

**VILLAGE OF BUCHANAN  
LOCAL LAW NO. 6 OF THE YEAR 2025**

**A LOCAL LAW AMENDING CHAPTER 211 ENTITLED ZONING, section 211-27 ( C) and 211-97 TO THE CODE OF THE VILLAGE OF BUCHANAN**

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[HISTORY: Adopted by the Board of Trustees of the Village of Buchanan 6-23-1980 by L.L. No. 2-1980 (Ch. 54 of the 1971 Code). Amendments noted where applicable.]

## GENERAL REFERENCES

Building construction — See Ch. 67.	Recreational facilities — See Ch. 149.
Driveways — See Ch. 73.	Sewers — See Ch. 155.
Environmental quality review — See Ch. 83.	Soil disturbances and excavations — See Ch. 159.
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ARTICLE I  
**General Provisions**

**§ 211-1. Short title.**

This chapter shall be known and cited as the "Comprehensive Zoning Local Law (Chapter) of the Village of Buchanan, New York."

**§ 211-2. Applicability.**

Except as hereinafter provided:

- A. No building or land shall hereafter be used or occupied, and no building or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located.
- B. No building shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, side yards, inner or outer courts than is specified herein for the district in which such building is located.
- C. No part of a yard or other open space about any building required for the purpose of complying with the provisions of this chapter shall be included as part of a yard or other open space similarly required for another building.
- D. No lot, yard, setback, parking area or other space shall be so reduced in area, dimension or capacity as to make said area, dimension or capacity less than the minimum required under this chapter. If already less than the minimum required under this chapter, said area, dimension or capacity shall not be further reduced.

**§ 211-3. Purpose and authority.**

There is hereby established a new comprehensive Zoning Chapter for the Village of Buchanan, which chapter is set forth in the text, tables and map that constitute this chapter. Said chapter is adopted for the purposes set forth in Article 7, § 7-700, of the New York Village Law, which, in the interest of the protection and promotion of the public health, safety and welfare, shall be deemed to specifically include the following, among others:

- A. To guide and control growth in an orderly, efficient manner consistent with the ability of the Village to provide services and facilities necessary to accommodate new growth.
- B. To facilitate the efficient and adequate provision of public facilities and services.
- C. To assure sites for residence, industry and commerce.
- D. To provide for privacy for families.
- E. To protect the wetlands and lakes from filling erosion and pollution.
- F. To prevent and reduce traffic congestion so as to promote efficient and safe circulation of vehicles and pedestrians.
- G. To protect residential areas.

- H. To provide land resources for the housing of all segments of the population.
- I. To provide for the gradual elimination of nonconforming uses.
- J. To provide for the enhancement of the appearance of the Village of Buchanan as a whole.

**§ 211-4. Construal of provisions; relationship to other laws; repealer.**

- A. Minimum requirements. The provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety and welfare.
- B. Relationship to other laws. Where the conditions imposed by any provision of this Zoning Chapter upon the use of land or buildings or upon the bulk of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provisions of this chapter or any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall govern.
- C. Repealer. The Zoning Ordinance of the Village of Buchanan, adopted September 9, 1969, and all subsequent amendments thereto, are hereby repealed.

**ARTICLE II  
Terminology**

**§ 211-5. Definitions; word usage.**

- A. Except where specified in the following definitions, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "building" includes all other structures of every kind, regardless of similarity to buildings; the word "lot" shall include the words "plot," "piece" or "parcel"; and the phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for" and "occupied for." The word "person" includes a corporation as well as an individual. The word "occupied" or "used" shall include "arranged, designed, constructed, altered, converted, rented, leased or intended to be used"; the word "shall" is mandatory; the word "may" is permissive.
- B. As used in this chapter, the following terms shall have the meanings indicated: **[Amended 9-18-1989 by L.L. No. 8-1989]**

**ACCESSORY** — A building, structure or use which is clearly incidental or subordinate to and customarily used in connection with the principal building, structure or use and which is located on the same lot with the principal building, structure or use. Any accessory building or structure attached to a principal building or structure is deemed to be part of such principal building or structure in applying the bulk requirements to such building or structure. No use shall be considered accessory where such use requires a greater area of a lot or larger setbacks or yards or for which greater restrictions than for the principal use on the lot are imposed by this chapter.

**AUTO SERVICE OR GASOLINE STATION** — A building or structure where gasoline, diesel fuel or any other transportation fuels, oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade, at retail, and where the following services may be rendered:

- (1) **MINOR REPAIR** — The sale and servicing of spark plugs and batteries; tire repair and servicing, but no recapping; the replacement of mufflers and tail pipes, water hoses, fan belts, brake and transmission fluids, light bulbs, floor mats, seat covers (where this shall not be the principal use), windshield wipers, grease retainers and wheel bearings; radiator

cleaning and flushing; washing and polishing, including automatic or mechanical car wash establishments; greasing and lubrication; installation of fuel pumps and fuel lines; minor servicing and replacement of carburetors; emergency wiring repairs; adjustment and installation of brakes; tuning engines, except for grinding valves, cleaning carbon or removing the head of engines and/or crank case; and other similar uses.

- (2) MAJOR REPAIR — In addition to those repairs and services listed above as "minor repair," any general repair, rebuilding or reconditioning not listed above; collision service, including body, frame or fender straightening or repair; painting or paint shop.
- (3) CONVENIENCE RETAIL — The sale of such nonautomobile-related items such as food, periodicals and nonprescription medicines, where the building area devoted to the display of such items exceeds 50 square feet. No minor or major repair shall be permitted.
- (4) FAST SPECIALIZED SERVICE — A commercial enterprise for the servicing of automobiles, usually limited to a particular system of the vehicle, such as transmissions, mufflers, brakes, wheel alignments or lubrication, and usually emphasizing speedy service, but not for the dispensing of motor fuels.

**BASEMENT** — That space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building.

**BOARD OF APPEALS** — The Board of Zoning Appeals of the Village of Buchanan.

**BUFFER** — An area of specified dimension in addition to the required yard. The buffer may not be used or otherwise encroached upon by any activities on the lot. The purpose of a buffer is to screen and separate uses of adjoining properties, and it shall be composed of either an undisturbed or landscaped area, with or without fencing, subject to the requirements of the Planning Board.

**BUILDING** — Any structure, either permanent or temporary, which is affixed to the land which has one or more floors and having a roof supported by columns or walls and is intended for the shelter, housing or enclosure of any person, animal or property.

**BUILDING HEIGHT** — The vertical distance measured from the mean level of the ground surrounding the building to the highest point of a flat or mansard roof or to a point equidistant between the highest and lowest points of a pitched, gabled, hip or gambrel roof.

**BUILDING LINE** — A line parallel to the front lot line coincident with the point of the building nearest the front line of the lot. Where no building presently exists, a line parallel to the front lot line, set back the required front yard distance.

**BUILDING, PRINCIPAL** — A building in which is conducted the main or principal use of the lot on which it is situated.

**CELLAR** — That space of a building that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building.

**CERTIFICATE OF OCCUPANCY** — Official certification by the Building Inspector that a building or structure conforms to this chapter and other applicable laws and may be legally occupied for the use set forth in the certificate.

**CUL-DE-SAC** — A street having only one intersection with another street for vehicular ingress and egress and having a turnaround for the reversal of traffic movement.

**DECK** — A structure which has a floor eight inches or more above grade, is unenclosed except for any side which may adjoin a building or any railings, fences, walls, shrubs or hedges and is designed for outdoor lounging, dining and the like.

§ 211-1

ZONING

§ 211-6

**DEWATERING FACILITY** — A facility using technology to separate solids from wastewater in an enclosed structure, by special permit to be granted by the Planning Board under Chapter 211, Article X, Special Permit Uses, of the Village Code.**[Added 7-16-2007 by L.L. No. 3-2011]**

**DISTRICT or ZONE** — Any specific geographical portion of the territory appearing on the Zoning Map<sup>1</sup> as a bounded area within the same classification, setting it apart from any other differently classified area or areas, and upon which this chapter imposes uniform restrictions and regulations corresponding to the particular classification as to use, buildings, structures, lots and dimensions thereof and as to special uses and nonconforming uses.

**DWELLING** — Any building or structure designed or used exclusively as the residence or sleeping place of one or more persons. The term "dwelling" shall not be deemed to include an automobile court or motel, rooming house, tourist home, hotel, hospital, nursing home, dormitory or fraternity or sorority house.

**DWELLING, MULTIFAMILY** — A building designed for occupancy by three or more families living independently of each other and containing three or more dwelling units.

**DWELLING, SINGLE-FAMILY** — A detached building designed for or occupied exclusively by one family and containing not more than one dwelling unit. A single-family dwelling shall not have more than one kitchen or kitchenette.

**DWELLING, TWO-FAMILY** — A detached building where not more than two individual families or two dwelling units are entirely separated by vertical walls or horizontal floors. A two-family dwelling shall not have more than two kitchens or kitchenettes.

**DWELLING UNIT** — A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, having no cooking or sanitary facilities in common with another dwelling unit and designed for occupancy by not more than one family for living, eating and sleeping purposes. A dwelling unit shall have no more than one kitchen or kitchenette. A boarding- or rooming house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing or other similar home or structure shall not be deemed to constitute a dwelling unit.

**ESSENTIAL SERVICES** — The erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, communication, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings, except telephone central office buildings and telephone booths, which shall also be considered an essential service facility hereunder.

**FAMILY** — One or more persons occupying a dwelling unit and living together as a single nonprofit housekeeping unit, subject to a limit of not more than three unrelated persons 18 years of age or over.

**FENCE** — A barrier, railing, or other upright structure, typically of wood, wire, rails, or netting connected to posts that connect various sections.**[Added 1-5-2021 by L.L. No. 1-2021]**

**FLOOR AREA, GROSS** — The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

**GROUP-CARE FACILITY** — A use providing room and board and/or recreational counseling or other rehabilitative service or facilities to individuals who, by reason of mental or physical disability, addiction to drugs or alcohol or family and school adjustment problems, require specialized attention and care in order to achieve personal independence. Individuals participating in a work release or similar program from a state institution or under the supervision of a court or local agency shall be included in this definition, except as such use may qualify as a family-care unit. Group-care facilities include halfway houses, boardinghouses or rooming houses, group homes and shelters and other uses



of like appellation.

**HOME OCCUPATION** — An occupation which is carried on in a dwelling unit as an accessory use which is clearly incidental and secondary to the use of the dwelling for residential purposes, subject to the requirements of § 211-19B.

**JUNK** — Includes but is not limited to scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc and all other scrap metals and their alloys and bones, rags, scrap paper, used cloth, used rubber, used rope, used tinfoil, used bottles, old or used machinery, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates, used pipe fittings, used tires and manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition but which are subject to being dismantled. Also included are any and all waste materials which tend to create a danger to public health, safety or welfare.

**LOT** — A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings or utilized for a principal use and uses accessory or incidental to the operation thereof, together with such open spaces as required by this chapter, and having required lot frontage on a street. A lot may be composed of one or more tax lots, but it may not be subdivided unless each new lot conforms to all the requirements of the district in which it is located.

**LOT, CORNER** — A lot situated at and abutting the intersection of two streets having an interior angle of intersection not greater than 135°.

**LOT COVERAGE** — The proportion of all ground floor areas and structures upon a lot to the total area of the lot, expressed as a percentage. Ground floor areas shall be measured by taking the outside dimensions at the ground level of all accessory and principal buildings, including porches, carports, garages and sheds. Structures, for the purposes of lot coverage, shall include swimming pools, paved walkways and, whether constructed of pervious materials or not, patios, decks and driveways and parking areas.

**LOT DEPTH** — The distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear. Such distance shall be defined by a continuous unbroken straight line measured and lying wholly within the boundaries on the lot.

**LOT FRONTAGE** — The distance between side lot lines, measured along the street right-of-way.

**LOT LINE, FRONT** — The line of the lot abutting a street right-of-way; a through lot and corner lot shall be considered to have two front lot lines.

**LOT LINE, REAR** — The lot line(s) opposite and most distant from the front lot line(s); if the rear lot line is less than 10 feet in length or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front lot line not less than 10 feet long, lying wholly within the lot and farthest from the front lot line. All lots shall contain a rear lot line, except in the case of a through lot.

**LOT LINES** — The property lines bounding the lot.

**LOT LINE, SIDE** — Any lot line other than a front or rear lot line.

**LOT, THROUGH** — A lot, other than a corner lot, having access on two streets.

**LOT WIDTH** — The horizontal distance between the side lot lines measured parallel to the front lot line; and, for lots without an existing principal building, measured from the front lot line to a line 30 feet to the rear of the minimum required front yard setback or, for lots with an existing principal building and setback so as to conform to the minimum required front yard, measured from the front lot line to a line tangent to the rearmost part of the principal building.

**MOBILE HOME** — A movable structure used for permanent living or sleeping quarters for one family and standing on wheels or on rigid supports and provided with the following mechanical

systems and equipment: plumbing, heating, electrical, cooking and refrigeration.

**MOBILE HOME PARK** — A tract of land which is used for the placement of three or more mobile homes.

**NONCONFORMING LOT** — A lot which, because of its size or shape, does not comply with the applicable dimensional regulations, including those relating to lot area, lot depth and lot width, prescribed by this chapter or any amendment to it that may be enacted for the district in which the lot is located, but which lot was lawfully in existence prior to the enactment of this chapter or an amendment.

**NONCONFORMING STRUCTURE** — A structure or other location of a use, including off-street parking and loading, principal buildings and accessory structures and signs, which, because of its size or location on a lot, does not comply with the applicable dimensional regulations, including those relating to building height, lot coverage, yard and buffer, prescribed by this chapter or any amendment to it that may be enacted for the district in which the structure is located, but which structure was lawfully in existence prior to the enactment of this chapter or an amendment.

**NONCONFORMING USE** — A use of land or structure, including signs, which does not comply with the applicable use regulations prescribed by this chapter or any amendment to it that may be enacted for the district in which the use is located, but which use was lawfully in existence prior to the enactment of this chapter or an amendment.

**NURSING OR CONVALESCENT HOME** — A building other than a hospital where persons, except insane, drug or alcohol patients, are lodged and furnished with meals and nursing care.

**PARKING SPACE** — A horizontal area used for the parking of a motor vehicle, consisting of a minimum depth of 18 feet and a minimum width of 8.5 feet.**[Amended 11-8-2023 by L.L. No. 9-2023]**

**PATIO** — A structure or area which has a floor less than eight inches above grade, is unenclosed except for any side which may adjoin a building or any fences, walls, shrubs or hedges and is designed for outdoor lounging, dining and the like.

**PERMITTED USE** — A principal or accessory use of a property which is specifically authorized in a particular zoning district by the Schedule of Use Regulations,<sup>2</sup> but not including any use which is authorized as a special permit use.

**PLANNING BOARD** — The Planning Board of the Village of Buchanan, established pursuant to the Village Law.

**PORCH** — An outdoor area or entrance to a building covered by a permanent roof as an extension of the building wall.

**PROFESSIONAL OFFICE** — A commercial use or building where personal services, as distinguished from the practice of a trade or business, are rendered by a practitioner of the learned professions, such as a lawyer or a physician, chiropractor, dentist, optometrist, architect, landscape architect, engineer or public accountant (as defined in the Education Law of the State of New York).

**PROTECTED AREA** — The portion of any land located in an M-2 Zone and employed for the peaceful use of atomic energy which is bounded by the highest level of safety and security measures for the protection of facilities using or storing radiological material. Any such area shall be that area of the M-2 Zone which is designated as a protected area by the terms of a 10 CFR 50 operating license and associated technical specifications, as such license and technical specifications may be amended from time to time.**[Added 12-15-2003 by L.L. No. 1-2003]**

**RADIOLOGICAL MATERIAL** — Any radioactive material including source, by-product or special nuclear material (as such terms are defined in 42 U.S.C. § 2014), low-level radioactive waste, high-level radioactive waste, and spent nuclear fuel (as such terms are defined in 42 U.S.C. § 10101), and spent fuel (as such term is defined in 10 CFR 72.3).**[Added 12-15-2003 by L.L. No. 1-2003]**

RECREATIONAL TRAILER — Any portable vehicle commonly used for recreational purposes, including camping trailers, which is not self-propelled and must be towed or hauled.

