonal (Camp).

Security Barrier: A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

Setback: The distance from lot lines, buildings, rights-of-way, water bodies or other specified boundaries to the nearest wall or corner of any building.

Separation: The distance between one carrier's array of antennas and another carrier's array.

Sewage: The water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present.

Side Lot Line: see Lot Line, Side.

Sign, Advertising: A sign of permanent nature which is designed solely for advertising a service or product and which does not convey information useful to motorists.

Sign, Directional: Off-site signs for the sole purpose of indicating directions to business and other establishments.

Single-Family Dwelling: see Dwelling, Single-Family.

Sludge: The solid, semi-solid, or liquid waste generated from a waste processing facility, but does not include the liquid stream of effluent.

Solid Waste: All putrescible and non-putrescible materials or substances that are discarded, abandoned, or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal.

Special Use: A use designated in a land use district that may be compatible with the Resource Management Plan depending on individual circumstances. Such a use requires a site plan review by the Planning Board.

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

Surface Water: Shall mean lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, wetlands, marshes, and all other perennial bodies of surface water, natural or artificial, public or private.

Telecommunication Tower: A structure on which transmitting and/or receiving antennae are located.

Travel Trailer: Any enclosed vehicle used or designed to be used for temporary living and/or sleeping quarters.

Travel Trailer Park: Any lot, piece or parcel of ground where two or more travel trailers are parked, located, or used, or for which said premises are held open to the public for two or more such units.

Two-Family Dwelling: see **Dwelling, Two-Family.**

Water Body: Any lake, pond, wetland, or streambed.

Water Supply Protection Overlay District. An overlay zoning district comprised of a portion of a Wellhead Protection Area within 200 feet or 60-days groundwater time-of-travel from a public supply well(s).

Wellhead Protection Area: The surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. This area has been delineated for the Martinsburg Water District #1 and the Glenfield Water District by the New York Rural Water Association based upon available hydrogeologic data.

Wind Power Generating Facilities: Wind generating facilities which generate original power on site to be transferred to a transmission system for distribution to customers. The definition of wind power generating facilities shall not include individual wind power generating facilities erected and used primarily for private use.

Wireless Communications Antenna: An antenna designed to transmit or receive communications as authorized by the Federal Communications Commission, including but not limited to whip, panel and dish communications antenna.

Wireless Communications Facility: A facility for the provision of wireless communications services, as defined by the Telecommunications Act of 1996, and usually consisting of an equipment shelter, a mount, and/or antenna(s). Radio or television transmission towers and repeaters shall be included in the definition of wireless communications facilities.

Wireless Communications Services: Three types of services are regulated by this law include commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services for Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, and Specialized Mobile Radio and Paging Services. Excluded from this definition are services used for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar private, residential communications.

ARTICLE 3. ESTABLISHMENT OF DISTRICTS

Section 310. Types of Districts

For the purpose of this law, the Town of Martinsburg is hereby divided into the following districts:

H – Hamlet:	The areas within this district are now developed to some extent and include low or medium density residential uses with some commercial and industrial uses.
A – Agricultural:	The areas within this district are generally used for agricultural activities. Most of the land is open in character with some scattered spots of forest, wetland, and residential use.
RR – Rural Residential:	The areas within this district are sparsely settled, but generally accessible by highway. Some forest and agricultural use may be present.
F – Forest Resources:	The areas within this district are predominantly covered by dense vegetation and contain many wet areas and stream courses. They are relatively inaccessible by automobile and contain few permanent residences and some seasonal residences.
WPO - Wind Power Overlay:	Area(s) in the Town of Martinsburg where wind power generating facilities are allowed.
WSP – Water Supply Protection Overlay:	Area(s) in the Town of Martinsburg within 200 feet or 60-days groundwater time-of-travel from the supply wells of Martinsburg Water District #1 and the Glenfield Water District.

Section 320. Development Map

Said districts are shown, defined and bounded on the map accompanying this law entitled “District Map,” dated April 15, 1998 and filed in the office of the town clerk, which map and all explanatory matter thereon is by this reference incorporated into this law.

The boundaries of the Water Supply Protection Overlay District are hereby incorporated on the District Map and shall be entitled “Martinsburg Wellhead Protection Area Map” and “Glenfield Wellhead Protection Area Map”.

Section 330. Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of the various districts, as shown on the development map, the following rules shall apply:

1. Where the designation on the development map indicates a boundary approximately upon a road, the centerline of the road shall be construed to be the boundary;
2. Where the designation on the development map indicates a boundary approximately upon a lot line, such lot line shall be construed to be the boundary;
3. Distances shown on the development map are perpendicular distances from road centerlines measured to the district boundary, which boundaries in all cases where distances are given are parallel to the road centerline;
4. In other cases the district boundary shall be determined by the use of the scale on the development map.

Section 340. Metes-and-Bounds Descriptions

In the event that a metes-and-bounds description has been filed for a district change or a variance as required by this law, such metes-and-bounds description may be used in lieu of other provisions of this section.

Section 350. Divided Lots

Where a district boundary divides a lot of record at the time such boundary is adopted, the district requirements of the least restrictive portion of such lot can extend 50 feet into the more restrictive portion of the lot, provided the least restrictive portion of the lot has frontage on a road. If the lot extends more than 50 feet, the district requirements will be of those in the more restricted district.

Section 360. Special Areas

“Special Areas” are designated on the development map pursuant to the provisions of the Tug Hill Reserve Act, Chapter 486 of the New York State Laws of 1992. All governmental agencies, boards, commissions, and authorities, prior to final action on a proposed development or review of a proposed development within a designated special area which would directly affect the special area and would change the basic nature of Tug Hill, shall consult with the Town Board about said development.

ARTICLE 4. DISTRICT REGULATIONS

Section 410. Allowed Uses

All uses shall comply with the requirements as indicated on the following chart:

P = Development Permit Required	NONE = No Permit Required
SU = Special Use by Planning Board Approval Required	NA = NOT ALLOWED

LAND USE	DISTRICT			
	RR Rural Residential	H Hamlet	A Agricultural	F Forest
Accessory Apartment	P	P	P	SU
Accessory Structures	P	P	P	P
Active Recreation	SU	NA	SU	SU
Agricultural Structure	P	SU	P	P
Agriculture	NONE	P	NONE	NONE
Campground	SU	NA	SU	SU
Commercial Use	SU	SU	SU	NA
Dwelling, Multi-Family	SU	SU	SU	NA
Dwelling, Seasonal (Camp)	P	NA	P	SU
Dwelling, Single-Family	P	P	P	SU
Dwelling, Two-Family	P	P	P	NA
Essential Facilities	SU	SU	SU	SU
Home-based Business	SU	SU	SU	SU
Junkyard	SU	NA	SU	NA
Kennels and Animal Care Facilities	SU	NA	NA	NA
Major Excavation	SU	NA	SU	SU
Manufacturing	SU	SU	SU	NA
Mobile Home	P	P	P	SU
Mobile Home Park	SU	NA	SU	NA
Motor Vehicle Repair	SU	SU	SU	NA
Public and Semi-Public Facilities	SU	SU	SU	NA
Retail Gasoline and Diesel Outlet	SU	SU	SU	NA
Travel Trailer Park	SU	NA	SU	NA
Wind Power Generation Facilities	SU	NONE	SU	SU
Wireless Communication Facilities	SU	NA	SU	SU

Section 420. Land Use District Schedule

District	Specifications for All Uses	
H Hamlet	Lot Frontage:	200 feet, minimum. Where public water is available, the frontage may be reduced to 100 feet.
	Lot Size: Setback of all buildings:	1 acre minimum. Where public water is available, the lot size may be reduced to 20,000 sq. ft. from centerline of state road – 75 feet minimum from centerline of county and town road – 60 feet minimum from side and rear lot lines – 20 feet minimum
A Agricultural	Lot Frontage:	200 feet, minimum. Where public water is available, the frontage may be reduced to 100 feet.
	Lot Size: Setback of all buildings:	1 acre, minimum. Where public water is available, the lot size may be reduced to 20,000 sq. ft. from centerline of state road – 75 feet minimum from centerline of county and town road – 60 feet minimum from side and rear lot lines – 25 feet minimum
RR Rural Residential	Lot Frontage:	200 feet, minimum. Where public water is available, the frontage may be reduced to 100 feet.
	Lot Size: Setback of all buildings:	1 acre, minimum. Where public water is available, the lot size may be reduced to 20,000 sq. ft. from centerline of state road – 75 feet minimum from centerline of county and town road – 60 feet minimum from side and rear lot lines – 25 feet minimum
F Forest	Lot Frontage:	200 feet, minimum. Lots without road frontage may be developed.
	Lot Size: Setback of all buildings:	1 acre, minimum. from centerline of county and town road – 60 feet minimum from side and rear lot lines – 50 feet minimum
WPO Wind Power Overlay	Lot Frontage:	same as underlying zone
	Lot Size:	same as underlying zone
	Setback of all wind power generating structures:	from centerline of any road - 300 feet. from side and rear lot lines - 300 feet , which can be waived by the Planning Board as part of its Special Permit review process if (i) neighboring parcels are also participating in the wind project, or (ii) in the case of a non-participating neighbor, the applicant has secured a development easement from said neighbor. from any existing residential structures - 1000 feet , unless the owner of said residential structure agrees to the lesser setback and consenting to a noise easement.
Landscaping and Screening:	Appropriate landscaping is required to keep the site in a neat and orderly fashion. Appropriate screening is required to screen accessory structures from adjacent residences.	

Section 425. Wind Power Overlay District Procedure

1. A Wind Power Overlay may be applied in the Rural Residential District or the Agricultural District upon application to the town board.
2. Any application for a Wind Power Overlay to the town board must be in writing and must be duly signed by the applicant and contain:
 - a. The identity of the parcels to be affected, including tax map numbers and acreage;
 - b. The consent of all property owners within the overlay;
 - c. Sufficient acreage to comply with setbacks and other requirements set forth in Section 420 of this law;
 - d. The identity of the applicant; and
 - e. An Environmental Assessment Form.
3. The town board shall hold a public hearing on any such application prior to permitting or denying such application. The notice shall be published in the official newspaper of the town at least 10 days prior to the hearing. In addition, written notices shall be sent to:
 - a. all adjoining property owners;
 - b. all other municipal entities within 500 feet of the project site; and
 - c. the Lewis County Planning Board.

The hearing shall be held within 62 days of receiving a complete application.

4. The Town Board shall make its determination within 62 days of when the public hearing is closed.

Section 430. Water Supply Protection Overlay District Regulations

1. Any uses not permitted in the underlying district shall not be permitted in the Water Supply Protection Overlay District. Any uses permitted in the underlying district shall be permitted in the Water Supply Protection Overlay District, except where the overlay district prohibited or imposes greater or additional restrictions and requirements. In any cases where conflicts arise between these requirements and any other existing regulations, the more restrictive regulations shall apply.
2. The following uses and activities are prohibited within the Water Supply Protection Overlay District:
 - a. Storage or disposal of septage, sewage, sludge, or human excreta;
 - b. Application, storage, or disposal of compost, manure, and other animal wastes;
 - c. Keeping or grazing of livestock;
 - d. Storage or disposal of petroleum, organic chemical solvents, hazardous substances, or hazardous wastes except where such storage is used in connection with the operation of a public water supply system;
 - e. Storage or disposal of solid waste or radioactive materials;
 - f. Disposal of snow containing deicing compounds;
 - g. Storage of deicing compounds; and
 - h. Placement of dead livestock on the ground or burial beneath the surface of the ground.
3. Any person who is responsible for or has knowledge of any spill of any hazardous substance, hazardous waste, petroleum, radioactive material, or other materials that could pose a threat to water quality to the land surface, subsurface, surface water, or ground water within the Wellhead Protection Area of the water supply wells of the Martinsburg Water District and/or the Glenfield Water District shall notify the New York State Department of Environmental Conservation and the Town of Martinsburg within two (2) hours of such spill, or when knowledge of such spill is obtained.
4. Any legally authorized representative(s) of the Town, may at a reasonable time and in a reasonable manner, enter and inspect any place.

ARTICLE 5. GENERAL REGULATIONS

Section 503. Dwellings per lot

There shall be no more than one dwelling on a single lot except for the placement of a temporary residence complying with the provisions of Section 915 of this law, or upon approval of a special use permit. Such special use permit may be issued where it can be demonstrated that any future subdivision of the lot which would result in the dwellings being located on separate lots, can be accomplished in such a way that the resulting dwellings will have setbacks in accordance with this law, the resulting lots will have areas and dimensions in accordance with this law, and all sewage disposal and wastewater systems will be in accordance with the NYS Sanitary Code.

Section 505. Line of Sight for Traffic Safety

No accessory structure, fence, wall, or hedge shall be erected in such a manner as to confuse or obstruct the views of any traffic sign, signal, or device, or obstruct the visibility of vehicles entering or exiting highways.

Section 510. Height of Structures

1. No structure shall exceed 40 feet in height except agricultural structures, chimneys, telecommunication towers, television and radio masts and antennas, water tanks, spires, and windmills.
2. Structures exceeding 40 feet in height shall be allowed only upon approval of a special use permit. Such permit shall not be approved until the applicant has demonstrated the following:
 - a. that there is a demonstrated public need for the proposed use, and that this need cannot be met by any means other than by exceeding the general height limitations of this law;
 - b. that the height of the structure is the minimum necessary to accomplish its intended purpose;
 - c. that all practical means have been used to minimize any negative aesthetic impacts identified by the planning board;
 - d. that the structure does not significantly impair solar access to buildings or solar energy systems equipment.

Section 512. Unapproved Lots

No development permit or certificate of compliance shall be issued for any use or structure on any lot which has been filed in the office of the county clerk after the effective date of the Town of Martinsburg Subdivision Law, unless such lot is included in a plat which has been approved by the planning board and filed with the office of the county clerk, or was exempt from said regulations at the time of filing.

Section 513. Road Access

1. No development permit or certificate of compliance shall be issued for any use or structure on any lot which does not directly abut a public or approved private road, as required by Town Law Section 280-a. This abutment shall include at least 15 feet of road frontage suitable for access by emergency vehicles. Easements may be considered for access.
2. No use or structure requiring access to a minimum maintenance road shall be allowed which would require a change in the maintenance standards of the road. A special use permit shall be required for all uses and structures on parcels of land solely abutting a minimum maintenance road.

Section 515. Signs

1. No permanent outdoor signs shall consist of lights that flash or move. General illumination lights are acceptable at any time. Temporary signs can flash.
2. No sign shall be higher than the principal building to which it is accessory except when erected on the roof of the building.
3. All existing signs at the time this regulation is adopted shall be allowed to remain as long as they are properly maintained and their use remains current.
4. No sign shall project into public right-of-way.
5. One on-site sign is permitted, not to exceed 32 square feet per side, to be illuminated during regular business hours only.

6. A limited number of off-site directional signs are permitted, not to exceed 16 square feet per side.

Section 520. Parking Requirements

This section is designed to reduce problems caused by inadequate or poorly designed parking facilities. No permit or approval shall be issued until the applicant has demonstrated that all uses are provided with adequate off-road parking for all vehicles parked during typical peak use periods. Parking should be designed to eliminate the need to back out onto the public road.