RECREATIONAL VEHICLE, MOBILE — Any portable or mobile vehicle commonly used for recreational purposes which is self-propelled, including vehicles commonly referred to as "RVs," "ATVs," "dirt bikes" or "snowmobiles."

SAFETY/SECURITY IMPROVEMENT — Any structure installed, constructed or operated for the purpose of protecting, shielding, containing, storing, cooling, handling or otherwise making safe and secure any radiological material, and shall include any structure installed, constructed or operated within the protected area, as such area may be modified from time to time, and any structure installed, constructed or operated outside of the protected area so long as documentation is provided to the Village Administrator and the Building Inspector evidencing either: oversight of such structure's installation, construction or operation by any federal department or agency charged with the responsibility of ensuring the safety and security of radiological material or of the public from potential threats to safety; or that installation, construction or operation of such structure is governed or directed by any federal law, statute, code, order, guidance, rule or regulation concerning the safety and security of radiological material or of the public from potential threats to safety. For any such structure, where a federal department or agency plans to or would be required to conduct one or more public hearings or meetings regarding the installation or construction of such structure, at least 30 days prior to an application for a building permit for such structure, but in no event less than 30 days prior to the first of such public hearings or meetings pertaining to such structure, the Village shall be provided notice regarding the date, time, and place of such hearing or meeting. **[Added 12-15-2003 by L.L. No. 1-2003]**

SIGN — Any surface or device containing a sign display, the purpose of which is to bring the subject thereof to the attention of the public through the communication of a visual message.<sup>3</sup>

SIGN, ANIMATED — Any freestanding or building sign that uses movement or change of lighting to depict action or to create a special effect or scene. **[Added 6-17-1991 by L.L. No. 3-1991]**

SIGN AREA — The smallest square, circle, rectangle or triangle, or combination thereof, that encompasses the extreme limits of the sign display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the background or structure against which it is placed, but not including any supporting framework, bracing or decorative fence or wall when such fence or wall otherwise is incidental to the display itself. Only one face of a double-faced sign shall be included as area of such a sign. **[Amended 6-17-1991 by L.L. No. 3-1991<sup>4</sup>]**

SIGN, BUILDING — Any sign attached to any part of a building, as contrasted to a freestanding sign. **[Added 6-17-1991 by L.L. No. 3-1991]**

SIGN, BUILDING MARKER — Any sign indicating the name of a building and date and incidental information about its construction, which sign is cut into a masonry surface or made of bronze or other permanent material. **[Added 6-17-1991 by L.L. No. 3-1991]**

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1. Editor's Note: The Zoning Map is included at the end of this chapter.
  2. Editor's Note: The Schedule of Use Regulations is included at the end of this chapter.
  3. Editor's Note: The original definitions of "sign, advertising," and "sign, announcement," which immediately followed this definition, were repealed 6-17-1991 by L.L. No. 3-1991.
  4. Editor's Note: This ordinance also repealed the original definitions of "sign, business identification," and "sign, directory," which immediately followed this definition.

**SIGN, CANOPY** — Any sign that is a part of or attached to an awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoor service area. A marquee is not a canopy.**[Added 6-17-1991 by L.L. No. 3-1991]**

**SIGN, CHANGEABLE COPY** — A freestanding or building sign or portion thereof with characters, letters or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the message changes more than eight times per day shall be considered an animated sign and not a changeable copy sign for purposes of this chapter, except that that portion of a sign on which the only copy that changes is an electronic or mechanical indication of time or temperature shall be considered a changeable copy sign for purposes of this chapter.**[Added 6-17-1991 by L.L. No. 3-1991]**

**SIGN DISPLAY** — A display or legend, including but not limited to letters, words, logos and insignia, which are used as or presented as an announcement, direction or advertisement.<sup>5</sup>

**SIGN, FREESTANDING** — Any sign supported by structures or supports that are placed on or anchored in the ground and that are independent from any building or other structure. A residential freestanding sign shall include no commercial message other than one for an activity legally offered on the premises, such as a home occupation, the sale or rent of the premises and contractors working on the premises.**[Added 6-17-1991 by L.L. No. 3-1991]**

**SIGN, HEIGHT** — The distance from the normal grade below a freestanding sign to the top of the highest attached component of the sign. "Normal grade" shall be construed to be the lower of the existing grade prior to construction or the newly established grade after construction, exclusive of any filing, berming, mounding or excavating solely for the purpose of locating the sign.**[Added 6-17-1991 by L.L. No. 3-1991]**

**SIGN, IDENTIFICATION** — A sign used to identify the name and address of the occupants of the principal building on a lot.**[Amended 6-17-1991 by L.L. No. 3-1991]**

**SIGN, ILLUMINATED** — A sign on which artificial light is directed or which is constructed of translucent materials through which light is directed. A sign on which the illuminating source is visible to the public way or any property line, except for signs constructed from neon-type tube, is not a permitted sign in any district.

**SIGN, INCIDENTAL** — A freestanding or building sign, generally informational, that has a purpose secondary to the use of the lot on which it is located, such as "no parking," "entrance," "loading only," "telephone" and other similar directives. No sign with a commercial message legible from a position off the lot on which the sign is located shall be considered incidental.**[Added 6-17-1991 by L.L. No. 3-1991]**

**SIGN, MARQUEE** — Any sign attached to, in any manner, or made a part of a marquee.**[Added 6-17-1991 by L.L. No. 3-1991]**

**SIGN PLAN** — A plan depicting the size, location, materials and content of a sign, which plan shall be the sole permitted display for any sign subject to the site development plan rules and regulations.

**SIGN, PROJECTING** — Any sign affixed to a building or wall in such a manner that its leading edge extends more than six inches beyond the surface of such building or wall.**[Added 6-17-1991 by L.L. No. 3-1991]**

**SIGN, WALL** — Any sign which is attached parallel to but within six inches of or painted on the surface of an outside wall of any building or structure; which is supported by such wall or building;

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5. Editor's Note: The original definition of "sign, flashing," which immediately followed this definition, was repealed 6-17-1991 by L.L. No. 3-1991.

and which displays only one sign surface.[Added 6-17-1991 by L.L. No. 3-1991]

**SIGN, WINDOW** — Any sign or picture, or combination thereof, that is placed inside a window or upon the windowpanes or glass and is visible from the exterior of the window.[Added 6-17-1991 by L.L. No. 3-1991]

**STORY** — That portion of a building, with a minimum height of seven feet six inches, included between the surface of any floor and the ceiling. A basement shall be deemed to be a story where the floor above is seven or more feet above the finished grade. A cellar shall not be deemed to be a story. An attic shall not be deemed to be a story if unfinished and without human occupancy.

**STORY, HALF** — A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such story, when not more than 60% of the floor area is used for rooms, baths or toilets.

**STREET** — A public or private thoroughfare which affords the principal means of access to abutting property, including avenue, way, drive, boulevard, highway, road and any other thoroughfare except an alley.

**STRUCTURAL ALTERATION** — Any change in the supporting members of a building, such as bearing walls, columns, beams and girders, in the dimensions or configurations of the roof or exterior walls of a building or in the dimensions or configurations of the exit facilities of a building.

**STRUCTURE** — Any constructed or erected combination of materials on, above or below the surface of land or water or an attachment thereto, including but not limited to buildings, mobile homes, sheds, garages, carports, porches, decks, fences, walls, tank, towers and swimming pools.

**SWIMMING POOL** — A structure in the open or enclosed in any structure or building, which is artificially constructed of any material to provide recreational facilities for swimming, bathing or wading. Such swimming pool shall be at least 24 inches in depth or shall have a surface area exceeding 100 square feet.[Amended 6-18-1990 by L.L. No. 5-1990]

**SWIMMING POOL, PUBLIC** — Any swimming pool used by two or more families and their guests or any pool having a water surface area in excess of 1,000 square feet.[Added 6-18-1990 by L.L. No. 5-1990]

**SWIMMING POOL, RESIDENTIAL** — Any swimming pool which is accessory to a single-family dwelling on the same lot and which is for the private use of residents of the dwelling or their guests.[Added 6-18-1990 by L.L. No. 5-1990]

**TRAILERABLE BOAT** — Any boat, whether stored on its trailer or on other supports, which is normally towed by the conventional passenger car or similarly constructed vehicle or light-duty truck and, with the trailer, does not exceed 10,000 pounds gross weight, eight feet in width and/or 27 feet in length.

**USE** — The specific purpose for which land, a building or a structure is used or occupied or maintained.

**VARIANCE, AREA OR BULK** — An approval by the Board of Appeals which authorizes departure from the strict requirements of the Table of Bulk Regulations<sup>6</sup> or other provisions of this chapter or of Chapter 171, Subdivision of Land. An area or bulk variance does not involve a use of land, building or structure which is prohibited by zoning regulations.

**VARIANCE, USE** — An approval by the Board of Appeals which permits a use of land, building or

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6. Editor's Note: The Table of Bulk Regulations is included at the end of this chapter.

structure which is not permitted by this chapter in the district or zone in which it is located.

**VEHICLE, COMMERCIAL** — Any vehicle which is required by the State of New York to have commercial license plates.

**WALL** — A continuous vertical brick, stone or similar materials having a solid foundation along its whole length and not supported by posts. **[Added 1-5-2021 by L.L. No. 1-2021]**

**YARD** — The area of a lot open and unoccupied by a structure from the ground upward, except as permitted under this chapter, lying between a lot line and the nearest line of the principal building. The depth of a yard shall be measured in a straight line that is the shortest distance between the lot line and the nearest line of the principal building. Where a buffer area is required, the buffer area shall be deemed to commence at the lot line, and the yard requirement shall be deemed to commence from the interior line of the buffer area.

**YARD, FRONT** — The yard extending across the full width of a lot and lying between the front lot line and the nearest line of the principal building.

**YARD, REAR** — A yard extending the full width of the lot and lying between the rear lot line and the nearest line of the principal building.

**YARD, SIDE** — A yard lying between a side lot line and the nearest line of the principal building and extending from the front yard to the rear yard.

### ARTICLE III

#### Districts Enumerated; Map; Boundaries

#### **§ 211-6. Enumeration of districts. [Amended 5-17-2021 by L.L. No. 3-2021]**

The Village of Buchanan is divided into the following districts:

R-40	Residential District
R-20	Residential District
R-15	Residential District
R-10	Residential District
R-7.5	Residential District
C-1	Neighborhood Commercial District
C-2	General Commercial District
M-1	Light Industrial District
M-2	Planned Industrial District
C-1/C-2	Overlay Zoning District

#### **§ 211-7. Zoning Map.<sup>7</sup>**

- A. The location and boundaries of the zoning districts hereby established are shown on the Zoning Map of the Village of Buchanan, New York, dated May 4, 2021. This Zoning Map, and all notations, references and other information shown thereon, is incorporated by reference and is attached hereto. An updated copy of the Zoning Map shall be maintained in the office of the Village Clerk for public view. **[Amended 5-17-2021 by L.L. No. 3-2021]**
- B. The Board shall cause to be delineated on the Zoning Map all amendments to the district boundaries which are authorized by local law immediately upon the effective date of such local law, indicating

the title and date of the local law.

### **§ 211-8. Interpretation of boundaries.**

Where uncertainty exists as to the locations of any boundaries shown on the Zoning Map,<sup>8</sup> the following rules shall apply:

- A. District boundary lines are intended to follow center lines of streets, rights-of-way, watercourses or lot lines or be parallel or perpendicular thereto, unless such boundary lines are fixed by dimensions as shown on the Zoning Map.
- B. Where such boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries.
- C. Where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by the use of the scale appearing thereon, after accurate placement of the lot on the map is determined to ensure accurate measurements by use of the scale.
- D. After the application of the foregoing rules, if uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine and fix the location of said line.
- E. Where a district boundary line divides a lot of record held in one ownership at the time of adoption of said district line, the regulations for the less restricted portion of such lot shall apply to the remainder of said lot up to a distance of not more than 50 feet from said district line.
- F. Any land hereafter annexed to or consolidated with the Village of Buchanan shall be deemed to be zoned in the residence district until said land is reclassified by an amendment to this chapter.

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7. Editor's Note: The Zoning Map is included at the end of this chapter.

8. Editor's Note: The Zoning Map is included at the end of this chapter.

## **ARTICLE IV Use Regulations**

### **§ 211-9. General provisions.**

The general regulations affecting the use of buildings, structures and land for each of the districts established by Article III are hereby established and set forth in this article.

### **§ 211-10. Schedule of Use Regulations. [Amended 3-6-1989 by L.L. No. 2-1989]**

The accompanying table entitled "Schedule of Use Regulations, § 211-10," shall be deemed part of this section and is referred to herein as "Use Table."<sup>9</sup>

### **§ 211-11. Prohibited uses. [Added 3-6-1989 by L.L. No. 3-1989]**

All uses not specifically listed in § 211-10 as permitted are prohibited in all locations within the Village of Buchanan. The following specifically prohibited uses included within this section are for enumeration and not limitation. Prohibited uses shall include but not be limited to the following:

- A. Manufacturing uses involving primary production of the following products from raw materials:
  - (1) Asphalt, cement, charcoal and fuel briquettes.
  - (2) Chemicals; aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and

bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (manufactured and natural) of an explosive nature, potash, plastic materials and synthetic resins, pyroxylin, rayon yarn and hydrochloric, nitric, phosphoric, picric and sulfuric acids.

- (3) Coal, coke and tar products, including gas manufacturing; fertilizers; gelatin, glue and size; gypsum, plaster of paris and cement.
  - (4) Linoleum, oilcloth, matches, paints, varnishes and turpentine.
  - (5) Rubber, natural or synthetic; soaps, including fat rendering; and starch.
- B. The following processes: nitrating of cotton or other materials; milling or processing of flour, feed or grain; magnesium foundry; reduction, refining, smelting and alloying of metal or metal ores; refining secondary aluminum; refining petroleum products, such as gasoline, kerosene, naphtha and lubricating oil; distillation of wood or bones; and reduction and processing of wood pulp and fiber, including paper mill operations.
- C. Operations involving stockyards and slaughterhouses, grain elevators, slag piles and the keeping, breeding and raising of pigs for commercial purposes.
- D. Storage or manufacture of explosives or fireworks.
- E. Bulk or wholesale storage of gasoline or other petroleum products above the ground.
- F. Dumps, sanitary landfills and junkyards.
- G. Incineration of waste materials.
- H. Disposal of septic or sewage wastes or other waste materials.
- I. Any other use, whether specified above or not, that is of such a nature as to be detrimental to neighboring properties by reason of emission of odor, dust, refuse matter, garbage, smoke, vibration, gas, radiation, noise or any other factor that is dangerous to the comfort, peace, enjoyment, health or safety of the area or the community.
- J. Freestanding water towers and freestanding water tanks, located below, on or above the ground.
- K. Auto wrecking yards, drive-in theaters, commercial breeding or raising of animals for any purpose, canning or processing of fish.
- L. Adult entertainment business uses. **[Added 7-17-1995 by L.L. No. 1-1995]**
- (1) Purposes and considerations.
    - (a) In the execution of this subsection it is recognized, after due deliberation and review of studies and empirical evidence, as well as an assessment and review of the unique composition of the community and available usable lands within the Village, that there are some business uses which, due to their very nature, have serious objectionable characteristics. The objectionable characteristics of these uses are further heightened by their presence in specific areas and concentration in any one area, thereby having deleterious effects on adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to or result in the blighting or downgrading of the surrounding neighborhoods or land uses.
    - (b) It is further declared that the location of these uses in regard to areas where our youth may regularly assemble and the general atmosphere encompassing their operation is of great concern to the Village of Buchanan.
    - (c) This subsection is necessary to accomplish the purposes of restricting the locations of adult



entertainment business uses and preventing a concentration of these uses within the Village which is inconsistent with the existing development and future planning development of the land and properties within the Village of Buchanan and restricting their accessibility to minors.