Section 525. Mobile Homes

1. Each mobile home shall be placed upon an adequate foundation for the placement allowing tie-down of the mobile home, securing the superstructure against uplift, sliding, rotation and overturning.
2. Such foundation shall be sufficient so that the mobile home shall not heave, shift or settle unevenly under the weight of the mobile home. Such foundation shall be provided with anchors and tie-downs such as cast-in-place concrete "dead men", eyelets imbedded in concrete foundations or runways, screw augers, arrowhead anchors or other devices securing the stability of the mobile home.
3. Anchors and tie-downs shall be placed at least at each corner of the mobile home stand and shall be able to sustain a minimum tensile strength of 2,800 pounds.
4. Each mobile home shall be enclosed between the bottom and the ground with a durable fire resistant material.
5. Mobile homes shall be used only as a dwelling, except upon issuance of a temporary development permit as provided for in Section 915 of this law.
6. All mobile homes shall be in compliance with standards equal to or more stringent than the U.S. Department of Housing and Urban Development (HUD) Manufactured Mobile Home Construction and Safety Standards, 24 CFR Part 3280 (1976). The applicant is responsible for providing adequate evidence that these standards have been complied with. The presence of a permanent certification label affixed to the mobile home by the manufacturer shall be presumptive evidence that the construction of a mobile home is in compliance with such standards. In all other respects, mobile homes shall be subject to all applicable portions of this law pertaining to single-family dwellings.

Section 530. Individual Travel Trailers and Converted Buses, Vans and Similar Vehicles

1. Individual travel trailers and converted buses, vans and similar vehicles shall not be occupied on an overnight basis, except in a travel trailer park which has been approved under Section 545 of this law, or on private land with the consent of the owner for a period not to exceed 30 consecutive days provided all health standards are met.
2. This shall not be interpreted to prevent parking a travel trailer, bus, van or similar vehicle on an owner's lot unoccupied for storage purposes only. Individual travel trailers or vehicles intended to be used as a dwelling unit shall meet all the applicable portions of this law pertaining to single-family dwellings.

Section 535. Streams, Wetlands and Water Bodies

1. The regulations of this section shall apply to all land within 100 feet of the following areas:
 - a. wetlands classified pursuant to 6 NYCRR Part 664;
 - b. streams classified as "D" or higher pursuant to 6 NYCRR Chapter X, Subchapter B;
 - c. any bodies of open water.
2. The following activities are prohibited:
 - a. dumping of waste materials, junk, refuse or anything that would alter the quality of the water, or the character of the area;
 - b. construction of any principal or accessory use;
 - c. feed lots.

Section 537. Sewage and Waste Disposal Standards

On-site sewage disposal systems shall comply with the specifications and standards set forth in 10 NYCRR Part 75, Appendix 75-A, entitled "Wastewater Treatment Standards – Individual Household Systems." Table 2 of this appendix

is hereby modified for the purposes of this law to read that the minimum separation distances of all wastewater source components from property lines shall be 50 feet, minimum.

Section 540. Retail Gasoline and Diesel Outlet

Retail gasoline and diesel outlets shall meet the following requirements:

1. Minimum distance of 75 feet between pump islands and any road centerline;
2. All petroleum bulk storage facilities shall comply with 6NYCRR Part 612, 613, 614 and any other state or federal regulations for petroleum bulk storage facilities;
3. A minimum of two egresses onto the property.

Section 545. Campgrounds and Travel Trailer Parks

1. A permit for a campground may be granted for two-year periods and may be renewed at the end of that time. They must meet Chapter I, Subpart 7-1 of the New York State Sanitary Code.
2. Garbage disposal must be carried out on a regular basis, such that it does not constitute a nuisance or health hazard.

Section 550. Home-based Businesses

A home-based business shall be a nonresidential activity conducted for financial gain that is clearly incidental and secondary to a residential use and exceeds one of the following criteria:

1. One nonresident is employed on the premises;
2. Total floor area devoted to retail sales exceeds 500 square feet;
3. Two customers, clients or delivery vehicles are present on the site at one time.

Home-based businesses shall be subject to the following standards:

1. The exterior of buildings containing home-based businesses shall not be altered to accommodate the business;
2. Excessive noise, glare, odors and/or vibrations shall not be produced;
3. One on-premises advertising sign not to exceed six square feet shall be allowed;
4. All parking shall be provided on-site in accordance with Section 520 of this law.

Section 552. Solid Waste Disposal

No junkyard items or solid waste is permitted to be stored unenclosed in any district except where specifically authorized by this law. Solid waste or junkyard items shall either be disposed of on site by burial or be transported to a solid waste facility for receiving such junkyard items and solid waste within 10 days. In no such case shall junkyard items or solid waste be incinerated without the approval of the planning board.

Section 555. Junkyards

1. No garbage, rubbish, waste material or trash shall be stored or allowed to accumulate on the open surface of the ground in any area.
2. Only junk vehicles and associated equipment may be stored in these areas.
3. Such areas shall be at least 200 feet from any highway, lake, stream, or property line and 500 feet from any neighboring dwelling.
4. Such areas shall be screened from public view by a hedge or fence.

Section 560. Major Excavations

1. No person shall mine more than 1,000 tons of material from the earth within one calendar year without applying for a permit from the Department of Environmental Conservation, as required by 6NYCRR Parts 420-426.
2. Access drives within 200 feet of the public road shall be treated to prevent dust.
3. Restored slopes shall have a ratio of 2:1 seeded on completion.
4. Drainage facilities shall minimize erosion and stagnant ponds.

Section 565. Mobile Home Parks

All mobile home parks shall be constructed to the following standards:

1. All lands used as a mobile home park shall be well drained, of ample size and free from heavy or dense growth of brush or weeds. The land shall be properly graded to insure proper drainage during and following a rainfall and shall at all times be so drained as to be free from stagnant pools of water;
2. Each mobile home park shall be subdivided and marked off into park units numbered consecutively, the number being conspicuously posted on each park unit and such number to correspond to the same number assigned to such park unit as shown upon the plans required to be submitted pursuant to this law;
3. Each park unit shall contain at least 5,000 square feet and shall have, where conditions require, a concrete or macadam base on which the mobile homes shall be placed, such base having a minimum size of 10 x 50 feet;
4. No more than one mobile home shall be permitted to occupy any one park unit;
5. All mobile homes, including additions and appurtenances, shall have a minimum front yard of 20 feet, a minimum side yard of 10 feet on each side and a minimum rear yard of 25 feet;
6. The park units shall be grouped in blocks with streets at least 50 feet wide between each block. Each street shall be treated with a double penetration macadam surface or shall otherwise be constructed in a manner sufficient to insure a proper traveling surface at all times during the year and under all conditions;
7. Each park unit shall have direct access to a public highway or public street line or within 50 feet of an adjacent property line or 75 feet of any adjacent dwelling house;
8. Each park unit and all parts thereof shall be kept in a clean and sanitary condition at all times;
9. Each mobile home park shall be provided with proper water connection on each park unit;
10. A sufficient supply of pure drinking water shall be provided to each park unit;
11. Any park unit in which is parked or located any mobile home not containing a water closet, lavatory and a shower or bathtub and hereinafter called a "dependent mobile home" shall be provided with toilets, showers, slop sinks and other sanitary facilities which shall conform to the following requirements:
 - a. toilet facilities for males shall consist of not less than one flush toilet for every 15 dependent mobile homes, one urinal for every 15 dependent mobile homes, one shower with individual dressing accommodations for every 10 dependent mobile homes and one lavatory for every 10 dependent mobile homes;
 - b. toilet facilities for females shall consist of not less than one flush toilet for every 10 dependent mobile homes, one shower with individual dressing accommodations for every 10 dependent mobile homes and one lavatory for every 10 dependent mobile homes;
 - c. the toilet and other sanitary facilities for males and females shall either be in separate buildings or shall be separated, if in the same building, by soundproof walls;
 - d. there shall be provided in addition in a separate compartment not less than one slop sink or other like facility with an adequate supply of hot running water;
 - e. all service buildings shall be of substantial construction and shall be maintained in a clean, sanitary and sightly condition and kept free of any condition that would adversely affect the health of any occupant or the public or constitute a nuisance;
 - f. all service buildings if in operation between October 1st of each year shall be properly heated.
12. Disposal of sewage where made into a private system will include a sanitary means of disposal, the operation of which creates neither a nuisance nor a menace to health and it is the responsibility of the owner or the operator of the said mobile home park to provide such sewage disposal system for each park unit to be done in such a manner that no odors are created or unsanitary conditions result;
13. Each mobile home park shall provide equipment sufficient to prevent littering on the grounds and premises with rubbish, garbage and refuse and provide fly tight metal depositories with tight fitting covers at conspicuous locations upon such premises. Such depositories shall be emptied regularly and kept, at all times, in sanitary condition;
14. Each mobile home park shall provide weather proof electric service connection and outlets for each park unit, all such connections and outlets to be of a type approved by the New York Board of Fire Underwriters.