- (d) It is further recognized that, due to the composition of the existing land uses in the Village, the establishment of an adult entertainment business use within the Village would bring it into close proximity to residential zones, religious facilities and/or public and municipal lands and uses, thereby heightening the potential for deleterious impacts upon the community. In addition, it is further recognized that provision has been made in surrounding communities for such uses and that such need is being met on a regional basis.
- (2) Restrictions. Adult entertainment business uses, as defined herein, shall not be permitted to exist in the Village of Buchanan.
- (3) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

**ADULT BOOKSTORE or ADULT VIDEO STORE** — An establishment having as a substantial portion of its stock-in-trade books, magazines, other periodicals, recordings, films, slides, videotapes or other viewing materials and/or merchandise or other items for sale or viewing, on or off the premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas and/or which establishment is customarily not open to the public generally but excludes any minor by reason of age. For the purpose of this definition only, "substantial" shall mean comprising an area that is 30% or more of the total floor area of such premises.

**ADULT DRIVE-IN THEATER** — A drive-in theater that customarily presents motion pictures which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas and/or that is not open to the public generally but excludes any minor by reason of age.

**ADULT ENTERTAINMENT BUSINESS USE** — Any use constituting an adult bookstore, adult video store, adult drive-in theater, adult entertainment cabaret, adult motel, adult theater, massage establishment or peep show, as those terms are defined herein.

**ADULT ENTERTAINMENT CABARET** — A public or private establishment which presents topless dancers, strippers, male or female impersonators or exotic dancers, or other similar entertainments, and which establishment is customarily not open to the public generally but excludes any minor by reason of age.

**ADULT MOTEL** — A motel which is not open to the public generally but excludes minors by reason of age, or which makes available to its patrons, in their rooms, films, slide shows or videotapes which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas and/or which, if presented in a public movie theater, would not be open to the public generally but would exclude any minor by reason of age.

**ADULT THEATER** — A theater that customarily presents motion pictures, films, videotapes or slide shows which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas and/or that is not open to the public generally but excludes any minor by reason of age.

**BUSINESS** — Any person, firm, association, partnership, corporation or other entity engaged in activities and/or operation, whether for profit or not-for-profit.

**MASSAGE ESTABLISHMENT** — Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. The term "massage" is defined as a method of treating the external part of the human

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body by rubbing, stroking, kneading or vibrating with the hand or any instrument. The definition of such an establishment shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist, or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition also shall exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

MINOR — Any person under the age of 18 years.

PEEP SHOWS — A theater or other establishment which presents material in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged and which is not open to the public generally but excludes any minor by reason of age.

PERSON — Any individual, firm, partnership, corporation, club, association or legal representative, acting individually or jointly.

SEXUAL ACTIVITIES — Any act of masturbation, fellatio, sodomy, sexual intercourse or fondling or erotic touching of a person's genitals, pubic area, buttocks or breast.

SEXUAL ANATOMICAL AREAS —

- (a) Less than completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
- (b) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

**§ 211-12. Uses permitted at time of preexisting applications. [Added 6-5-1989 by L.L. No. 5-1989]**

- A. The amendments to this chapter contained in § 211-10 shall not govern, apply to or limit the following specific uses permitted at the time of any application for subdivision approval or site plan approval which was filed before the Village Board of Trustees or Zoning Board of Appeals on or prior to July 5, 1988:
  - (1) With respect to property now described on the Village Tax Assessment Map as Section 5, Block 34, Lot 1, the following specific uses are exempted from § 211-10 and are hereby permitted: mixed-use light industry, light manufacturing, assembly, laboratories, storage and warehouse uses and office and accessory uses incidental thereto.
  - (2) With respect to property now described in the Village Tax Assessment Map as Section 5, Block 35, Lots 1 and 2, the following specific uses are exempted from § 211-10 and are hereby permitted: concrete batching facility, together with retail and wholesale sales and storage, office and accessory uses incidental thereto.
- B. Nothing herein shall restrict or prohibit any uses permitted by § 211-10. Nothing herein shall permit or authorize any prohibited use set forth in § 211-11.

**§ 211-13. Rules for use of Use Table.<sup>10</sup>**

- A. The Use Table is divided into columns, with each column headed by a number for reference. Horizontal lines divide the regulations for one district from those of another.
- B. In the Use Table, the words "same as," followed by the symbol of the district, shall be construed to include all of the matter set forth in the same column for the district or districts thus referred to, thereby incorporating such matter by reference. Where reference is made to uses in other columns, such uses shall be those of the same district in which such reference occurs.

- C. In the Use Table, Column 3, the uses set forth are permitted by special permit only. Those uses shown underlined are by special permit issued by the Village Board in accordance with § 211-42. All other uses in Column 3 are by special permit of the Planning Board in accordance with § 211-41.

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7. Editor's Note: The Zoning Map is included at the end of this chapter.
8. Editor's Note: The Zoning Map is included at the end of this chapter.
9. Editor's Note: The Schedule of Use Regulations, § 211-10, is included at the end of this chapter.
10. Editor's Note: The Schedule of Use Regulations, § 211-10, is included at the end of this chapter.

## **Article V**

### **Bulk Regulations**

#### **§ 211-14. General provisions.**

The general regulations affecting the bulk and arrangement of buildings and structures, the density of residential development and of materials and equipment occupying land in connection with nonbuilding uses thereof for each of the districts established by Article III are hereby established and set forth in this article.

#### **§ 211-15. Table of Bulk Regulations.**

The accompanying table entitled "Table of Bulk Regulations, § 211-15," shall be deemed a part of this section and is referred to herein as "Bulk Table."<sup>11</sup>

#### **§ 211-16. Rules for use of Bulk Table.<sup>12</sup>**

- A. The Bulk Table is divided into columns, each column headed by a number for reference. Double-weight horizontal lines divide the regulations for one district from those of another. The Bulk Table is further divided by single-weight horizontal lines into groups, each group being designated by a letter symbol and having different bulk regulations. Bulk Table, Column 3, refers in abbreviated form to the uses listed in detail in the Use Table, Columns 2 and 3.
- B. In the Bulk Table, the words "same as" followed by a group symbol shall be construed to include all of the matter in the same columns for the group thus referred to. Where the words "same as" are followed by a series of group symbols, the use group and their respective bulk regulations shall be construed as applying to equivalent uses in the district wherein referred.

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11. Editor's Note: The Table of Bulk Regulations is included at the end of this chapter.
12. Editor's Note: The Table of Bulk Regulations is included at the end of this chapter.

ARTICLE VI  
**Supplementary District Regulations**

**§ 211-17. Permitted variations from required bulk regulations. [Amended 9-5-1989 by L.L. No. 6-1989; 1-5-2021 by L.L. No. 1-2021]**

- A. Front yard exception. When an unimproved lot is situated between two improved lots, each having a principal building 20 feet to the side lot line of the unimproved lot, the front yard may be reduced to a depth equal to that of the greater front yard of the two adjoining lots; provided, however, that it may not be reduced to below 10 feet in residential districts.
- (1) Front yard exception for preexisting nonconforming buildings. The front yard of a preexisting nonconforming building may be reduced to a depth equal to that of the greater front yard of the two adjoining lots; provided, however, that the front yard may not be reduced to below 10 feet from the property line.
  - (2) Side yard exception for preexisting nonconforming buildings. Other than as indicated in Subsection A(3) below, in no event shall there be less than 30 feet between the two buildings on the side of the building or structure being expanded.
  - (3) If the footprint of the building or structure is not being altered, the Zoning Board may grant a variance of up to 20% from the thirty-foot requirement of Subsection A(2) above.
- B. Projections into yards. Projections into required yards shall be permitted as follows, except that no such projection shall be located closer than three feet to any side or rear lot line or 10 feet to any front lot line:
- (1) Bay windows, carports, fireplaces, fire escapes, chimneys, uncovered stairs and landings and balconies and cornices, canopies, eaves or other architectural features not required for structural support may project into the required side, front or rear yard not more than a total of three feet.
  - (2) Porches may project into the required rear yard up to 10 feet.
  - (3) Patios may be located in the required side and rear yards not closer than three feet to any adjacent property line and may project into front yards up to 10 feet.
  - (4) Accessory off-street parking spaces, except that in residential districts no off-street parking spaces are permitted in any required front yard.
  - (5) Signs as provided in § 211-10, except freestanding signs.

**§ 211-17.1. Standard for lot count. [Added 2-19-2008 by L.L. No. 6-2011]**

- A. Standards for lot count. For all major subdivision applications, the maximum number of lots or dwelling units (N) which the Planning Board may approve for land to be subdivided shall be the whole number (all fractions excluded) which results from the following calculation:

Gross parcel area (GPA), minus areas of wetlands, water bodies and watercourses (WWW), including 50% of the buffer area (BA), as defined in Chapter 203, Wetlands, of the Village Code, minus areas of freshwater wetlands (FW), including 50% of the buffer area (BA), as defined in Article 24 of the New York State Environmental Conservation Law, minus areas within the one-hundred-year-flood boundaries (FB), as defined on the Flood Boundary and Floodway Map issued by the Federal Emergency Management Agency, minus steep slopes (SS), defined as land with a slope greater than 15%, minus 10% of net parcel area (NPA).

**Lot count formula is:**

$$N = \frac{(GPA - WWW - 50\% BA - FW - 50\% BA - FB - SS) - 10\% NPA}{MLS}$$

**MLS is the minimum lot size required in the zoning district in which the land is located.**

**NOTE:**

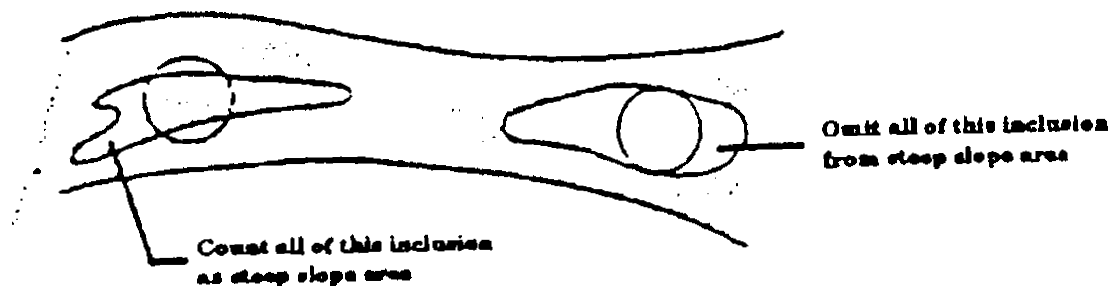
- \* The ten-percent NPA deduction is to be made only when streets are included within the subdivision.

- B. Procedures for steep slope delineations. The procedure to be utilized in quantifying the areas of steep slope for the purpose of determining the number of lots or units shall be as follows:
- (1) Scale of map shall be either one inch equals 50 feet or one inch equals 100 feet with a two-foot contour interval.
  - (2) All areas of steep slopes shall be shown on the Lot Count Map. Areas of steep slopes used in lot count calculations and inclusions of 20% or less, too small to be excluded, shall be clearly differentiated from steeply sloping land which has not been included. Determination for inclusion in lot count calculations shall be made by applying the guidelines below.
  - (3) Calculations pursuant to the formula contained in Subsection A shall be included on the Lot Count Map.
  - (4) Sources of all topographic and other survey data shall be identified on the Lot Count Map.
  - (5) The Lot Count Map, including all steep slope quantifications and calculations, shall be sealed by either a licensed professional engineer, licensed surveyor, licensed landscape architect or registered architect.
  - (6) The original Mylar(s) or other dimensionally stable transparency and a minimum of two copies of the original Lot Count Map shall be submitted to the Planning Board.
  - (7) Steep slopes shall be determined by measuring at right angles to contour lines. Whenever the distance between two adjacent contour lines is less than 10 feet, such area shall be shaded as steep slope on the worksheet maps. Limits of steeply sloping land shall be shown as a curvilinear line smoothly transitioning between points. Allowances shall be made for the continuation of steeply sloping land at the top and bottom of such slopes. See Figure 1 below.



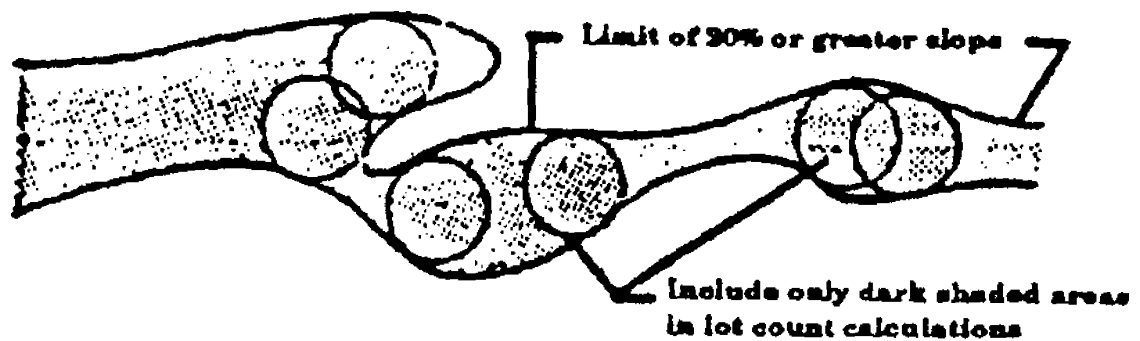
(Figure 1)

- (8) On the Lot Count Map and in the lot count calculations, an area of less than 25% slope located within an area which generally is a steep slope area shall be included as a part of such steep slope area, unless it is large enough to contain a fifty-foot-diameter circle as shown in Figure 2.



(Figure 2)

- (9) On the Lot Count Map and in the lot count calculations, the minimum area to be considered a steep slope area shall be large enough to contain a fifty-foot-diameter circle as shown in Figure 3. When applying this guideline, steep slope areas continuing offside or into wetlands shall be considered.



(Figure 3)

## (10) Topographic mapping.

- (a) All topographic mapping used for lot count calculations shall be in the National Geodetic Vertical Datum (NGVD) of 1929. At least three recently established or recently recovered bench marks shall be properly plotted on the same, together with their complete descriptions and elevations. These bench marks shall be readily accessible and located either on the subject parcel or in nearby public rights-of-way. They shall be geographically distributed so as to make their use generally convenient.
- (b) The boundary (property line) of the subject parcel shall be clearly marked on the topographic map(s) and complete metes and bounds information provided, together with a printout or list of coordinates to permit random mathematical scale checks. These scale checks will be used to prorate areas by the appropriate squared scale factor.
- (c) Photogrammetry used for this purpose shall be compiled to national map accuracy standards from current aerial photography. All areas of dense foliage shall be clearly identified, and contours in these areas shall be verified by direct field work; otherwise, these areas shall be considered steep slope areas.

## (11) As determined by the Planning Board, the recreation area requirement shall be satisfied by either:

- (a) A reduction of N in the calculations in this section by 10% and a designation of at least one acre of land for every 20 dwelling units for active recreation;
- (b) Payment of an in-lieu-of-recreation-area fee at a rate per dwelling unit as required in the Village of Buchanan Code; or
- (c) A combination of a reduction of N in the calculations in this section and the designation and development of active recreation facilities that would be commensurate with alternatives in the subsections above.

## (12) Calculations.

- (a) For purposes of the calculations in this section, if a parcel falls in more than one zoning district, zoning district lines shall be treated as hypothetical lot lines, and separate calculations shall be made for each portion of the parcel so divided by zoning district lines.

- (b) For purposes of the calculations in this section, areas falling under more than one category to be subtracted from the gross parcel area shall be subtracted only once.

**§ 211-18. Unique lots and building locations. [Amended 11-6-1989 by L.L. No. 11-1989]**

- A. Vehicular access for through lots and corner lots. The Planning Board shall decide which street shall be considered as the street from which vehicular access is derived and shall designate the front yard.
- B. Front yard designation of through lots and corner lots. The Planning Board shall designate which yard abutting a street shall be considered the front yard for purpose of locating accessory structures and uses.
- C. Clear sight triangle for corner lots. Across each corner lot, a clear sight triangle shall be provided outside the street right-of-way, within the area formed by the nearest edges of the street pavement and a straight line between two points, each 75 feet back from the theoretical intersection of the nearest edges of the pavement. A clear line of sight shall be maintained in either direction across such triangular area between an observer's eye 3.5 feet above the pavement surface at its nearest edge and an object 4.25 feet above the nearest edge of pavement on the intersecting road. In the case of streets which intersect at other than right angles, the Planning Board may require that the dimensions of the clear sight triangle be modified to provide adequate sight distance.
- D. Lots without public water or sewer facilities. No building permit shall be issued for any use on a lot which is not served by both the public water and public sewer systems.
- E. One building or structure per lot. Every building or structure hereafter erected shall be located on a lot, and there shall not be more than one building or structure on a lot unless specifically permitted elsewhere in this chapter.

**§ 211-19. Accessory structures and uses.**

- A. Accessory structures. All accessory structures shall conform to the minimum yard regulations established in Article V, except as permitted below:
  - (1) Unattached structures accessory to residential buildings. Structures accessory to residential buildings which are not attached to a principal structure shall not be higher than 15 feet or 1 1/2 stories and may be erected within the required rear yard of a principal structure, provided that they conform to the following:
    - (a) Distance from side lot line: not less than three feet from the side lot line, except in the case of corner lots, where the side yard, as specified in § 211-18, shall be maintained.
    - (b) Distance from rear lot line: not less than four feet from the rear lot line.
    - (c) Distance from principal structure: not less than 10 feet from a principal structure.
  - (2) Unattached structures accessory to nonresidential buildings. Such accessory structures shall comply with front and side yard requirements for the principal structure, shall have a minimum rear yard of at least 10 feet and shall not exceed two stories or 25 feet in height.
  - (3) Fences and walls. Unless specifically noted, the provisions of this chapter shall not apply to fences, terraces or walls less than six feet in height above the average natural grade nor to terraces, steps, unroofed porches or other similar features not over three feet above the level of the natural grade.



- B. Home occupations. A single home occupation per lot is permitted as an accessory use to a residential building subject to special use permit approval of the Board of Appeals. The home occupation must conform to the following regulations: **[Amended 4-6-1981 by L.L. No. 2-1981; 11-20-1989 by L.L. No. 13-1989]**
- (1) The home occupation shall be carried on wholly indoors within a dwelling unit.
  - (2) Not more than 300 square feet and in no case more than 20% of the floor area of the dwelling unit may be used.
  - (3) There shall be no exterior storage of materials or equipment.
  - (4) The home occupation must be operated only by a person residing in the dwelling unit.
  - (5) There shall be no use of show windows, displays or advertising visible outside the premises to attract customers or clients other than one home occupation announcement sign, not more than two square feet in size.
  - (6) No external alterations, additions or changes to the structure shall be permitted in order to accommodate or facilitate a home occupation.
  - (7) The Building Inspector shall be permitted free access to the dwelling during normal business hours.
  - (8) The special use permit shall be valid for a period of one year and may be renewed annually upon a showing that all the conditions of the original permit are still satisfied.
  - (9) The following uses are the only uses eligible as an accessory home occupation: writer, seamstress, typist, crafts, word processing, tutor and such other similar uses that the Board of Appeals deems compatible with a residential district.
  - (10) Among those uses not to be interpreted to be a home occupation are the following: clinics, hospitals, laboratories, group-care facilities, group homes, shelters and veterinarians.
  - (11) No offensive odor, noise, vibration, smoke, dust, heat, light, glare or similar condition shall be produced by a home occupation.
  - (12) Parking requirements for home occupation uses must be complied with.
  - (13) A home occupation shall not be permitted on a lot where the dwelling also contains an accessory apartment as an accessory use.
- C. Home gardening, nurseries and greenhouses. Home gardening and accessory structures used for nurseries or as greenhouses are permitted in residential areas, provided that they are used by the residents thereof for noncommercial purposes and provided, further, that they shall not include the outdoor storage of equipment and supplies.
- D. Residential swimming pools. **[Amended 6-18-1990 by L.L. No. 5-1990]**
- (1) A residential swimming pool is permitted within a building, provided that the building complies with the area and dimensional requirements of this chapter and with the structural requirements of Chapter 67, Building Construction.
  - (2) A residential swimming pool is permitted outside of a building, provided that:

- (a) The edge of the pool (measured at the waterline) and any deck, patio, walkway, filter and other equipment shall not be located closer than 10 feet to any side or rear property line nor located within any front yard.
- (b) The pool, with any deck, patio, walkway, filter and other equipment, shall not occupy more than 8% of the lot area.

(c) Enclosures.

[1] The pool shall be provided with an enclosure which shall comply with the following:

- [a] The enclosure shall be at least four feet in height and have a maximum vertical clearance to grade of two inches.
- [b] Where a picket-type fence is provided, horizontal openings between pickets shall not exceed 3 1/2 inches.
- [c] Where a chain link fence is provided, the openings between links shall not exceed 2 3/8 inches.
- [d] The enclosure shall be constructed so as not to provide footholds.
- [e] Pickets and chain link twists shall extend above the upper horizontal bar.
- [f] The enclosure shall have railings and posts within the enclosure, which shall be capable of resisting a minimum lateral load of 150 pounds applied midway between posts and at the top of the posts respectively. Enclosure, fence material or fabric shall be capable of withstanding a concentrated lateral load of 50 pounds applied anywhere between supports on an area 12 inches square, without failure or permanent deformation. Gates provided in the enclosure shall be self-closing and self-latching, with the latch handle located within the enclosure and at least 40 inches above grade.

[2] A wall of a dwelling is permitted to serve as part of the enclosure required in Subsection D(2)(c)[1] under the following conditions:

- [a] Windows in the wall shall have a latching device at least 40 inches above the floor.
- [b] Any swinging door in the wall shall be self-closing and self-latching.
- [c] Any sliding door in the wall shall have a self-latching device.

[3] The pool shall not be required to be enclosed in accordance with Subsection D(2)(c)[1] and [2] if the pool decking or pool top is separated from adjoining grade by at least 46 inches, provided that the access ladder or steps can be blocked in an approved manner when the pool is not intended for use.

E. Private garages and parking spaces. **[Amended 6-14-2018 by L.L. No. 2-2018; 8-11-2020 by L.L. No. 4-2020]**

- (1) Any garage or parking space in a residential district, when used for boat or vehicle storage, shall be occupied only by boats or vehicles owned and operated by the residents of the dwellings on the same lot.

- (2) Under Subsection E(2)(a) and (b) below, there will be permitted a total of two, in any combination, of any of the following except where specifically prohibited.
- (a) One commercial vehicle, including taxis, not longer than 20 feet in length and eight feet in height nor more than 7,500 pounds unladen vehicle weight, excluding any commercial vehicle designed primarily for the transportation of petroleum products or other flammable substance, hazardous material or waste. This restriction does not pertain to personal use vehicles that are required by the Department of Motor Vehicles and/or by law to have commercial license plates as well as vans and pickup trucks used for personal use. Lettering required by law, including business name, address, phone and license numbers, are permitted on commercial vehicles. All other forms of advertisement and signage, including wrapping, are specifically excluded and are not permitted. No box trucks, dump trucks, or similar trucks are allowed.
  - (b) No more than one trailer, including but not limited to trailers used for recreational vehicles and motor homes, may be parked or stored on any residential lot. A second trailer may be kept on property if a boat which is owned by the owner or renter of the property is permanently stored on that trailer.
- (3) All parked or stored recreational vehicles and trailers must have a permit and sticker issued by the Village indicating that said recreational vehicle and/or trailer is owned by the owner of the property or owned by a legal renter of the property where said recreational vehicle or trailer is stored or parked. In order to obtain said permit, the owner must provide proof of registration of said vehicle or trailer. Fees for said permit, if any, shall be set by resolution of the Board of Trustees and incorporated into the Village Fee Schedule.
- (4) Parking of any trailer, recreational vehicle, or commercial vehicle on front lawns or front yards, other than on paved driveways, is strictly prohibited.
- (5) Parking of any trailer, recreational vehicle, or commercial vehicle on streets and/or Village right-of-way is strictly prohibited for periods in excess of three hours, unless a variance is obtained from the Village Building Inspector.
- (6) Trailers, boats, and commercial vehicles stored on properties must comply with the same setback requirements which apply to accessory structures. If a property is nonconforming or is unable to comply with these setback requirements, then in that event the owner or renter may apply for a variance from the Village Building Inspector.
- (7) Development of parking and loading spaces. All off-street parking and loading areas shall conform to the following:
- (a) Off-street parking and loading lots may be developed on any required side or rear yard subject to § 211-17B. Off-street parking garages shall conform to the requirements for accessory or principal buildings of the district in which they are located.
  - (b) They shall be surfaced with a durable bituminous or concrete paving material.
  - (c) They shall be properly graded and drained to dispose of all surface water.
  - (d) They shall be arranged and marked for the orderly and safe movement, loading, parking and storage of vehicles.
  - (e) They shall be adequately illuminated if designed for use by more than three cars after dusk.

- (f) Exit and entrance driveways or access points for other than residences shall be at least 20 feet wide and shall not exceed 32 feet in width and, wherever practical, shall not occupy the full width of the streets, alleys or other rights-of-way from which they derive their access, but in all cases shall be limited to well-defined points and shall be so designed as to provide maximum safety for other adjoining or nearby uses.
- (g) There shall be no parking on any front yards, other than on paved driveways.
- (8) Storage of vehicles. No dead storage of vehicles shall be allowed in any front or side yards.
- F. Penalties for offenses. **[Added 8-11-2020 by L.L. No. 4-2020]**
  - (1) Any person, firm or corporation guilty of violating any provision of this article shall be punishable by a fine as follows:
    - (a) First offense: warning.
    - (b) Second offense: \$25.
    - (c) Third offense: \$50.
    - (d) Fourth offense: \$100.
    - (e) Fifth offense and all additional offenses: \$250.
  - (2) Each week's continued violation is considered a separate violation with increased fines per week as referenced above.

**§ 211-20. Signs. [Amended 6-17-1991 by L.L. No. 3-1991]**

- A. Purpose. The purpose of this section is to promote and protect the public health, safety and welfare by regulating outdoor signs of all types, in furtherance of the purposes of this chapter as set forth in § 211-3. It is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community. It is further intended hereby to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more visual open space and maintain and improve the community's appearance and attractiveness. This section is intended to promote attractive signs which clearly present the visual message in a manner that is compatible with its surroundings. The appearance, character and quality of a community are affected by the location, size, construction and graphic design of its signs. Therefore, such signs should convey their messages clearly and simply to enhance their surroundings.
- B. Sign permit application.
  - (1) No person shall erect, alter or relocate any sign allowed by permit in a commercial or industrial district as listed in Subsection D, Sign Table,<sup>13</sup> without first obtaining a permit from the Building Inspector unless approval is given through site development plan or special permit review. Subsequent to this initial application or site development plan or special permit approval, no permit shall be required for a sign to be repainted or repaired or to have its message changed, provided that its location, size, materials and method of construction, illumination and colors

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13. Editor's Note: The Sign Schedule is included at the end of this chapter.

are the same as those for which the initial application was made or site development plan or special permit approval was given.

- (2) Application for a permit shall be made, in writing, to the Building Inspector on forms provided by the Village and shall contain the following information. Depending on the exact nature of the sign, the Building Inspector may modify the following informational requirements to require additional information or to eliminate certain information. The application shall include:
  - (a) The name, address and telephone number of the applicant and the owner of the property.
  - (b) The street address and Tax Map parcel number of the building, structure or land upon which the sign now exists or is to be erected.
  - (c) A full description of the placement and appearance of the proposed sign, including the following:
    - [1] The elevation and plan drawings of the proposed sign.
    - [2] The location on the premises; specifically, its position in relation to adjacent buildings, structures and property lines.
    - [3] The method of illumination, if any, and the position of lighting or other extraneous devices and a copy of the electrical permit related to the electrical connections.
    - [4] The graphic design, including symbols, letters, materials and colors.
    - [5] The visual message, text, copy or content of the sign.
    - [6] Construction plans sufficient to indicate compliance with Chapter 67, Building Construction, and Chapter 79, Electrical Standards.
  - (d) A description of the placement and appearance of all existing signs on the premises, including elevation and plan drawings of the signs, location on the premises, method of illumination, graphic design and content of the sign.
  - (e) Written consent or a copy of the contract made with the owner of the property upon which the sign is to be erected if the applicant is not the owner.
- (3) Upon the filing of a completed application for a sign permit and the payment of a fee in accordance with the fee schedule of the Village of Buchanan, the Building Inspector shall examine the plans, specifications and other data submitted and the premises on which the sign is to be erected or now exists. If the proposed sign is in compliance with all the requirements of this chapter, the Building Inspector shall then, within 15 days, issue a permit for the erection of the proposed sign or for an existing sign. The issuance of a permit shall not exclude the applicant from conforming to the other laws and ordinances of the Village.
- (4) If the erection of the sign authorized under any such permit has not commenced within six months from the date of the issuance, the permit shall become null and void, but may be renewed within 30 days prior to the expiration, for good cause shown, for an additional six months, upon payment of 1/2 of the original fee.
- (5) A current and valid sign permit shall be freely assignable to a successor as owner of the property or holder of a business license for the same property, provided that the subsequent owner of the property or holder of the business license makes no changes.

C. General regulations.

- (1) No sign shall impair or cause confusion of vehicular or pedestrian traffic in its design, color or placement.
- (2) In addition to the setback requirements of this section, signs shall be located in compliance with § 211-18C, Clear sight triangle for corner lots, except that a freestanding sign may be permitted in the clear sight triangle, provided that the bottom of the sign is at least seven feet above normal grade below the sign, that the sign is supported by no more than two stanchions adequately spaced to maintain a clear line of sight and that each stanchion is no wider than six inches.
- (3) No direct light or significant glare from an illuminated sign, other than one composed of exposed bulbs or neon, shall be cast beyond the property lines of the lot on which the sign is located.
- (4) Illumination shall be appropriate to the character of the sign and surroundings.
- (5) Signs shall be designed to be compatible with the surroundings and appropriate to the architectural character of the buildings on which they are placed. Sign panels and graphics shall relate with and not cover architectural features and shall be in proportion to them.
- (6) Groups of related signs shall express uniformity and create a sense of harmonious appearance.
- (7) Signs shall be appropriate to the types of activities they represent.
- (8) Temporary signs may be displayed for 14 days prior to and during the event or occurrence but shall be removed two days after the close of the event or occurrence.

D. Sign Table. The accompanying table entitled "Village of Buchanan Sign Schedule"<sup>14</sup> shall be deemed part of this section and is referred to herein as "Sign Table."

- (1) Allowed signs per lot. Those signs listed under the column "Allowed Signs Per Lot" in the Sign Table, none of which shall be animated, changeable copy or illuminated, except where otherwise noted, shall be allowed as regulated therein without the need for obtaining a permit as specified in Subsection B.
- (2) Signs allowed by permit per lot. Those signs listed under the column "Signs Allowed By Permit Per Lot" in the Sign Table shall be allowed as regulated therein only after a permit as specified in Subsection B has been obtained.

E. Prohibited signs. All signs not expressly allowed either with or without a permit under this section are prohibited. Such signs include but are not limited to:

- (1) Signs with commercial messages which do not concern a lawful activity or are misleading.
- (2) Signs within a public right-of-way and signs attached to utility poles, other than public signs erected by a governmental body to post legal notices, identify public property, convey public information and regulate pedestrian or vehicular traffic; bus stop signs erected by a public transit company; and informational signs of a public utility.
- (3) Signs placed upon or above the roof of any building.

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14. Editor's Note: The Sign Schedule is included at the end of this chapter.

- (4) Beacons, pennants and strings of lights which are not permanently mounted to a rigid background, other than holiday lights and decorations having no commercial message and being displayed between November 15 and January 15.
- (5) Inflatable signs and tethered balloons.
- (6) Animated signs.
- (7) General advertising (billboard or posterboard) signs which direct attention to a business, commodity, service, event or other activity which is sold, offered or conducted elsewhere than on the premises upon which such sign is located. **[Amended 7-8-1996 by L.L. No. 1-1996]**

F. Construction standards.

- (1) All freestanding signs shall be designed and constructed to withstand a wind pressure of not less than 30 pounds per square foot of surface area.
- (2) All changeable copy signs, the bottoms of which are located below 10 feet above normal grade below the sign, shall be enclosed or otherwise protected from vandalism.
- (3) All signs, including wall and projecting signs, shall be securely anchored.
- (4) All projecting, freestanding or wall signs shall employ acceptable safety material.
- (5) All signs shall be painted and/or fabricated in accordance with standards acceptable to the Building Inspector.
- (6) All internally illuminated signs shall be constructed in conformance with the Standards for Electric Signs (U.L. 48) of Underwriters' Laboratories, Inc., and bear the seal of Underwriters' Laboratories, Inc. If such sign does not bear the Underwriters' Laboratories, Inc., label, the sign shall be inspected and certified by the New York Board of Fire Underwriters.
- (7) All transformers, wires and similar items for illuminated signs shall be concealed. All wiring to freestanding signs shall be underground.
- (8) All signs, sign finishes, supports and electric work shall be kept clean, neatly painted and free from all hazards, such as but not limited to faulty wiring and loose supports, braces, guys and anchors.