Section 570. Kennel and Animal Care Facilities.

1. No kennel or animal care facility shall be located with outdoor kennels or dog runs within 500 feet of any external property line or road right-of-way.
2. Buffers. All kennels and animal care facilities shall provide appropriate vegetative or other buffers to assure that noise levels at property lines do not exceed a pre-existing ambient noise level at such point.
3. All animal and medical waste shall be disposed of in a sanitary and environmentally safe manner.

Section 575. Wireless Telecommunication Facilities

1. The purpose of this section is to regulate the location, design, and use of wireless communications facilities in order to:
 - a. Protect the health, safety, and general welfare of residents of the Town of Martinsburg.
 - b. Establish predictable and balanced regulations for the siting and screening of wireless communications facilities in order to accommodate the growth of communications services within the Town.
 - c. Maximize the use of existing towers, tall buildings and other high structures to reduce the number of new towers needed to serve the community.
 - d. Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements.
 - e. Ensure harmony and compatibility with surrounding land use patterns.
 - f. Protect the historic rural character, natural features and irreplaceable scenic qualities of the Town with special attention to open space, mountain ridges, recreation areas, scenic roads, view sheds and historic sites, through careful design, siting, landscaping, screening and innovative camouflaging techniques.

These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall they be used to discriminate among providers of functionally equivalent services, consistent with federal regulations.

2. District Regulations

- a. **Use Regulations.** These regulations govern the installation and/or use of all wireless communications facilities as defined herein. Any proposed user of wireless communications facilities shall be an FCC licensed provider of wireless communications facilities and must obtain a Special Use Permit whether or not they will install and own the facilities. The construction of a wireless communications facility shall require a building permit in all cases.
- b. **Permitted Uses, Existing Structures.** A wireless communications facility may be permitted to locate on any existing radio or television transmission tower, guyed tower, lattice tower, monopole, fire tower, water tower, clock tower, bell tower, cross tower, flagpole, road sign, steeple, chimney, silo or other innovative use of appropriate existing structures (as determined by the Planning Board) provided that there is no increase in the height of the existing structure as a result of the installation of the facility. Such installations shall not require a Special Use Permit but will require Site Plan approval by the Planning Board in accordance with Article 7 of this Law.
- c. **Permitted Uses, Existing Buildings.** A wireless communications facility may be permitted to locate on any existing building, with the exception of a designated historic structure, provided that the installation of the new facility does not increase the height of the existing building by more than ten feet. Such installations shall not require a Special Use Permit but will require Site Plan approval by the Planning Board in accordance with Article 7 of this Law.
- d. **Permitted Uses, Existing Utility Structures.** A wireless communications facility may be permitted to locate on any existing electric utility transmission and distribution tower, telephone pole and similar existing utility structure provided that the installation of the new facility does not increase the height of the existing structure by more than twenty feet. These facilities may locate in all areas of the town where they are permitted, except within 500 feet of a designated historic structure or within 250 feet of the right-of-way of any scenic road as identified in the town comprehensive plan. Such facilities may locate within 250 feet of the right-of-way of any scenic road, as identified in the town comprehensive plan, provided the new facility does not increase the height of the existing structure. Such installations shall not require a Special Use Permit but will require Site Plan approval by the Planning Board in accordance with Article 7 of this Law.
- e. **Special Use Permit.** A wireless communications facility involving construction of one or more ground-mounts shall require a Special Use Permit. A Special Use Permit may be granted provided that the proposed use complies with the height, setback, and other requirements of this Law, the Special Use Permit Regulations set forth in Article 6, is placed to minimize visual and aesthetic impacts, and is placed on the side slope of terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline. The town defines the placement, construction and modification of a wireless communications facility

requiring a Special Use Permit as a Type I action under the New York State Environmental Quality Review Act (SEQR).

- f. If an applicant for a Special Use Permit proposes a wireless communications facility which does not meet all dimensional requirements of the Martinsburg Development Law, including height, area and bulk regulations, the applicant may, at any point in the review process apply for an area variance from the Board of Appeals.
- g. New wireless communications facilities requiring a Special Use Permit shall be prohibited from locating:
 - (1) Inside or within 500 feet of a hamlet zoning district
 - (2) Inside or within 500 feet of a special overlay district unless such overlay district specifically provides for regulations governing the siting of wireless communications facilities.
 - (3) Inside or within 500 feet of a Critical Environmental Area, as designated under the State Environmental Quality Review Act (SEQR).
- h. It shall be the responsibility of the holder of the Special Permit to inform the Town of Martinsburg of any change in or termination of contractual agreements which affect the Special Use Permit within 30 days of such change. Any material change in the conditions under which a Special Use Permit was granted shall result in the immediate termination of the Special Use Permit unless agreement has been obtained from the Planning Board prior to the change. These material changes include but are not limited to:
 - (1) Changes in supporting structures (such as towers), accessory buildings or access roads.
 - (2) A change in ownership of the facility or the property on which the facility is installed shall require notification to the Enforcement Officer by the holder of the Special Use Permit but will not terminate such permit.
 - (3) Cessation of use by the FCC licensed carrier which has a Special Use Permit for use of the facility.
 - (4) A change in the FCC licensed user of the specially permitted facility. Nothing herein shall prohibit another FCC licensed carrier from using the facility so long as that carrier provides evidence of need to use that facility and acquires a Special Use Permit under this Local Law.
 - (5) Loss of the user's FCC license to provide commercial communications services within the Town.
 - (6) Violation of the Town's Development Law on or with regard to the facility by the holder(s) of the Special Use Permit or the owner of the land on which the facility is installed

3. Location. Wireless communications facilities shall only be located, upon the grant of Site Plan Approval and, as applicable, a Special Use Permit, on property which allows wireless communications facilities as set forth in Section 410 of this Local Law. Applicants seeking approval for wireless communications facilities shall comply with the following:

- a. If feasible, new wireless communications facilities shall be located on existing structures, including but not limited to buildings, water towers, existing communications facilities, silos, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more wireless communications facilities. The applicant shall have the burden of proving that there are no feasible existing structures on which to locate.
- b. If the applicant demonstrates that it is not feasible to locate on an existing structure, wireless communications facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to the use of compatible building materials and colors, screening, landscaping placement within trees, and the use of stealth technology to disguise the facility as determined by the Planning Board.
- c. The applicant must submit documentation of the legal right to install and use the proposed facility mount at the time of application for Special Use Permit approval.

4. Dimensional Requirements. Wireless communications facilities shall comply with the following requirements:

- a. Height. The total height of any mount or accessory elements attached to any structure shall be measured from the ground level to the top of the mount or the top of the uppermost accessory affixed to the mount, whichever is higher. Maximum height of a wireless communications facility is limited to 80 feet above ground level in cleared areas where there are less than 20 trees within 100 feet surrounding the proposed location. If there are at least 20 trees within 100 feet surrounding the proposed location, the total height of the proposed facility shall be limited to 25 feet above the average tree canopy, or 100 feet, whichever is lower.

- b. Height Variance. The Planning Board may allow wireless communications facilities up to 150 feet if an independent radio frequency consultant determines that adequate coverage would not be provided by a tower of lesser height and if the applicant can demonstrate that, based upon topography of the site and surrounding area, siting of the antenna, antenna design, surrounding tree cover and structures and/or through the use of screening, that off-site views of the facility will be de minimis. The height limitation is waived when the antenna is mounted on an existing structure or building and is completely camouflaged, or is located on an existing utility structure. Applicants may be required to achieve coverage objectives by using multiple existing or new structures rather than taller structures, which shall not exceed the height limitations.
- c. Setbacks. All wireless communications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the following setbacks shall be observed:
 - (1) To ensure public safety, the minimum distance from the base of any ground mounted wireless communications facility to any property line, road, habitable dwelling, business or institutional use, accessory structure, or public recreation area shall be the height of the facility/mount, including any antennas or other appurtenances. This setback is considered the “fall zone.” Additional setbacks may be required by the Planning Board to provide for the public safety.
 - (2) In the event that an existing structure or building is proposed as a mount for a wireless communication facility, a fall zone shall not be required unless the Planning Board finds that a substantially better design will result from an increased setback. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

5. Performance Standards.

- a. Lighting. Wireless communications facilities shall not be artificially lighted or display strobe lights unless required by the Federal Aviation Administration or other applicable authority.
- b. Noise. Roof-mounted or side-mounted equipment for wireless communications facilities shall not generate noise in excess of 50 dB at ground level at the base of the building closest to the antenna.
- c. Radio Frequency Radiation (RFR) Standards. All equipment proposed for a wireless communications facility shall be authorized per the *FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation*. The owner of the facility shall submit evidence of compliance with the FCC standards on a yearly basis to the Planning Board. If new, more restrictive standards are adopted by any appropriate federal or state agency, the facility shall be made to comply or continued operations may be restricted by the Planning Board. The cost of verification of compliance shall be borne by the owner and/or operator of the facility.

6. Signs.

- a. Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No advertising is permitted anywhere on the facility, with the exception of the identification signage. All signs shall comply with the requirement of Section 515 of this law.
- b. All ground mounted wireless communication facilities shall be surrounded by a security barrier which shall be posted with no trespassing signs. A 24-hour emergency telephone number shall be posted adjacent to the entry gate. If high voltage is necessary for the operation of equipment within the facility, signs shall be posted stating “Danger-High Voltage.”

7. Accessory Structures. Accessory structures for wireless communications facilities shall be permitted if the structures are constructed for the sole and exclusive use and operation of the communications facility, are the minimum size necessary to meet the needs of the specific site, and meet the following requirements:

- a. Accessory structures may not include office, long-term vehicle storage, other outdoor storage or other uses that are not needed to send or receive wireless communications transmissions.
- b. Accessory structures must be less than 500 square feet and 15 feet in height.
- c. Accessory structures must be camouflaged behind an effective year-round landscape buffer equal in height to the proposed structure. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.
- d. In residential districts, the use of compatible building materials such as wood, brick or stucco is required for all accessory structures, which shall be designed to match architecturally the exterior of residential structures

in the neighborhood, as determined by the Planning Board. In no case will metal siding be allowed for accessory structures.

8. Scenic Landscapes and Vistas. Wireless communications facilities shall not be located within open areas that are visible from public roads, recreational areas or residential development. All ground-mounted wireless communications facilities shall be surrounded by a buffer or dense tree growth or shall be camouflaged by design to minimize adverse visual and aesthetic impacts.
9. Utility service lines. All electric power supply and telephone service lines to new towers and accompanying facilities shall be installed underground from the existing power source.
10. Access and Parking.
 - a. A road and parking plan shall be provided to ensure adequate emergency and service access.
 - b. Maximum use of existing public and private roads shall be made, consistent with safety and aesthetic considerations.
 - c. Road construction shall minimize ground and vegetation disturbance. Road grades shall follow natural contours to reduce soil erosion potential and to ensure that roads are aesthetically compatible with the character of the surrounding area.
 - d. The Planning Board may require an erosion and sedimentation control plan.
 - e. Unpaved roads shall be considered unless conditions require paving, as determined by the Planning Board.
11. Maintenance, Testing and Inspection.
 - a. The applicant must retain the original appearance of the exteriors of all towers, accessory buildings and any other structures through regular maintenance.
 - b. Before commercial transmission begins, the applicant shall acquire certification by a licensed professional engineer that the facility will not exceed the maximum permissible exposure limits for the level of electromagnetic radiation using standards in accordance with the *FCC Guidelines*.
12. Removal of Facilities.
 - a. Towers and antennas shall be removed if the owner's or user's Special Use Permit for these facilities has expired or been terminated or if the facilities are no longer being used by the FCC licensee. Potential or planned future use of any facility for commercial communication service is not sufficient to avoid the requirement for removal.
 - b. If the removal of towers and antennas is required, accessory buildings and other structures shall also be removed unless:
 - (1) The landowner wishes to retain these structures and communicates this in writing to the Planning Board and
 - (2) The retention of these structures will comply with this local law, and
 - (3) The Planning Board agrees that removal of these structures is not required.
 - c. Each applicant seeking a Special Use Permit for a wireless communications facility shall provide a written contract with the Town of Martinsburg agreeing to be fully responsible for removal, and indemnifying the Town for the costs of removal of antennas, accessory buildings and supporting structures such as towers when removal is required by this local law.
 - d. If a proposed wireless communications facility is owned by an entity other than an FCC licensed carrier which will use that facility, the carrier shall provide to the Planning Board a copy of a contract between the facility owner and the FCC licensed carrier in which the owner agrees to remove the facility including any tower, antennas and accessory structures, and indemnify the Town for the costs of such removal, when these facilities are no longer being used by an FCC licensed operator with a valid Special Use Permit.
 - e. A decision to require removal shall be the responsibility of the Planning Board after consulting with the Enforcement Officer and the Town Attorney. Removal shall occur within 90 days of the Planning Board's decision to require removal unless the Planning Board has agreed to an extension of that time. If not removed within the designated period, the Town shall have the right to compel removal, with all costs to be borne by the Special Use Permit holder who owns and/or previously used the facilities. Removal costs may also be recovered from the owner of the tax parcel on which the facilities are located.

- f. When towers are removed, site reclamation shall be completed to the satisfaction of the Planning Board within one year. Reclamation shall include landscaping, removal of structures, utility lines and accessory structures, and shall encompass the building site and buffer area controlled by the facility owner.
 - g. Bonding. Before obtaining or renewing a Special Use Permit, the applicant shall provide financial surety in an amount acceptable to the Planning Board (in consultation with the Town Board and Town Attorney) to ensure full and complete performance of all conditions imposed by the Planning Board as a requirement of the Special Use Permit.
13. Insurance. Facilities shall be insured by the owner(s) of the towers and/or the antennas thereon against damage to persons or property. The owner(s) of the towers and/or antennas thereon shall provide annually to the Town Clerk a Certificate of Insurance in the minimum amount of \$1,000,000, or a higher amount if required by the Planning Board in consultation with the Town Board, in which the Town of Martinsburg shall be an additional named insured. This insurance shall insure against damage or loss arriving from all structures, towers or antennas on the property.
14. Additional Special Use Permit Application Requirements.
- a. Proof that the applicant or co-applicant is an FCC licensed carrier.
 - b. A survey of all existing structures, buildings and utility structures within the Town outlining the opportunities for the use of these existing structures and buildings as an alternative to the proposed site. The applicant must demonstrate that the proposed wireless communications facility cannot be accommodated on an existing structure, building or utility structure. In the event that location on an existing structure, building or utility structure is not feasible, a written statement of the reasons for the unfeasibility shall be submitted to the Planning Board. The Planning Board may hire an independent technical expert in the field of radio frequency engineering, to verify if location on an existing structure, building or utility structure is not feasible and to evaluate the need for the proposed facility. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an applicant to demonstrate a good faith effort to co-locate may be grounds for denial of the Special Use Permit.
 - c. A town-wide map showing the locations of all existing and future wireless communications facilities in the Town for this carrier. The applicant must demonstrate the need for the proposed facility showing the impracticality of upgrading or expanding an existing site, and must project long-range facility expansion needs within the Town based on market demand. The Planning Board may hire an independent technical expert in the field of RF engineering, to evaluate the impracticability of upgrading or expanding an existing site. The cost of such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an applicant to demonstrate a good faith effort to co-locate may be grounds for denial of the Special Use Permit.