G. Nonconforming signs. **[Added 7-8-1996 by L.L. No. 1-1996]**

- (1) Any sign which cannot be classified from the sign categories specifically permitted or exempted by this section shall be removed within one year of the effective date of this section.
- (2) All other signs which do not meet the provisions or standards of this section shall be either conformed or removed within three years of the effective date of this section (the "amortization period"). Upon the submission of an application within 30 days of the expiration of such amortization period and credible evidence by the owner of any such sign establishing that recoupment of the initial investment cannot be accomplished within the amortization period, the Village Board of Trustees may, after consideration of the submitted evidence and purposes of this section, grant an extension of the amortization period.
- (3) The transfer of ownership or use of any nonconforming or prohibited sign during the amortization period noted above will immediately terminate the amortization period and shall

result in the immediate removal of the nonconforming or prohibited sign.

**§ 211-21. Yard screening. [Amended 7-5-2016 by L.L. No. 2-2016; 9-17-2021 by L.L. No. 8-2021]**

- A. Required yard screening. Yard screening shall be provided within 15 feet of the boundary or property line of any manufacturing or commercial use of off-street parking lot which abuts a residential use and on any special use where such screening is required by the Board of Appeals. Such screening shall consist of a four-foot-high to six-foot-high visual screen or obstruction of suitable scrubs, fences, walls, or hedges.
- B. Other yard screening. Walls, shrubs, and hedges under six feet tall may be located in any yard or court and shall be maintained in good condition and shall be subject to compliance with all of the requirements outlined in Subsection C through H below.
- C. Fences.
  - (1) A drawing of the proposed fence must be submitted to the Building Department showing the exact location the fence will be located on the property and a building permit must be obtained. Fences are to be limited to four feet in height across front yards and six feet in height on side and rear yards. Fences may be located anywhere on a property; however, the Village requires front yard fences to be set back six feet from the curb to allow for snow removal. The Village will not be responsible for damage to fences caused by snow plowing and snow removal.
  - (2) In regard to fences, the height of the fence shall be measured from the finished grade to the top of the fence. In the case of a fence located on the top of a wall or berm, the height of the fence shall include the height of the wall or berm. Fences located more than 10 feet away from the wall will not be required to include the height of the wall when calculating fence height.
  - (3) All fences installed before the adoption of this section shall be exempt from the requirements of Subsection C.
- D. One decorative entrance gate or archway, not exceeding eight feet in height and eight feet in width, may be installed to allow entry to and from a yard in any side or rear yard.
- E. At all street intersections in all districts, no obstructions to motorist vision exceeding three feet in height above street pavement level shall be erected or maintained on any lot within the triangle formed by the street lines of such lot and a line drawn between points along such street line 30 feet distant from their point of intersection. All corner lots are deemed to have two front yards and are therefore subject to the four-foot-height restriction.
- F. Walls. Walls may be located anywhere on a property. Walls less than three feet in height do not require a building permit. Walls over three feet in height require a building permit and a drawing of where the wall will be located on the property. Walls over four feet in height require a building permit and a drawing by a licensed engineer detailing the design of the wall and its location on the property.
- G. Any preexisting fence or wall installed before the adoption of this section, which is damaged or destroyed to an extent equal to not more than 50% of the total wall or fence, may be restored within one year of the date of the damage; provided, however, that it shall not be altered or enlarged unless said alteration or enlargement complies with the current requirements of this chapter.
- H. All fences featuring a rough or unfinished side including the structural components such as fence posts shall be constructed such that the rough or unfinished side of the fence faces the interior of the property on which the fence is situated.



- (1) All fences installed before the adoption of this section shall be exempt from the requirements of Subsection H.

**§ 211-22. Accessory apartments in single-family detached residences. [Amended 5-1-1989 by L.L. No. 4-1989; 9-5-1989 by L.L. No. 7-1989; 8-19-1991 by L.L. No. 4-1991]**

- A. Legislative intent. A special permit may be granted by the Planning Board to permit accessory apartments. It is the specific purpose and intent of this provision to provide the opportunity for the development of small, rental dwelling units designed, in particular, to meet the special housing needs of single persons and couples of low and moderate income, both young and old, and of relatives of families presently living in the Village of Buchanan. Furthermore, it is the purpose and intent of this section to allow the more efficient use of the Village's existing stock of dwellings, to provide economic support for present resident families of limited income, to protect and preserve property values and to maintain the single-family character of the residential districts of the Village of Buchanan without the overutilization of the land.
- B. To help achieve these goals and promote the objectives of the Village Development Plan, the issuance of a special permit and the granting of site development plan approval by the Planning Board shall be subject to the following requirements, and the Planning Board shall make the following as findings in addition to the general standards and requirements applicable to site development plans set forth in Article VII and special permits as set forth in Article X of this chapter.
  - (1) More restrictive provisions to prevail. In the R-7.5, R-10, R-15, R-20 and R-40 Residential Districts and in the C-1 and C-2 Commercial Districts, the property and structures shall comply with all applicable requirements for the zoning district in which the property is located, except that the regulations of this section shall apply when they are more restrictive.
  - (2) Occupancy.
    - (a) The owner of the single-family lot upon which the accessory apartment is located shall occupy the principal or accessory dwelling unit on the premises as his primary residence.
    - (b) No more than one accessory apartment shall be permitted on any lot.
    - (c) An accessory apartment shall be subordinate in area to the principal dwelling and shall be limited to occupancy by a maximum of two persons.
  - (3) Use.
    - (a) An accessory apartment shall not be permitted on a lot where the dwelling also contains either boarding or a home occupation as an accessory use.
    - (b) The principal use of the premises must be a single-family detached residence.
    - (c) No accessory apartment is permitted in an accessory building or structure.
  - (4) Maintenance and continued compliance. An accessory apartment shall be permitted only where all structures on the premises are in a reasonable state of repair and modernization and where all structures and any new construction undertaken for the accessory apartment shall be in compliance with Chapter 67, Building Construction, and the New York State Uniform Fire Prevention and Building Code as well as all other applicable regulations. The Building Inspector shall inspect the premises and shall report on the condition of structures on the premises to the Planning Board. No permit shall be granted until all outstanding violations are corrected. All

conditions of the special permit must be complied with and shall be subject to inspection by the Building Inspector.

(5) Parking.

- (a) Off-street parking shall be provided in accordance with the standards and requirements of §§ 211-10 and 211-19. The location of such parking and driveways shall be reviewed by the Planning Board to ensure compatibility with the use of the lot and adjacent properties.
- (b) The foregoing conditions shall not be varied by any board in the Village of Buchanan in conjunction with an application for a special permit under this section.

(6) Other conditions.

- (a) In making its determination on the special permit, the Planning Board shall also give consideration to the character of the existing and future uses in the immediate vicinity of the proposed accessory apartment, including the exterior appearance of buildings as single-family dwellings, the number of other accessory apartments existing in the neighborhood in relation to single-family dwellings and the amount of traffic and parking conditions in the neighborhood. The principal building must continue to appear to be a single-family residence.
- (b) Artificial illumination shall be installed at the entrance to any dwelling unit if such entrance is not directly from a public street.

C. After the Planning Board has determined that the applicant has complied with the above requirements, the issuance of a special permit and the granting of site development plan approval, if necessary, by the Planning Board shall be further subject to the following requirements; however, the Planning Board shall have the power to modify the requirements, provided that said Board finds that such following modifications are consistent with the legislative intent of this section as set forth in Subsection A above and the purposes of this chapter as set forth in § 211-3:

- (1) Age of structure and length of occupancy. The building in which the accessory apartment is constructed shall be at least 10 years old, and the owner applicant shall have occupied the dwelling for at least three years prior to the initial application for the special permit for an accessory apartment.
- (2) Occupancy.
  - (a) No more than one bedroom shall be permitted in any accessory apartment.
  - (b) The minimum gross floor area for an accessory apartment within a principal building shall be 300 square feet but not larger than 600 square feet, and in no case shall it exceed 33% of gross floor area of the building in which it is located.
- (3) Location of parking. No more than two off-street parking spaces shall be permitted in front of the principal building.
- (4) Other provisions.
  - (a) A second entrance on the front facade of the principal dwelling building shall not be permitted.
  - (b) Outside stairways and fire escapes for the accessory apartment shall be at the rear of the

building.

D. In addition to the above requirements, the special permit for an accessory apartment shall be subject to the following conditions and procedures:

(1) Required submissions.

- (a) In addition to the information required in §§ 211-27 and 211-42A of this chapter, the owner-applicant shall present to the Planning Board a floor plan of each habitable floor of the building, with all interior dimensions, including windows and doors, and with an assignment of spaces to the proposed dwelling units, including types of rooms. All plans shall be prepared in sufficient detail and by a person of adequate qualifications to enable the Planning Board to understand and decide upon the acceptability of the proposal.
- (b) The special permit shall be issued to the owners of the property. Should there be a change in ownership or a change in the residence of the owner, the special permit and the certificate of occupancy for the accessory apartment shall become null and void. Thereafter, should the new owner decide to live in the structure and desire to continue the use of the accessory apartment, within 90 days of the change of ownership he shall apply to the Planning Board for a special permit. Should the new owner decide not to live in the structure or desire not to continue the use of the accessory apartment, the tenant shall have 90 days to relocate, the owner shall remove the kitchen of the accessory apartment within 60 days after the tenant leaves, and the premises shall revert to a single-dwelling unit.

(2) Term of permit.

- (a) The initial permit shall be valid for a period of one year, at which time the applicant must appear before the Planning Board and request a renewal of such permit. Subsequent thereto, the special permit shall be valid for a period not to exceed three years, the exact term to be determined by the Planning Board upon its issuance of a renewal special permit. At the end of such period, the owner-applicant shall request the Building Inspector to renew the permit or the owner shall notify the Building Inspector of his intent to discontinue the permit in accordance with the applicable time periods established in Subsection D(1). The Building Inspector shall renew the permit if all conditions of the original permit are still satisfied; otherwise, the Building Inspector shall not renew the permit, and the time periods established in Subsection D(1) for discontinuing the accessory apartment shall apply.
- (b) The owner-applicant shall be required to file on the subject property a declaration of covenants at the Westchester County Clerk's office prior to the issuance of a special permit for an accessory apartment. This declaration shall be in favor of the Village of Buchanan and state that:
  - [1] The special permit for an accessory apartment or any renewal of said special permit shall terminate upon the death of the undersigned or the survivor of the undersigned or upon the transfer of title to said premises or upon the undersigned no longer occupying the premises as his principal residence.
  - [2] The new owner of the premises shall have to apply to the Planning Board for a special permit to continue the accessory apartment.
  - [3] The Building Inspector shall have the right to inspect the premises upon reasonable

notice to the owner.<sup>15</sup>

**§ 211-23. Performance standards; nuisances.**

**A. All nonresidential uses shall be subject to performance standards as follows: [Amended 8-20-1990 by L.L. No. 12-1990]**

- (1) Prior to construction and operation. Any application for a building permit for a use which shall be subject to performance standards shall be accompanied by a sworn statement by the owner of the subject property that said use will be operated in accordance with the performance standards set forth herein.
- (2) Continued compliance. Continued compliance with performance standards is required, and the enforcement of continued compliance with these performance standards shall be enforced by the Code Enforcement Officer.

**B. Regulation of nuisance elements.**

- (1) Definition of elements. No land or building in any district, used or occupied for any purposes, shall be operated in such manner as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosive or other hazard; noise or vibration, smoke, dust, dirt or other form of air pollution; electrical or other disturbance; glare; or other substance, condition or element in such amount as to adversely affect the surrounding area or premises (referred to herein as "dangerous or objectionable elements"), provided that any use permitted by this chapter may be undertaken and maintained if it conforms to the regulations of this subsection limiting dangerous and objectionable elements at the specified point or points of the determination of their existence.
- (2) Location where determinations are to be made for enforcement of performance standards. The determination of the existence of any dangerous and objectionable elements shall be made at:
  - (a) The point or points where such elements shall be most apparent for fire and explosion hazards, for radioactivity and electrical disturbances, for smoke and other forms of air pollution.
  - (b) The property lines of the use creating such elements for noise, for vibration, for glare and for odors.

**C. Standards to be enforced.**

- (1) Fire and explosion hazards. All activities involving, and all storage of, flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and adequate fire-fighting and fire-suppression equipment and devices standard in this industry. Burning of waste materials in open fires is prohibited. The relevant provisions of state and local laws and regulations shall also apply.
- (2) Radioactivity or electrical disturbance. No activities shall be permitted which emit dangerous radioactivity or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance. All applicable federal regulations shall be complied

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15. Editor's Note: Original §§ 54-22 and 54-23 of the 1971 Code, entitled "Commercial and industrial planned development groups" and "Residential planned development groups," respectively, which immediately followed this subsection, were repealed 9-5-1989 by L.L. No. 6-1989.

with.

(3) Noise.

- (a) At the points of measurement specified, the maximum sound-pressure level radiated in each standard octave band by any use or facility, other than transportation facilities or temporary construction work, shall not exceed the values for octave bands lying within the several frequency limits given in Table I after applying the corrections shown in Table II. The sound-pressure level, measured with a sound-level meter and associated octave band analyzer conforming to standards prescribed by the American Standards Association, Inc., New York, New York. (American Standard Sound Level Meters for Measurement of Noise and Other Sounds, 224.3—944, American Standards Association, Inc., New York, New York, and American Standard Specification for an Octave-Band Filter Set for the Analysis of Noise and Other Sounds, 224.30—1953, or latest approved revision thereof, American Standards Association, Inc., New York, New York, shall be used.)

**Table I**

<b>Frequency Ranges Containing Standard Octave Bands (cycles per second)</b>	<b>Octave Band Sound-Pressure Level (decibels) (re 0.0002 dyne/cm)</b>
20 to 75	65
75 to 150	55
150 to 300	50
300 to 600	45
600 to 1,200	40
1,200 to 2,400	40
Above 2,400	35

- (b) If the noise is not smooth and continuous and is not radiated between the hours of 10:00 p.m. and 7:00 a.m., one or more of the corrections in Table II shall be applied to the octave band levels given in Table I.

**Table II**

<b>Type of Location of Operation or Character of Noise</b>	<b>Correction (decibels)</b>
Daytime operation only	5
Noise source operates less than: (NOTE: Apply 1 of these corrections only.)	
20% of any 1-hour period	5
5% of any 1-hour period	10
Noise of impulsive character (hammering, etc.)	-5
Noise of periodic character (hum, screech, etc.)	-5

**Table II**

<b>Type of Location of Operation or Character of Noise</b>	<b>Correction (decibels)</b>
Property is located in any M District and is not within 200 feet of any R District	10
(4) Vibration. No vibration shall be permitted which is detectable without instruments at the property lines.	
(5) Glare. No direct or sky-reflected glare, whether from floodlights or from high-temperature processes, such as combustion or welding, or otherwise, shall be permitted. This restriction shall not apply to signs otherwise permitted by the provisions of this chapter.	
(6) Smoke. No emission shall be permitted from any chimney, or otherwise, of visible gray smoke of a shade equal to or darker than No. 2 on the Powers Micro Ringelmann Chart, published by McGraw-Hill Publishing Company, Inc., and copyrighted 1954 (being a direct facsimile reduction of a standard Ringelmann Chart as issued by the United States Bureau of Mines), except that visible gray smoke of a shade equal to No. 3 on said chart may be emitted for four minutes in any 30 minutes. All applicable federal, state or county regulations shall apply.	
(7) Odors. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable at the property line of the zone lot from which they are emitted without instruments.	
(8) Other forms of air pollution. No emission of fly ash, dust, fumes, vapors, gases and other forms of air pollution shall be permitted which can cause any damage to health, to animals, to vegetation or to other forms of property or which can cause any excessive soiling. All applicable federal, state and county regulations shall apply.	