Section 580. Outdoor Furnaces

- 1. With respect to any outdoor furnaces installed, such outdoor furnaces must be set back a minimum of 50 feet from any property line.
- 2. The use of such furnaces must follow all operating instructions supplied by the manufacturer.
- 3. The only fuels allowed shall be those listed fuels recommended by the manufacturer. The following are prohibited: trash, plastics, gasoline, rubber, naphtha, household garbage, material treated with petroleum products (particle board, railroad ties and pressure treated wood), leaves, paper products and cardboard.
- 4. Users must follow the manufacturer’s written instructions for recommended loading times and amounts.
- 5. Lighter fluids, gasoline, or chemicals to start the furnace are prohibited.
- 6. The unit must be located with due consideration to the prevailing wind direction.
 - a. If located 50 feet or less to any residence not served by the furnace, it is recommended that the stack be at least 2 feet higher than the eave line of the residence.
 - b. If located more than 50 feet but no more than 100 feet to any residence, it is recommended that the stack be at least 75% of the height of the eave line of that residence, plus an additional 2 feet.
 - c. If located more than 100 feet but no more than 150 feet to any residence, it is recommended that the stack be at least 50% of the height of the eave line of that residence, plus an additional 2 feet.
 - d. If located more than 150 feet but no more than 200 feet to any residence, it is recommended that the stack be at least 25% of the height of the eave line of that residence, plus an additional 2 feet.

Section 585. Erection of Structures in Proximity to Wind Power Generating Facilities.

Once a wind power generating facility has been erected, property owners may choose to erect structures on adjoining parcels. Such structures may be erected, provided they meet the setback provisions applicable to their Zoning District for that type of use. The provisions of Section 420 of this law, regarding wind power overlay districts, regarding setbacks of wind power generating structures is intended to restrict only wind power generating structures being erected. Other structures being erected after a wind power generating structure is in existence need only meet setbacks otherwise applicable to that district.

ARTICLE 6. SPECIAL USE PERMITS

Section 610. Authority

The Planning Board of the Town of Martinsburg is hereby authorized pursuant to Town Law Section 274-b to review and approve, approve with modifications, or disapprove special use permits within the town as designated in accordance with the standards and procedures set forth in this law.

Section 620. Applicability

All uses listed in Section 410 of this law as requiring a special use permit shall be required to have such permit approved by the planning board prior to the issuance of a development permit or a certificate of compliance by the enforcement officer.

Section 630. Considerations

1. In considering and acting on special use permits, the planning board shall consider the public health, safety, welfare, and comfort and convenience of the public in general, the residents of proposed developments, and the residents of the immediate surrounding area.
2. The planning board may prescribe such appropriate conditions and safeguards as may be required in order that the results of its action shall, to the maximum extent possible, further the accomplishment of the following objectives:
 - a. Compatibility: That the proposed use is of a character compatible with the surrounding neighborhood and in harmony with the Resource Management Plan for the community;
 - b. Public Facilities: That the public facilities to service the proposed use, including water supply, sewage disposal, drainage facilities, and road facilities, and any other utilities and public services are adequate for the intended level of use;
 - c. Other Requirements: That the proposed use complies with all requirements for site plans in Article 7 of this law and any other special requirements as may be set forth for the use in this law.

Section 640. Application and Review Procedure

All applications for special use permits shall be submitted and reviewed in compliance with the submission requirements and review procedures for site plan reviews in Article 7 of this law.

ARTICLE 7. SITE PLAN REVIEWS

Section 705. Authority

The Planning Board of the Town of Martinsburg is hereby authorized pursuant to Town Law Section 274-a to review and approve, approve with modifications, or disapprove site plans within the town as designated in accordance with the standards and procedures set forth in this law.

Section 710. Applicability

All nonresidential uses on any site or lot, and all multi-family dwellings of over two families shall be required to have an approved site plan approved by the planning board prior to the issuance of a development permit or a certificate of compliance by the enforcement officer.

Section 715. General Review Criteria

The planning board shall require that all site plans comply with the following general review criteria:

1. That the site is designed in the interests of the public health, safety, welfare, and comfort and convenience of the public in general, the residents of the proposed development, and the residents of the immediate surrounding area;
2. That the site is designed so as to be in harmony with the Resource Management Plan for the community;
3. That parking areas are adequate for the intended level of use, and arranged and screened so as to minimize negative impacts on adjacent properties;
4. That access to the site is safe and convenient and relates in an appropriate way to both the internal circulation on the site as well as the town road system;
5. That the internal circulation of the site is arranged so as to minimize impacts on the town road system;
6. That the site is suitably landscaped, and appropriately screened from adjacent properties and the road so as to protect the visual character of the area and to minimize negative impacts on adjacent properties and the neighborhood;
7. That any activities on the site which are incompatible with adjacent properties are suitably buffered so as to minimize negative impacts on such adjacent properties;
8. That signs, site lighting, and the locations of all buildings and structures are in keeping with the character of the neighborhood;
9. That any changes to existing drainage patterns, or increased drainage due to development activity has no negative impacts on adjacent property;
10. That proposed water supply and sewage disposal facilities are adequate;
11. That development activity complies with all other standards and requirements of this law.
12. The proposed use does not negatively impact or threaten the groundwater resources that provide water to public supply wells operated by the Martinsburg Water District #1 and/or the Glenfield Water District.

Section 720. Application

The enforcement officer shall refer any application for a development permit that requires a site plan review to the planning board. An application for a site plan review shall be filed with the planning board, and the appropriate fee as determined by the fee schedule adopted by town board resolution shall be paid to the town clerk. Six copies of the application and site plans shall be provided which shall include the following:

1. Name and address of applicant and owner, if different, and of the person responsible for preparation of drawings;
2. Date, northpoint, written and graphic scale;
3. Boundaries of the site plotted to scale, including distances, bearings, and areas;
4. Locator map showing the site in relationship to the town;
5. Location and ownership of all adjacent lands as shown on the latest tax records;
6. Location of all district boundaries;
7. Location, name, and existing width of adjacent roads;
8. Location, width, and purpose of all existing and proposed easements, setbacks, reservations, and areas dedicated to public use or adjoining the property;

9. Complete outline of existing or proposed deed restrictions or covenants applying to the property;
10. Existing hydrologic features together with a grading and drainage plan showing existing and proposed contours at a maximum of five foot intervals;
11. Location, proposed use, and height and dimensions of all buildings including the number and distribution by type of all proposed dwelling units, and the designation of the amount of gross floor area and gross leasable area proposed for retail sales and services, office and other commercial or industrial activities;
12. Location and design of all parking and loading areas including access and egress drives and fire lanes and emergency access areas;
13. Provision for pedestrian access, including public and private sidewalks;
14. Location of outdoor storage;
15. Location and design of all existing or proposed site improvements, including drains, culverts, retaining walls, and fences;
16. Description of the method of securing public water supply and disposing of sewage, and the location and design of such facilities;
17. Location and design of all energy distribution facilities, including electrical, gas, and solar energy;
18. Location, size and design of all proposed signs;
19. Location and design of outdoor lighting facilities;
20. General landscaping plan and planting schedule, including the location and proposed development of all buffer areas;
21. Erosion and sediment control plan conforming to the standards and practices contained in the USDA Soil Conservation Service Engineering Field Manual (EFM) and New York Guidelines for Urban Erosion and Sediment Control, or other erosion and sediment control manual recognized by the planning board;
22. An agricultural data statement pursuant to Town Law Section 283-a, when applicable;
23. A statement of the nature and extent of the interest of any state employee, or officer of employee of the town in the applicant pursuant to General Municipal Law Section 709.
24. An environmental assessment form (EAF) and, where required, a draft environmental impact statement (EIS);
25. Other elements integral to the proposed development as considered necessary by the planning board.
26. Location of all district boundaries and Wellhead Protection Area(s) if applicable;
27. For proposed uses requiring site plan review within a Wellhead Protection Area, a list of the type and quantity of any hazardous substances and polluting materials (including chemicals, hazardous materials, petroleum products, hazardous wastes and other polluting materials) that are expected to be used, stored or generated on-site. Quantities should reflect the maximum volumes on hand at any time.
28. For proposed uses requiring site plan review within a Wellhead Protection Area, a description of how hazardous substances or polluting materials are to be stored, used, or handled, including proposed measures to protect all storage containers or facilities associated with such materials from vandalism, accidental damage, corrosion and leakage.

Section 725. Waiver of Submission Requirements

The planning board may waive any of the submission requirements listed in Section 720 above where it deems that the information is either not applicable or is unnecessary to a particular site plan review.

Section 730. Environmental Impact Review

The planning board shall be responsible for the completion of an environmental assessment form (EAF) for each application for site plan review. The planning board shall be responsible for compliance with 6 NYCRR Part 617 (State Environmental Quality Review regulations) in cooperation with other involved agencies in the review of any site plan.

Section 735. Review

Upon a determination by the planning board that the application for a site plan review is complete, the board shall review the site plan taking into consideration the objectives for site plan review as outlined in Section 715 above, the general regulations for all uses as outlined in Article 5 of this law.

Section 740. Area Variance

During the course of the review, should the planning board determine that an approval may not be feasible without the granting of an area variance as defined by Town Law Section 267-a, the planning board may refer the application to the zoning board of appeals for the consideration of such variance.

Section 745. Public Hearing

The planning board shall conduct a public hearing. Such public hearing shall be conducted within 62 days of the receipt of the completed application for a site plan review and shall be advertised at least five days before the hearing in a newspaper in general circulation in the town. A notice of the hearing shall be mailed to the applicant at least 10 days before the hearing.

Section 750. County Planning Board Review

At least 10 days before the hearing, the planning board shall refer all site plan review matters that fall within those areas specified under General Municipal Law Section 239-m to the Lewis County Planning Department prior to final action. This includes any use that falls within 500 feet of the following: the boundary of the town; a state or county park or recreation area; a state or county highway or expressway; a state or county owned drainage channel; or state or county land where a public building or institution is located. Such referral shall be to the Lewis County Department of Planning for their recommendations thereon. If the Lewis County Department of Planning does not respond within 30 days from the time it received a full statement on the referral matter, then the planning board may act without such report.

Section 755. Waiver of Public Hearing

The planning board may waive the public hearing. Such waiver shall not be allowed in any one of the following circumstances:

1. The use is a Type I SEQR action and the use is determined by the planning board to have environmental significance;
2. The use is over 10,000 square feet of floor or ground area;
3. The use is over 20 feet in height;
4. The use is within 200 feet of a DEC designated wetland area, within 200 feet of a stream with a DEC classification of C or higher, or in a FEMA designated floodplain area;
5. The use is determined by the planning board to be of a publicly controversial nature; or
6. The applicant has requested a public hearing.

Section 760. Final Action

1. Within 62 days of the public hearing, or within 62 days of the acceptance of a complete application by the planning board where such hearing has been waived pursuant to Section 755 above, the planning board shall act on the site plans. The time within which the planning board must render its decision may be extended upon mutual consent of the applicant and the planning board. The action of the planning board shall be in the form of a written statement to the applicant stating whether or not the site plans are approved, approved with modifications, or disapproved. The decision of the planning board shall immediately be filed in the office of the town clerk and a copy mailed to the applicant.
2. If the site plans are approved, and upon payment by the applicant of all fees and reimbursable costs due the town, the planning board shall endorse its approval on a copy of the application and site plans.
3. If the site plans are approved with modifications, the planning board shall specify in the statement all modifications to be made. Upon payment by the applicant of all fees and reimbursable costs due to town, and upon approval of the modified application and site plans, the planning board shall endorse its approval on a copy of the application and site plans.
4. If the site plans are disapproved, the statement shall contain the reasons for such findings. In such case, the planning board may recommend further study of the application and resubmission after it has been revised or redesigned.

Section 765. Report to County Planning Department

Within 30 days of final action on any matter referred to the Lewis County Planning Department, the Town of Martinsburg Planning Board shall file a report of the final action it has taken with the Lewis County Planning Department.

ARTICLE 8. NONCONFORMITIES

Section 810. Intent

The intent of this article is to recognize lots, structures and uses of land and structures which legally existed prior to the enactment or subsequent amendment of this law which would be prohibited or unreasonably restricted by the requirements herein. All rights of nonconformity shall continue regardless of the transfer of ownership of nonconforming lots, structures or uses.

Section 820. Nonconforming Lots

Any lot held under separate ownership prior to the enactment or amendment of this law, and having a lot frontage, lot size, side and rear lot line setback or setback from road centerline less than the minimum requirements set forth in this law, may be developed for any use allowed in the district in which it is located, as designated in Section 410 of this law, provided that such lot has sufficient frontage, side and rear lot area to undertake development which will:

1. Maintain the required setback from road centerline; and
2. Maintain at least 2/3 of the required minimum setback from side and rear lot lines.

Section 830. Nonconforming Structures

No structure which by the enactment or amendment of this law is made nonconforming or placed in a nonconforming situation with regard to side and rear lot line setback, setback from road centerline or any requirement of this law, other than the use to which it is put, shall be changed so as to increase its nonconformity. If a structure is nonconforming as to use, see Section 840 below. Any such nonconforming structure may be used for any compatible use listed for the district in which it is located as designated in Section 410 of this law.

Section 840. Nonconforming Uses of Land or Structures

Any use of land or structures which by the enactment or amendment of this law is made nonconforming may be continued on the premises and to the extent preexisting provided that:

1. No nonconforming use shall be increased in size so as to occupy a greater area of land or floor area than was committed to the nonconforming use at the time of such enactment or amendment;
2. No nonconforming use which has for any reason been discontinued for a period of one year or more shall be reestablished; and
3. A special use permit shall be required for any alteration or reconstruction that is on the premises of a nonconforming multi-family residential or nonresidential use.

Section 850. Nonconforming Structures Damaged or Destroyed

Any structure which is nonconforming as to use, side and rear lot line setback, setback from road centerline or any other requirement of this law, which is damaged or destroyed by fire or other hazard, may be repaired, restored or reconstructed provided that such work is undertaken within one year of the date on which the damage or destruction occurred. No such work shall increase the nonconformity of the structure.

Section 860. Nonconforming Signs

Nonconforming signs shall be allowed to continue in a nonconforming manner until the advertised use is terminated, or the sign is structurally changed or replaced.