**§ 211-24. Mobile homes and mobile home parks. [Amended 8-2-1990 by L.L. No. 13-1990]**

- A. Mobile homes. Mobile homes shall be permitted only in mobile home parks and shall conform to the following requirements:
- (1) Code requirements. Mobile home units shall meet the requirements of American Standards Association Code Provision A-119.1, American Standards for Installation in Mobile Homes of Electrical Heating and Plumbing Systems or Mobile Home Manufacturers Association Mobile Home Standards for Plumbing, Heating and Electrical Systems or any state-administered code ensuring equal or better standards and shall have a visible official certification of compliance with such code or codes.
  - (2) Mobile home stands. The mobile home shall be placed upon a stand consisting of appropriate material, properly placed, graded and compacted so as to be durable and adequate for the maximum load anticipated during all seasons.
  - (3) Anchors. Anchors and tie-downs shall be placed at least at each corner of the structure, and each shall be able to sustain a minimum tensile strength of 2,800 pounds. Anchors shall be such as cast-in-place concrete "dead men," eyelets embedded in concrete, screw augers, arrowhead anchors or similar devices.
  - (4) Skirting. Each mobile home shall be skirted around the bottom portion with approved metal,

fire-retardant treated wood or other durable material, properly ventilated, within 60 days from the date of placement of the unit.

B. Mobile home parks. The following regulations and minimum requirements shall apply:

- (1) Minimum size. Each mobile home park shall have a minimum area of five acres containing clearly defined and marked mobile home lots and stands, streets, service buildings and recreation areas.
- (2) Location and access. No mobile home park shall be located except with direct access to a state or county highway and with appropriate frontage thereon to permit proper design of access facilities.
- (3) Site conditions. The mobile home park site shall in all respects be suitable for residential use. It shall not be subject to hazards, insects, rodents, objectionable smoke, noxious odors, unusual noise, soil subsidence or the probability of flooding or erosion. The soil, groundwater level, drainage, rock formations and topography shall not create hazards to property or to the health and safety of occupants.
- (4) Landscaping and screening.
  - (a) Landscaping and screening will be required to the extent needed to provide for:
    - [1] The screening of objectionable views.
    - [2] Adequate shading.
    - [3] A suitable setting for the mobile homes and other facilities.
  - (b) Screening, where required, will be a solid fence six feet high, maintained in good condition and free of all advertising.
  - (c) Planted screenings in lieu of such fence shall consist of dense plantings of evergreens not less than six feet in height.
  - (d) Screening may be required, where appropriate, for objectionable views such as laundry drying yards, refuse collection stations, accessory uses and adjacent properties.
  - (e) Landscaping will be required in appropriate size, quantity and character to provide an attractive setting for the mobile homes and accessory facilities, to provide adequate privacy and a pleasant setting, to minimize glare and to afford shade.
  - (f) Existing natural vegetation should be preserved to the maximum extent possible where such is suitable for preservation.
- (5) Size of lots, yards and setbacks. One mobile home may be permitted on a lot which shall meet the following minimum requirements:
  - (a) Minimum lot area: 10,000 square feet. **[Amended 8-1-2017 by L.L. No. 3-2017]**
  - (b) Minimum lot width: 100 feet. **[Amended 8-1-2017 by L.L. No. 3-2017]**
  - (c) Minimum side yard: 10 feet.
  - (d) Front yard depth from internal street: 20 feet.

- (e) Yard depth from public streets: 50 feet; and 30 feet from any other mobile home park boundary.
- (6) Recreation areas and open spaces. Not less than 10% of the total mobile home park area shall be devoted to recreational facilities, generally provided in a central location or, in larger courts, decentralized. Recreation areas shall include space for community buildings and community use facilities, such as guest parking, adult recreation and child play areas and swimming pools.
- C. Mobile home stands spacing. Mobile home stands shall be so located so as to be separated from each other and from other buildings and structures by at least 25 feet, provided that mobile homes placed end-to-end may have a clearance of 20 feet.
- D. Walkways. Walkways not less than 30 inches wide shall be provided from the mobile home space to the off-street parking space and from mobile home park streets to service buildings.
- E. Patio pads. All mobile home stands shall be provided with a patio pad constructed of concrete, to be a minimum of eight feet by 20 feet and four inches in depth. Patio pads shall be located so as to provide safe and easy access to and from the mobile home.
- F. Awnings. Awnings may be provided of any size, provided that they are not placed closer than 10 feet to an adjacent mobile home lot.
- G. Additional structure on mobile home stand. No nonintegral structural addition or other accessory building or structure in excess of 10 feet by 10 feet, or a total of 100 square feet, shall be permitted on any mobile home lot.
- H. Streets.
  - (1) Streets shall be provided on the site where necessary to furnish principal trafficways for convenient access to the mobile home stands and other important facilities on the property. Streets shall be privately owned and maintained.
  - (2) All streets shall be provided with a smooth, hard and dense surface in accordance with Village specifications, which streets shall be durable and well-drained under normal use and weather conditions. Street surfaces shall be maintained free of holes and other hazards.
  - (3) Street surface drainage and overland surface drainage adjacent to streets shall be conveyed to stormwater drain systems or natural drainage systems as approved by the Village consulting engineer.
  - (4) Access streets. The entrance streets connecting the mobile home park streets with a public street shall have a minimum pavement width of 32 feet and a minimum right-of-way width of 50 feet.
  - (5) Internal streets. The width of all rights-of-way must be a minimum of 50 feet, 24 feet of which must be pavement.
  - (6) Culs-de-sac shall be provided in lieu of closed-end streets and shall have a turnaround with an outside pavement diameter of at least 100 feet.
- I. Water supply. Public water supply connection shall be used exclusively unless local authorities deem otherwise, and water mains and hydrants shall be installed in accordance with Village specifications.
- J. Sewerage. Public sewer system connections shall be provided in all mobile home parks for the conveying, disposing and treatment of sewage from mobile homes, service buildings and other



facilities.

- K. Garbage and refuse. Each mobile home space shall be provided with at least two twenty-gallon metal or plastic garbage cans with tight-fitting covers. The cans shall be kept in a sanitary condition at all times. It shall be the responsibility of the court owner to ensure that garbage and rubbish shall be collected and properly disposed of outside of the mobile home park. Exterior property areas shall be maintained free from organic and inorganic material that might become a health, accident or fire hazard.
- L. Fuel supply and storage.
  - (1) Liquefied petroleum gas storage containers having a capacity exceeding 125 gallons shall be stored in accordance with National Fire Prevention Act standards.
  - (2) Supports and standards for fuel storage tanks are to be of a noncombustible material.
  - (3) All fuel oil tanks shall be placed at the rear of the mobile home and located not less than five feet from any exit.
- M. Electrical service.
  - (1) Every mobile home park shall contain an electrical wiring system consisting of wiring fixtures, equipment and appurtenances in accordance with the National Electrical Code.
  - (2) Each mobile home stand shall be supplied with not less than one-hundred-ampere service.
  - (3) Adequate lights shall be provided to illuminate streets, driveways and walkways for the safe movement of vehicles and pedestrians at night. A minimum lighting level of 0.3 footcandle shall be provided.
  - (4) All electrical distribution lines shall be placed underground.
- N. Telephone service. When telephone service is provided to mobile home spaces, the distribution service shall be placed underground.
- O. Fire protection and control.
  - (1) Every mobile home park shall be equipped at all times with fire-extinguishing equipment, in good working order, of such type, size and number so located within the park as to satisfy applicable regulations of the fire district within which the mobile home park is located.
  - (2) No open fires shall be permitted at any place within the mobile home park, with the exception of outdoor grills used for the preparation of food.
  - (3) Water mains and hydrants shall be required and installed in accordance with Village specifications.
- P. Management and duties of licensees.
  - (1) All park owners shall keep a register of the year, make, serial number and size of all mobile homes in the park. Said register is to be maintained in the office of the park. The names and addresses of the mobile home owners shall also be on file on the park premises.
  - (2) The person or person operating a mobile home park shall provide adequate supervision to maintain the park and its facilities and equipment in good repair and in sanitary condition at all

times.

- Q. Posting of license and temporary permit. The certificate of occupancy shall be conspicuously posted in the office of or on the premises of the mobile home park at all times.<sup>16</sup>

**§ 211-24.1. C-1/C-2 Overlay District. [Added 5-17-2021 by L.L. No. 3-2021]**

- A. Purpose. The purpose of the C-1/C-2 Overlay District is to implement recommendations of the Village's Comprehensive Plan by encouraging business and residential development of a character desired by the Village, amending the tables of use and bulk regulations to obtain such character, beautifying the existing commercial corridor, and improving its pedestrian access.
- B. Underlying and overlay zoning. The parcels located in the C-1/C-2 Overlay District shall retain their respective underlying zoning and may be developed in accordance with said underlying zoning. In addition, the provisions of this section shall also apply to the parcels in the C-1/C-2 Overlay District.
- C. Bulk regulations. The following provisions apply to all permitted uses (whether based upon the underlying zoning or the overlay district), provided said uses comply with Subsection D.
- (1) The permitted lot coverage in the C-1/C-2 Overlay District may be increased at the sole discretion of the Planning Board to not more than 75%, provided that effective perimeter screening is proposed and the Board determines that said increase conforms to sound planning principles.
  - (2) When a parcel is situated between two improved lots, each having a principal building within 20 feet of the side lot lines of said parcel, the front yard on the parcel may be reduced to a depth equal to that of the greater front yard of the two adjoining lots provided, however, that it may not be reduced to less than 20 feet.
- D. Design guidelines. Any use developed in accordance with this section, shall be consistent, to the extent deemed necessary by the Planning Board, with the Design Guidelines of the Village of Buchanan.
- E. Prevailing provisions. If the provisions of this section are found to be inconsistent with any other provisions of this chapter, the provisions of this section shall prevail.
- F. Notwithstanding anything to the contrary contained herein, in the C-1/C-2 Overlay District, the Board of Trustees shall be the approving agency for special permits and site development plans for uses listed in § 211-10, Schedule of Use Regulations, Column 3A, Uses by Special Permit of the Board of Trustees, in which case the same requirements and procedures set forth in this chapter for the Planning Board shall be applicable to the Board of Trustees. Any application to the Board of Trustees made pursuant to this section shall be referred to the Planning Board for its recommendation to the Board of Trustees prior to the public hearing. If the Planning Board fails to report within a period of 45 days from the date of receipt of such referral, the Board of Trustees may act without such report. If the Planning Board recommends against the proposed special permit and/or site development plan, the Board of Trustees shall not act contrary to such recommendation, except by the adoption of a resolution fully setting forth the reasons for such contrary action. **[Added 9-5-2023 by L.L. No. 7-2023]**

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16. Editor's Note: Original § 54-25.1 of the 1971 Code, entitled "One-family dwelling on a lot of 5,000 square feet in a R-7.5 District," which immediately followed this section and was added 6-18-1984 by L.L. No. 2-1984 and amended 2-3-1986 by L.L. No. 1-1986, was repealed 10-6-1986 by L.L. No. 4-1986.

## ARTICLE VII

**Site Development Plan Approval****[Amended 12-15-1986 by L.L. No. 5-1986; 5-21-1990 by L.L. No. 2-1990]****§ 211-25. Plan required; exceptions; conformance to approved plan.**

- A. Site development plan required. The Building Inspector shall not issue a building permit for the construction or alteration of any structure or for the use of any land in accordance with § 211-48 of this chapter and no certificate of occupancy for the construction or alteration of any structure or for the use of any land in accordance with § 211-49 of this chapter, until the Planning Board has approved a final site development plan or an amendment to a final site development plan in accordance with this article, other than the exceptions noted below.
- B. Exception to plan requirement. No such site development plan approval called for in Subsection A above shall be required for:
  - (1) The erection, alteration or occupancy of one-family dwellings.
  - (2) The erection and alteration of structures accessory to one-family dwellings or the use of structures and land as a use accessory to such dwellings.
  - (3) The erection, alteration or occupancy of structures or the use of land identified as a special permit use in § 211-10 of this chapter.
  - (4) The installation, construction or operation of any safety/security improvement. **[Added 12-15-2003 by L.L. No. 1-2003]**
- C. Continued performance to approved plan. The continued validity of any building permit or certificate of occupancy issued in accordance with an approved plan referred to in Subsection A above shall be subject to continued conformance with such approved plan.

**§ 211-26. Standards for review.**

In considering the approval of the site development plan or an amendment to a final site development plan, the Planning Board shall take into consideration the public health, safety and general welfare and the comfort and convenience of the public in general and the residents of the immediate neighborhood in particular and shall make any appropriate conditions and safeguards in harmony with the general purpose and intent of this chapter and, particularly, in regard to achieving:

- A. Design. Harmonious relationships of principal and accessory structures and uses with the site, with each other and with adjacent properties and streets. Consideration shall be given to architectural design of buildings, signs and other structures and to the provision of off-street parking and loading areas, landscaping, buffering, open areas and exterior lighting.
- B. Access. Maximum safety and convenience of vehicular and pedestrian access to and egress from the site, as well as circulation within the site.
- C. Utilities. Water supply, stormwater drainage, sewage and solid waste disposal systems and layouts which afford the best solution to any potential problems.
- D. Environment. The avoidance or minimization of disturbance to wetlands and floodplains, air and water pollution and other potential environmental, engineering or aesthetic impacts.

- E. Conformance. Conformance of the proposed site development plan with the Master Plan and Official Map of the Village, with all applicable provisions of this chapter and with all other regulations and statutes governing the development of the proposed site.

**§ 211-27. Contents of plan.**

An application for approval of a site development plan or an amendment to a final site development plan shall be accompanied by a site development plan. The plan shall be drawn at a scale and on sheets of a size satisfactory to the Village Engineer and shall include the following information:

A. Legal data.

- (1) The names and addresses of the owner and applicant and signed authorization of the owner.
- (2) The names of all owners of record of all adjacent property and the lot, block and section numbers of the site and adjacent property.
- (3) Existing school, zoning and special district boundaries.
- (4) The size of the property to be developed, as well as site boundaries showing dimensions and bearings as determined by a current survey; dimensions of yards along all property lines; and lines of existing streets, lots, reservations, easements and areas dedicated to public uses.
- (5) Reference to the location and conditions of any covenants, easements or deed restrictions that cover all or any part of the tract, as well as identification of the document where such covenants, easements or deed restrictions are legally established.
- (6) A schedule of minimum zoning requirements, as well as the plan's proposed compliance to them, including lot area, lot width, lot depth, lot coverage, yards, off-street parking and off-street loading.
- (7) A key map showing the location of the site with reference to surrounding properties, streets, etc., within 500 feet of the site.
- (8) A North arrow, written and graphic scales and date of original plan and all revisions, with notations identifying the revisions.

B. Existing conditions.

- (1) The location of existing buildings, identifying first floor elevations and other structures.
- (2) The location of existing water supply, sanitary sewage disposal, stormwater, gas and electric facilities with pipe sizes, grades, direction of flow, etc., on the site.
- (3) The location of all the above utilities which are near the site and will be used or affected by development of the site.
- (4) Existing contours with intervals of two feet or less, referred to a Village datum.
- (5) The location of existing wetlands, regulatory floodplains, wooded areas, rock outcrops, single trees with a diameter of eight inches or more measured 4 1/2 feet above the ground and other significant existing features.

C. Development data.

- (1) The title of the development and the name, address, telephone number, signature and seal of the engineer, architect or other qualified professional who prepared the site development plan.
- (2) The proposed use of land and structures and their proposed location, including proposed grades and first floor elevations.
- (3) All proposed lots, streets, easements and public and community areas.
- (4) All proposed means of pedestrian and vehicular access to and egress from the site onto adjacent streets.
- (5) The proposed location and design of any pedestrian circulation on the site and off-street parking areas and loading areas, including handicapped parking and ramps and including details of construction, surface materials, pavement markings and directional signs.
- (6) All proposed streets, with profiles indicating grading and cross sections showing the width of the roadway, the location and width of sidewalks and the location and size of utility lines, according to the standards and specifications contained in the street improvement specifications of the Village.
- (7) The location of all proposed waterlines, valves and hydrants and of all sewer lines.
- (8) Proposed erosion and sediment controls and stormwater drainage system.
- (9) The type, location, direction, power and time of operation of proposed outdoor lighting.
- (10) The proposed screening and landscaping, including a planting plan that identifies the type (scientific and common names), location, size and amount of plantings.
- (11) The location, height, materials, color and design, including construction details, of any proposed fences or walls.
- (12) The location, type, illumination, size, materials, color and design, including construction details, of proposed signs.
- (13) A Stormwater Pollution Prevention Plan (SWPPP) consistent with the requirements of Article XIV of this chapter shall be required for Site Plan Approval. The SWPPP shall meet the performance and design criteria and standards set forth therein. The approved Site Plan shall be consistent with the provisions of this chapter.