ARTICLE 9. ADMINISTRATION AND ENFORCEMENT

Section 905. Development Permits Required

No land-use activity as listed below shall be carried out until a development permit has been issued by the enforcement officer stating that the proposed building, structure, use of land, or development activity complies with the requirements of this law:

1. Erection, re-erection or movement of a building or structure;
2. Change of the exterior structural dimensions of a building or structure;
3. Change in use of land, buildings or structures through the establishment of a new use, or through the expansion or enlargement of an existing use;
4. The resumption of any use which has been discontinued for a period of 12 months or longer;
5. Establishment or change in dimensions of a parking area for nonresidential or multi-family residential uses;
6. Change in the contours of land.
7. Construction of a septic system, wastewater source, or outhouse for a new use.
8. Outdoor furnaces.

Section 910. Development Permit Exceptions

A development permit shall not be required for the following development activities and shall be exempt from the provisions of this law:

1. Accessory structures with less than 150 square feet of ground coverage, unless over 15 feet in height;
2. Alterations of less than 150 square feet of ground coverage;
3. Fences or walls complying with Section 505 of this law;
4. Interior structural alterations or routine maintenance and improvement that does not expand the exterior dimensions of the structure (e.g., roofing, window replacement, siding replacement, etc.);
5. Minor accessory structures such as posts, sidewalks, driveways, flagpoles, playground equipment, etc.;
6. Family day care homes and group family day care homes;
7. Agricultural uses, commercial logging, conservation practices, and passive recreation uses;
8. Replacement or improvement of a septic system, wastewater source or outhouse for a preexisting use. Facilities for new uses requires a development permit as indicated in Section 905, 7:
9. Wells.

Section 915. Temporary Development Permits

Temporary development permits may be issued upon approval of the planning board for a period not to exceed 12 months for temporary uses and structures incidental to a construction project. Such temporary development permit shall be conditioned upon agreement by the applicant to remove any nonconforming uses or structures upon expiration of the permit. The planning board may place such appropriate conditions on the use so as to protect the character of the surrounding area. A temporary development permit may be extended by the planning board, for such length of time as may be deemed appropriate, where the applicant has shown suitable progress toward the completion of construction.

Section 920. Application Procedure for Development Permits

1. Applications for development permits shall be submitted to the enforcement officer or town clerk and shall include three copies of a layout or plot plan showing the actual dimensions of the lot to be used; the size and location on the lot of existing and proposed structures and accessory structures; the setbacks of structures from all lot lines, road center lines, mean high water lines of streams, ponds and wetlands, and any other features of the lot; and such other information as may be necessary to provide for the enforcement of this law. This information, and other relevant application data, shall be provided on forms issued by the town clerk.
2. When establishing measurements to meet the required setbacks, the measurements shall be taken from the lot line, road center line, or nearest mean high water line to the furthest protruding part of the use or structure. This shall include such projecting facilities as porches, carports, attached garages, etc.

3. The enforcement officer shall take action to approve or disapprove the application within 15 days of the receipt of a completed application by the enforcement officer and the payment of all fees.
4. A development permit shall expire one year from the date of issue if construction is not substantially started or the use has not commenced. Such permit may be renewed upon payment of all fees.

Section 925. Permit Fees

A fee as determined by town board resolution shall be paid for each application for a development permit or special use permit. No permit shall be issued until full payment has been received by the town clerk.

Section 930. Certificate of Compliance

No use or structure requiring a development permit shall be occupied, used, or changed in use until a certificate of compliance has been issued by the enforcement officer stating that the use or structure complies with the provisions of this law. All certificates of compliance shall be applied for coincidentally with the application for a development permit and shall be issued within five days after the use has been approved as complying with the provisions of this law.

Section 935. Temporary Certificate of Compliance

A temporary certificate of compliance for not more than 60 days for a part of a building or lot may be issued upon approval of the planning board. Such temporary certificate may be renewed upon request for an additional 30 days.

Section 940. Enforcement Officer

This law shall be enforced by the enforcement officer, who shall be appointed by the town board. The duties of the enforcement officer shall be to:

1. Approve and disapprove development permits and certificates of compliance;
2. Scale and interpret district boundaries on the development map;
3. Refer appropriate matters to the board of appeals, planning board, or town board;
4. Revoke development permits or certificates of compliance where there is false, misleading or insufficient information or where the applicant has varied from the terms of the application;
5. Investigate violations, issue stop work orders and appearance tickets, and refer violations to the town justice or the town board;
6. Report at regular town board meetings the number of development permits and certificates of compliance issued.

Section 945. Board of Appeals

1. The board of appeals shall consist of five members as set forth in Section 267 of the Town Law, or in the alternative the town board may enter into an agreement pursuant to Article 5-G of the General Municipal Law and Section 284 of the Town Law to establish a cooperative zoning board of appeals. In the event of a cooperative zoning board of appeals, membership shall be as per the contractual agreement and may otherwise vary from provisions of Section 267 of the Town Law as may be set forth in that agreement.
2. The powers of the board of appeals shall be to interpret this law and to grant area variances and use variances in accordance with the standards set forth in Section 267-b of the Town Law and as may be otherwise provided by law.
3. The procedure before the board of appeals shall be in accordance with Section 267-a of the Town Law except as may be specifically modified by intermunicipal agreement should the town elect to enter into a cooperative zoning board of appeals, in which event such procedures shall be strictly governed by the intermunicipal agreement.
4. This local law specifically supersedes those provisions of Section 267 of the Town Law requiring that there be three or five members of the board of appeals, that the terms be staggered, that the town board select the chairman, and the voting power of members of the board of appeals in the event that the town should enter into an intermunicipal agreement pursuant to Section 284 of the Town Law and Article 5-G of the General Municipal Law in which event the intermunicipal agreement shall govern those factors.

Section 950. Planning Board

The planning board shall have the powers and duties to approve special use permits and temporary permits. All applications made shall be made in writing on forms prescribed by the town. Every decision of the planning board shall be made by resolution that shall contain a full record of findings in the case.

Section 955. Filing of Records

1. A copy of all development permits, temporary development permits, certificates of compliance, notices of violation, and stop work orders shall be immediately filed in the office of the town clerk, upon issuance by the enforcement officer.
2. A copy of all decisions of the board of appeals shall be filed in the office of the town clerk within five business days of the decision.
3. A copy of all special use permit decisions of the planning board shall be filed in the office of the town clerk within five business days of the decision.
4. All such records shall be available for the inspection of the public.

Section 960. Violations and Penalties

1. Whenever a violation of this law occurs any person may file a complaint in regard thereto. All such complaints shall be in writing and shall be filed with the enforcement officer who shall properly record and immediately investigate such complaint. If the complaint is found to be valid, the enforcement officer shall issue a stop work order requiring all work to cease until the violation is corrected. If the violation is not corrected within the specified time the enforcement officer shall take action to compel compliance.
2. Pursuant to Criminal Procedure Law Section 150.20 (3), the enforcement officer is hereby authorized to issue an appearance ticket to any person causing a violation of this law, and shall cause such person to appear before the town justice.
3. Pursuant to Municipal Home Rule Law Section 10 and Town Law Section 268, any person, firm, or corporation who commits an offense against, disobeys, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this law shall, upon conviction, be deemed guilty of a violation and subject to fine and/or imprisonment. Any violation of this law is an offense punishable by a fine of not less than \$100 nor more than \$350 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for a 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 \$750 nor more than \$1000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this law shall be deemed classified misdemeanor 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.
4. The town board may maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of this law.

ARTICLE 10. MISCELLANEOUS PROVISIONS

Section 1010. Amendments

The town board may amend the provisions of this law pursuant to Town Law Section 265 after public notice, public hearing, compliance with the State Environmental Quality Review Act regulations (6 NYCRR Part 617), and following appropriate referral to the county planning board pursuant to General Municipal Law Section 239-m.

Section 1020. Interpretation

Interpretation and application of the provisions of this law shall be held to be minimal requirements, adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this law differ from the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

Section 1030. Separability

Should any article, section, subsection, sentence or clause of this law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 1040. Effective Date

The provisions of this law shall take effect upon filing with the Secretary of State.