**§ 211-27.1. Reservation of parkland. [Added 5-5-2014 by L.L. No. 3-2014]**

**A. General standards.**

- (1) Pursuant to the Village Law, the Planning Board may require that a site plan containing residential units also contain a park or parks suitably located for playground or other recreational purposes.
- (2) Before the Planning Board may require that land be reserved for park, playground or other recreational purposes, the Planning Board must make a finding that such requirement is warranted. Such a finding shall include an evaluation of the present and anticipated future needs for park and recreational purposes in the Village, based on the projected population growth to which the particular site plan will contribute.

**B. Ownership of park area.** The ownership of reservations for park purposes shall be clearly indicated on the site plan and established in a manner satisfactory to the Planning Board so as to assure their proper future continuation and maintenance.

## C. Cash payment in lieu of reservation.

- (1) Where the Planning Board makes a finding that the proposed site plan presents a proper case for requiring a park or parks suitably located for playground or other recreational purposes, but that a suitable park or parks of adequate size cannot be properly located on such site plan, the Planning Board may require, as a condition to approval of the site plan, a payment to the Village of a sum of money determined by the Board of Trustees.
- (2) In making the determination of suitability, the Planning Board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors, including whether there is a need for additional facilities in the immediate neighborhood.
- (3) Any moneys required by the Planning Board in lieu of land for park, playground or other recreational purposes pursuant to this section shall be deposited into a trust fund to be used by the Village exclusively for park, playground or other recreational purposes, including the acquisition of property.
- (4) Credit for land set aside in subdivision approval. Notwithstanding Subsections A through C of this section, if the land included in a site plan under review is a portion of a subdivision plat that has been reviewed and approved, the Planning Board shall credit the applicant for any land set aside for parkland or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.
- (5) Where money in lieu of recreation land is accepted, the amount shall be calculated based on the per-dwelling-unit rate as set from time to time by resolution of the Board of Trustees.

**§ 211-28. Inspection fees and bonds.**

- A. As a condition of approval under this article, an inspection fee shall be paid to the Village of Buchanan in an amount determined necessary by the Planning Board, but not in excess of 5% of the estimated cost of constructing all private roads, sidewalks, water supply, sewerage and storm drainage systems, grading, landscaping and all other site improvements, not including building construction. Such fee shall be used to cover costs incurred by the Village in conducting inspections of such development as it progresses and upon completion.
- B. Before the site plan is signed by the Chairman of the Planning Board, the applicant shall be required to post a performance bond or other type of acceptable monetary guaranty which shall be in an amount determined by the Planning Board and Village Engineer and in a form satisfactory to the Village Attorney. Said bond or other monetary guaranty shall be sufficient to secure to the Village the satisfactory construction and installation of all required improvements. Said bond or other monetary guaranty shall comply with the performance bond requirements set forth in § 7-730, Subdivision 9, of the Village Law. The period within which required improvements must be completed shall be specified by the Planning Board and expressed in the bond or other monetary guaranty, but in no case for a period of more than three years unless the period is extended by the Planning Board with the consent of the parties. In those cases where the required improvements have not been completed within the specified time, the Planning Board or Village Board may thereafter declare said bond or other monetary guaranty to be in default and require that all improvements be completed regardless of the extent of the site development at the time the default is declared.
- C. In addition to the performance security, the Planning Board shall require the posting of a maintenance security. Said security shall guarantee the upkeep of the landscaping, screening and safety devices

and ensure the general cleanliness and proper housekeeping of the grounds and environment of the site development plan. After a period of two years from the effective date of said maintenance security, if the applicant has satisfactorily complied with the above requirements, he shall be eligible, upon request, for the release of the security posted.

- D. The Planning Board, in its review of an application for preliminary layout or final subdivision approval, or preliminary or final site development plan approval as described in Chapter 171 or Chapter 211, may refer any such application to such engineering, environmental or other technical consultant as the Planning Board shall deem reasonably necessary to enable it to review such application as required by law. The charges made by such consultants shall be in accordance with charges usually made for such services in the metropolitan New York region or pursuant to an existing contractual agreement between the Village and such consultant. The applicant shall reimburse the Village for the cost of such consultant services upon submission of a copy of the voucher therefor. Such reimbursement shall be made prior to any Board action on the preliminary or final subdivision or site development plan application. Any reimbursement of fees for professional consultant services rendered may be extended for one period of 90 days upon written request made by the applicant demonstrating good cause as may be determined by the Planning Board. However, in no event shall any action or approval on any such pending application be determined until any and all such reimbursements have been made in full by the applicant. **[Added 4-18-2005 by L.L. No. 1-2011]**

#### **§ 211-29. Submission and review procedure.**

- A. Presubmission. Prior to the submission of a formal site development plan, the applicant should meet with the Planning Board to discuss the proposed site development, its conformance with the Village Master Plan and Official Map, its compliance with Village regulations and its potential environmental impacts, if any. A sketch plan showing property boundaries, significant man-made and natural features on the site, such as buildings and wetlands, and the proposed development should be submitted, along with a nonrefundable sketch site development plan review fee, payable to the Village of Buchanan, in an amount as set from time to time by resolution of the Board of Trustees. **[Amended 2-7-2011 by L.L. No. 9-2011]**
- B. Preliminary site development plan.
- (1) At least 14 days in advance of the Planning Board meeting at which a preliminary site development plan or an amendment of an approved final site development plan is to be submitted, 10 copies of the information enumerated in § 211-27 must be submitted to the Secretary of the Planning Board, along with 10 copies of the completed application form and related forms and a nonrefundable application fee, payable to the Village of Buchanan, in an amount as set from time to time by resolution of the Board of Trustees for each off-street parking space required for the proposed use as set forth in § 211-10, Schedule of Use Regulations,<sup>17</sup> but in no case less than an amount as set from time to time by resolution of the Board of Trustees when fewer than three parking spaces are required. **[Amended 2-7-2011 by L.L. No. 9-2011]**
  - (2) Within 60 days of receipt of the preliminary application and all accompanying material, the Planning Board shall call a public hearing on the preliminary application. Public notice of the hearing shall be given by publication in the official newspaper at least 10 days prior to the date of the hearing. Public notice shall also include the mailing, by certified mail, at least 10 days

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17. Editor's Note: The Schedule of Use Regulations, § 211-10, is included at the end of this chapter.

prior to the hearing, of the notice of hearing to all owners of property abutting and within 500 feet of the property which is the subject of the hearing. The applicant shall furnish stamped (certified mail) envelopes, addressed with each such property owner at the time of application. Public notice shall also include the display of a notice sign, provided by the Village, on all street frontages of the property at least 10 days prior to the hearing. Within 60 days after the closing of the public hearing, the Planning Board shall decide to approve, approve with modifications or disapprove the preliminary application. The decision of the Planning Board shall be filed in the office of the Village Clerk, and a copy of the decision shall be mailed to the applicant.

- (3) Any Planning Board decision to approve or approve with modifications a preliminary site development plan shall expire six months from the date of such decision, unless an application for final site development plan approval is submitted within that time period.

C. Final site development plan.

- (1) An application for approval of a final site development plan or an amendment to an approved final site development plan, including a nonrefundable fee, shall be submitted in accordance with Subsection B(1). The application shall also include any formal offers of dedication to the Village of streets, recreation areas, public access, drainage, slope, sight and other easements in a form satisfactory to the Village Attorney. In addition, the application shall include proof of application to all federal, state and county agencies for any approvals by such agencies required for the submitted final site development plan or amendment.
- (2) The time periods within which the Planning Board shall hold a duly noticed public hearing and render a decision shall be the same as those established in Subsection B(2). The decision of the Planning Board on the final site development plan application shall be filed in the office of the Village Clerk, and a copy of the decision shall be mailed to the applicant.
- (3) Any Planning Board decision to approve or approve with modifications a final site development plan application shall lapse and become null and void unless a building permit shall be obtained within one year of the date of the Board's decision. Failure of the applicant to complete construction pursuant to the approved final site plan within three years of the granting of said approval shall render the approval null and void unless the conditions of approval have specifically provided for a longer period of time. All final site plans approved prior to the effective date of this section shall have no more than three years from the effective date hereof to complete construction unless the conditions of approval have specifically provided for a longer period of time. However, if said final site development plan approval is or has been rendered null and void in a shorter period of time by any other provision of this chapter or by a condition of approval, said shorter time period shall prevail, and this section shall not be deemed to extend such shorter time period.
- (4) The Chairman or, in his absence, the Vice Chairman and the Secretary of the Planning Board shall sign the final site development plan when they have determined that the final site development plan complies with the Planning Board's resolution of approval, including any modifications noted in the resolution and all requirements of this article. If the Chairman has not signed the final site development plan within six months after final approval due to the failure of the applicant to meet the requirements and conditions established by the Planning Board, said final approval shall be null and void. The Planning Board, at its discretion, may grant one additional period of time, not exceeding six months, for the applicant to meet said requirements.



**§ 211-30. Waiver and modification of requirements.**

Upon findings by the Planning Board that, due to special conditions peculiar to a site, certain of the procedures or information normally required as part of the site development plan review is inappropriate or unnecessary or that strict compliance with said requirements may cause extraordinary and unnecessary hardships, the Board may modify or waive such requirements, provided that such modification or waiver will not have detrimental effects on the public health, safety or general welfare or have the effect of nullifying the intent and purpose of the site development plan submission, Official Map, Master Plan or this chapter.

- A. Modifications of required time periods. Such modification of procedures may include the reduction in the period of time for application submission prior to a Planning Board meeting and the extension of review periods and the length of the validity of a Board approval or approval with modifications, by mutual consent of the Board and the applicant.
- B. Waiver of preliminary site development plan. Such waiver of procedures may include the submission of a preliminary site development plan and public hearing on a preliminary site development plan when an applicant proposes an amendment to an approved site development plan that results in:
  - (1) No addition to the usable space of the building.
  - (2) No change in the amount or location of parking spaces, loading spaces, access to such spaces or buffers.
  - (3) No change to the location, number, type, size or design of signs.
  - (4) Continued compliance with all conditions of the final approval of the original site development plan that are still pertinent under the amended site plan.
- C. Waiver of public hearing on final plan. Such waiver of procedures may include the public hearing on the final site development plan application if the Planning Board deems the final site development plan to be in substantial agreement with the preliminary site development plan, as approved. Such waiver shall not be permitted if a waiver of the public hearing on the preliminary site development plan has been granted in accordance with Subsection B above.
- D. Modification of plan information requirements. Such modification of plan information requirements may include the elimination of certain information or the inclusion of additional information as deemed appropriate by the Planning Board.

**§ 211-31. Appeals.**

The Zoning Board of Appeals shall have jurisdiction on appeals from the decisions of the Planning Board in relation to site development plans in accordance with Article IX of this chapter.

**§ 211-32. As-built plans.**

Upon completion of construction, an as-built site development plan shall be submitted to the Secretary of the Planning Board which shall show all elements of the site as actually constructed. Except as provided in § 211-33 below, no certificate of occupancy shall be issued until the as-built plan has been reviewed by the Village Engineer and found to be in compliance with the approved final site development plan or amendment thereto.

**§ 211-33. Temporary certificates of occupancy.**

Where, in the opinion of the Village Engineer, the elements of an approved final site development plan or amendment thereto are substantially complete and, in the opinion of the Code Enforcement Officer, the structure or use meets the requirements of other applicable codes and ordinances, the Building Inspector may issue a temporary certificate of occupancy for a period of up to 45 days; such temporary certificate shall be issued subject to a suitable assurance that all required elements of the approved final site development plan or amendment will be completed as soon as practicable. Where the Building Inspector finds good cause, he may extend such temporary certificate of occupancy for one additional period of not to exceed 45 days.

**§ 211-34. Legislative intent; supersession of Village Law.**

This article is hereby adopted pursuant to § 7-725 of the Village Law of the State of New York.<sup>18</sup> Under the authority of Municipal Home Rule Law § 22, Subdivision 1, it is the intent of this section to supersede § 7-725 of the Village Law by expanding the powers and authority of the Planning Board and Zoning Board of Appeals regarding review and approval of site plans. However, nothing herein shall be construed to reduce or limit the powers or authority granted to the Planning Board by § 7-725, and it is the intent of this article that the Planning Board retain all such powers and authority.

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18. Editor's Note: Section 7-725 of the Village Law was repealed by L. 1992, c. 694, § 3, effective 7-1-1993. See now § 7-725-a of the Village Law.

**ARTICLE VIII****Nonconforming Uses and Lots**

[Amended 11-6-1989 by L.L. No. 11-1989]

**§ 211-35. Changes to nonconforming uses.**

No legal nonconforming use may be continued, repaired, maintained, improved or enlarged, except as provided below:

- A. Restoration. If a nonconforming use is destroyed or damaged to an extent equal to not more than 50% of the total floor area of the improvements, it may be restored or reconstructed within one year from the date of the damage.
- B. Discontinuance. No such nonconforming use may be reestablished after it has been discontinued or vacated for a period of six months. Upon a showing of good cause, the Zoning Board of Appeals may grant one six-month extension to reestablish a discontinued or vacated use.
- C. Change of use. A nonconforming use may be changed to another nonconforming use only if such change is more appropriate to the character of the district in which it is located as determined by the Zoning Board of Appeals after a public hearing.
- D. No enlargement. Nonconforming uses may not be enlarged in any manner whatsoever.

**§ 211-36. Existing nonconforming lots.**

- A. Variances. Where a nonconforming lot exists as a separate entity and the owner of the nonconforming lot does not own an adjoining lot, then the Zoning Board of Appeals may grant a variance to permit the development of the property, provided that the Zoning Board of Appeals shall make each and every one of the following findings:

- (1) The applicant qualifies for a variance under § 211-39B.

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- (2) The proposed variance or variances will not reduce the requirements of § 211-15 by more than 25%.
  - (3) The proposed use is a permitted use in the district in which the nonconforming lot is located.
  - (4) If the nonconforming lot is located in a C-1, C-2, M-1 or M-2 District, any front, side or rear yard abutting a residential district or an existing residential use shall be at least 10 feet.
- B. Merger. Where a nonconforming lot adjoins another lot and both lots are owned by a common owner, said lots shall merge and be deemed one lot for all purposes.

**§ 211-37. Nonconforming buildings.**

- A. Any legal nonconforming building or structure may be continued, repaired, maintained, improved, or enlarged, provided that such building or structure shall not be altered or enlarged unless said alteration or enlargement complies with the current requirements of this chapter, including § 211-17A(1), (2) and (3). [Amended 1-5-2021 by L.L. No. 1-2021]
- B. Any such nonconforming building or structure, which is damaged or destroyed other than by the order or with the consent of the owner to an extent equal to not more than 50% of the total floor area, may be restored within one year of the date of the damage; provided, however, that it shall not be altered or enlarged unless said alteration or enlargement complies with the current requirements of this chapter.

ARTICLE IX

**Appeals**

**§ 211-38. Board of Appeals.**

- A. Organization and procedure.
  - (1) Establishment. Pursuant to § 7-712 of the Village Law, a Board of Appeals is hereby established for the Village of Buchanan.
  - (2) Appointment. The Board of Appeals shall consist of five members who shall be appointed in accordance with § 7-712 of Village Law. The term of each appointment shall be five years. The members of the Board shall receive compensation for their services, as approved by the Board of Trustees.
  - (3) Appointment to fill vacancies. Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms become vacant. Such appointments to fill such vacancies shall be made in the same manner as the original appointment.
  - (4) General grant of power. The Board of Appeals shall perform all the duties and have all the powers prescribed by the laws of the State of New York and as herein described.
  - (5) Rules of procedures.
    - (a) The Board of Appeals shall adopt rules in accordance with the provisions of this chapter and any others not inconsistent herewith or with the laws of the State of New York.
    - (b) There shall be a Chairman appointed by the Mayor for a period of one year, and the Board may elect such other officers or may employ such help as may be necessary and authorized within the appropriations therefor. All meetings of the Board shall be public. The presence of three members shall be necessary for a quorum. The Secretary to the Board shall keep minutes of its proceedings showing the vote of each member upon every question or, if absent or failing to vote, indicating that fact. The final disposition of each appeal, request,

matter or proceeding shall be in the form of a resolution reversing, modifying or affirming the decision of the Building Inspector or granting or denying any relief sought.

- (6) Votes necessary for a decision. The concurring vote of three members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector, to decide in favor of the applicant any matter upon which it is required to pass, under the terms of this chapter, or to affect any variation in this chapter.
- B. Should any appeal, application for variance or interpretation involve any change in regulations applying to land lying within 500 feet of any municipal boundary; existing or proposed county or state park or other recreation area; right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated, such application, accompanied by the notice of public hearing, shall be forwarded to the Westchester County Planning Department for review in accordance with the provisions of the Westchester County Administrative Code. Notice of hearing shall also be sent to the Clerk of any affected municipality, at least 10 days prior to the public hearing. Westchester County Planning Department shall have 30 days in which to recommend approval or disapproval, and no action shall be taken on such application within the statutory referral period. The Board shall not act contrary to the recommendations of the County Planning Department unless by affirmative vote of four members, setting forth fully the reasons for such contrary action. **[Amended 11-6-1989 by L.L. No. 11-1989]**
- (1) Rules and forms. The Board of Appeals shall adopt and make available to the public such rules and regulations as are necessary and proper to the performance of its powers and duties hereunder and may amend or repeal the same. Such rules shall prescribe the forms to be used in matters over which the Board has jurisdiction.
  - (2) Powers and duties. On appeal from an order, requirement, decision or determination made by an administrative official charged with the enforcement of this chapter or on referral of an applicant to the Board by an approving agency acting pursuant to this chapter, the Board of Appeals is authorized to:
    - (a) Vary or modify the strict letter of this chapter where its literal interpretation would cause practical difficulties or unnecessary hardships, in such manner as to observe the spirit of the chapter, secure public safety and welfare and do substantial justice.
    - (b) Interpret and determine the meaning and requirement of any portion of this chapter or of Chapters 83, 97, 103, 143, 159, 167, 171, 175 and 203 of the Code of the Village of Buchanan.
    - (c) Determine the exact location of any district boundary shown on the Zoning Map.<sup>19</sup>
  - (3) Referral to Planning Board. The Board of Appeals shall refer to the Planning Board applications or appeals which, in the opinion of the Board of Appeals, require review by the Planning Board. In its review, the Planning Board shall determine compliance with the standards set forth in this chapter and, in all cases, shall report, in writing, its findings and recommendations to the Board of Appeals within 30 days from the date any matter is referred to it by the Board.
  - (4) Special permits. The Board of Appeals shall hear and determine applications for the special permit uses which require Board of Appeals approval. Said hearing and determination shall be pursuant to the procedure set forth in this chapter.

**§ 211-39. Variances. [Amended 12-15-1986 by L.L. No. 5-1986; 11-6-1989 by L.L. No. 11-1989]**

- A. Use variances. Where, because of unnecessary hardship relating to the land in question, an applicant desires to utilize said land for a use not allowed in the district in which the land is located, the Board may grant a variance in the application of the provisions of this chapter in the specific case, provided that, as a condition to the grant of any such variance, the Board shall take into consideration whether or not the unnecessary hardship has been created by the owner or his predecessor in title, and the Board shall make each and every one of the following findings:
- (1) After considering all permitted uses, that the property in question cannot yield a reasonable return if used only for a purpose allowed in that district.
  - (2) That the plight of the owner is due to unique circumstances affecting the property which is the subject of the application and is not due to general conditions in the neighborhood.
  - (3) That the use to be authorized by the variance will not alter the essential character of the locality.
  - (4) That the use to be authorized by the variance is in reasonable harmony with the intent of this chapter.
  - (5) That, within the intent and purposes of this chapter, the variance, if granted, is the minimum variance necessary to afford relief. To this end, the Board may permit a lesser variance than that applied for.
  - (6) No use variance shall be granted permitting a use prohibited by § 211-11 or permitting a use not listed in § 211-10 as a permitted use within the Village of Buchanan.

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7. **Editor's Note: The Zoning Map is included at the end of this chapter.**

- A. Area variances. Where, because of practical difficulty, an applicant requests a variance of the lot area or other dimensional requirements of this chapter, the Board may grant a variance in the application of the provisions of this chapter in the specific case, provided that as a condition to the grant of any such variance the Board shall make a specific finding that the application of the requirements of this chapter to the land in question creates such practical difficulty. In making this determination, the Board shall take into consideration whether or not the practical difficulty has been created by the owner or his predecessor in title and shall make each and every one of the following findings:
- (1) That the variation requested is not substantial in relation to the requirement.
  - (2) That the effect of any increased population density which may thus be produced upon available services and facilities is not significant.
  - (3) That a substantial change in the character of the neighborhood or a substantial detriment to adjoining properties will not be created.
  - (4) That the difficulty cannot be alleviated by some method feasible for the applicant to pursue other than a variance.
  - (5) That the variation would not cause adverse aesthetic, environmental or ecological impacts on the property or on surrounding areas.
  - (6) That the requested variance is the minimum variance necessary to afford relief.
  - (7) That, in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.
- B. Conditions and safeguards. The Board of Appeals may prescribe such conditions or restrictions applying to the grant of a variance as it may deem necessary in each specific case, in order to minimize

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any adverse effects of such variance upon the character and property value of the neighborhood and to protect the public health, safety and welfare. Such conditions or restrictions shall be incorporated in the building permit and certificate of occupancy. Failure to comply with such conditions or restrictions shall constitute a violation of this chapter and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies.

- C. Expiration of a variance. A variance granted under this chapter shall automatically expire if substantial construction, in accordance with the plans for which such variance was granted, has not been completed within one year or such other time limit as may be chosen by the Board of Appeals in connection with its decision, from the date of the granting of such variance by the Board or, if judicial proceedings to review the Board's decision shall be instituted, from the date of entry of the final order in such proceedings, including all appeals.

**§ 211-40. Appeals from decisions of administrating officials. [Amended 11-6-1989 by L.L. No. 11-1989]**

- A. Appeal or application. An appeal or application shall be made within 30 days of the order or decision appealed from, by filing with the official or agency from whom the appeal is taken and with the Board of Appeals a notice of appeal, specifying the ground thereof. The official or agency from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from is taken. All such appeals and applications to the Board shall be made by the owner or his duly authorized agent, in writing, and shall be on forms prescribed by the Board. Each appeal or application shall fully set forth the circumstances of the case, shall refer to the specific provisions of this chapter involved and shall exactly set forth, as the case may be, the interpretation that is claimed and details of the adjustment that is applied for and the grounds on which it is claimed that the same should be granted.
- B. Information required on appeals to the Board of Appeals. All appeals from a decision of the Building Inspector and applications to the Board of Appeals shall include the following:
- (1) The name and address of the applicant or appellant.
  - (2) The name and address of the owner of the lot or lots to be affected by such proposed change or appeal.
  - (3) A statement of the present zoning classification of the property in question, the improvement thereon and the present use thereof.
  - (4) A statement of the section of this chapter under which the appeal is made and reasons why it should be granted or a statement of this chapter governing the situation in which the alleged erroneous ruling is being appealed and the reason for this appeal.
  - (5) A reasonably accurate description of the present improvements and the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected, prepared by a licensed land surveyor, indicating the location and the size of the lot and size of improvements thereon and/or proposed to be erected thereon.
- C. Stay of proceedings. An appeal to the Board of Appeals shall stay all proceedings in furtherance of the action appealed from unless the Building Inspector certifies to the Board of Appeals after the notice of appeal shall have been filed with him that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by the Supreme Court, on application, on notice to the Building Inspector and on due cause shown.

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- D. Public hearing. The Board of Appeals shall conduct a public hearing on any appeal, application or request made pursuant to this chapter. Such public hearing shall be held within a reasonable time of the date an appeal is taken or an application or request is made to the Board.
- E. Notice of hearing. Notice of the hearing shall be published in the official newspaper at least 10 days prior to the date of such hearing. Notice shall also be sent by the applicant, at least 10 days prior to the date of such hearing, to all property owners within 250 feet of the perimeter of the property for residential uses and within 500 feet of the perimeter of the property for commercial or industrial uses. The Village Clerk shall furnish the applicant with signs indicating the date and purpose of the public hearing. The applicant shall cause said signs to be posted on the subject property on each street frontage. The costs of all such notices shall be paid for by the applicant.
- F. Action. Every decision, determination or interpretation of the Board of Appeals shall be by resolution, shall be recorded and shall fully set forth the facts of the case, the findings and the conclusions on which the decision is based. The Board shall immediately file its resolution in the office of the Board and with the Village Clerk and shall thereafter mail a copy of such resolution to the applicant.
- G. Fees. Every application or appeal to the Board of Appeals shall be subject to a nonrefundable fee, payable to the Village of Buchanan, in an amount as set from time to time by resolution of the Board of Trustees for an application requesting a use variance or for any other matter. No application or appeal shall be accepted for processing until the required fee has been paid. **[Amended 2-7-2011 by L.L. No. 9-2011]**
- H. Appeal from decision of the Board of Appeals. In case of an appeal from the Board of Appeals to any court having jurisdiction, the Board of Appeals shall make the return required by law and shall promptly notify the Village Attorney of such appeal and furnish him with a copy of the return, including a transcript of testimony. Any person aggrieved by any decision of the Board of Appeals may, within 30 days of the filing of the decision with the Village Clerk, appeal said decision. After said 30 days, all decisions shall be final and unappealable.

## ARTICLE X

### Special Permit Uses

#### § 211-41. General provisions.

- A. The uses listed in the Schedule of Use Regulations, § 211-10, Column 3, Uses by Special Permit of the Planning Board or Board of Appeals,<sup>20</sup> for the districts in which permitted and subject to the bulk regulations therefor, § 211-15 herein, may be authorized on application and after public notice and hearing. Such uses shall be deemed to be prohibited unless there shall be a valid special permit filed and recorded with the Village Clerk. Where such special permit may be granted and subject to any terms and conditions thereto, such uses shall be deemed conforming uses in the districts wherein located.
- B. The grant of special permits for the uses indicated may be conditioned on periodic renewal, which renewal shall be granted following public notice and hearing, and may be withheld only upon determination that conditions as may have been identified in the original grant requiring that the use by of temporary duration now necessitate cessation of such use or imposition of additional or supplemental safeguards or conditions or that the original conditions as may have been prescribed for such special permit have not been or are not being complied with, wholly or in part. Notices of violation pursuant to Article XI shall be prima facie evidence of lack of conformity to such standards or conditions.

#### § 211-42. Application and review procedure.

- A. Application for a special permit pursuant to these regulations shall be upon forms prescribed by the

Planning Board and shall contain the following information unless specifically waived by the approval authority:

- (1) A survey of the property, topography and soils classification, present zoning classification, any special districts, easements or other restrictions, including covenants on the development of the property and ownership of the property.
- (2) Description of the proposed use, with reference to the appropriate use and bulk regulations herein, including any supplementary regulations applying thereto.
- (3) A plan of the proposed development generally setting forth the location of buildings, structures or other improvements to the land, means of access and egress, fire protection, topographical alteration and effects on drainage, both on the proposed site and downstream of the site.
- (4) A cost benefit analysis or similar study to review the estimated municipal costs, services and prospective revenues which would be generated by the proposed use.
- (5) Evidence that the proposed use is consistent with and compatible to the goals of the Village Master Plan.
- (6) A traffic and circulation study projecting the effects of the proposed use on the existing and probable future traffic and access in the vicinity of the proposed use.
- (7) Copies of environmental assessments or permit applications and supporting materials which may be required to meet New York State Department of Environmental Conservation regulations.
- (8) Names and mailing addresses of all owners of property abutting or within 200 feet of the property for which application is made shall be submitted. The applicant shall furnish stamped (certified mail) envelopes, addressed with each such property owner at the time of application.

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**8. Editor's Note: The Schedule of Use Regulations is included at the end of this chapter.**

- B. Every application for a special permit shall be submitted (three copies) to the Village Clerk with the fee as set forth in the standard schedule of fees of the Village of Buchanan, along with a nonrefundable application fee, payable to the Village of Buchanan, in an amount as set from time to time by resolution of the Board of Trustees for each off-street parking space required for the proposed use as set forth in § 211-10, Schedule of Use Regulations, but not less than an amount as set from time to time by resolution of the Board of Trustees when fewer than three parking spaces are required. One copy of the application shall be filed in the office of the Clerk, and two copies of the application shall be transmitted to the Planning Board for review. In reviewing such application, the Planning Board shall take into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular and may determine such appropriate conditions and safeguards as may be required in order that the results shall, to the maximum extent possible, further the expressed intent of this chapter and the accomplishment of the following objectives: **[Amended 12-15-1986 by L.L. No. 5-1986; 2-7-2011 by L.L. No. 9-2011]**

- (1) That all proposed structures, equipment or material shall be readily accessible to fire and police protection.
- (2) That the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
- (3) The location and size of such use, the nature and intensity of operations involved in or conducted



in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with, or conflict with the normal traffic of the neighborhood.

- (4) The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.
  - (5) The impact of the proposed use shall not engender avoidable impacts upon the environment of the site or adjacent lands and that any such impacts will be the minimum necessary to accommodate the proposed use, and further that there shall be the maximum preservation of unique ecological or environmental assets particularly as such effect the value and viability of adjacent areas.
- C. In the event that such special permit use shall be by Board of Appeals authorization, the Planning Board shall, within 45 days (or such longer period as may be agreed to in writing by the Board and applicant) of the receipt by the Village of such application in proper form, transmit one copy of the application, together with its report thereon with findings set forth in Subsection B above, to the Village Board. The report of the Planning Board may also contain recommendations of conditions or other relevant findings appropriate to the application. In the event such special permit use shall be by Planning Board authorization, the Planning Board shall, within 45 days (or such longer period as may be agreed to in writing by the Board and applicant) of receipt by the Village of such application in proper form, conduct a hearing as set forth in Subsection E and within 45 days thereafter render its decision.
  - D. The Board of Appeals, upon receipt of the report by the Planning Board, shall, within 45 days, conduct a public hearing as set forth in Subsection E and within 45 days thereafter render its decision. The Board of Appeals, in considering any application for a special permit hereunder, shall make findings required in Subsection E and, in addition, may exercise such discretion reserved for legislative matters so as to ensure that public health, welfare and safety is protected and the environmental and land resources of the community are most efficiently programmed and that any authorization hereunder shall not create fiscal burdens upon the community at large or an adverse impact upon adjacent property and its prospective use under the zoning by right.
  - E. Applications shall be referred when required by law to the Westchester County Planning Department for review pursuant to the Westchester County Administrative Code at least 30 days prior to the required public hearing. Notice of the public hearing shall be published at least once, not less than 10 days prior to the date of the hearing, in the official newspaper, and notice of hearing shall be mailed, certified mail, to all owners of property abutting and within 200 feet of the property for which such application is made and to any other person(s) the hearing authority may deem to be particularly affected. In the case of any special permit application pertaining to real property within a distance of 500 feet of the boundaries of any municipality or state or county road, park or other state-owned facility, notice of such hearing shall be mailed to the Clerk of such municipality and to the County Planning Department not less than 10 days prior to such hearing. Provided that due notice shall have been published and that there shall have been substantial compliance with the remaining provisions of this section, the failure to give notice in exact conformance herewith shall not be deemed to invalidate any action taken in connection with the grant or denial of any special permit.
  - F. The Board of Appeals or Planning Board, in approving any special permit hereunder, shall require conformance to any supplementary regulations applying to such uses generally and may establish such other conditions, including but not limited to landscaping, lighting, access and egress, signs, screening, architectural features, location and layout of buildings and definitions or limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this chapter. The decision of the Board of Appeals

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or Planning Board shall immediately be filed in the office of the Village Clerk and a copy thereof mailed to the applicant.

**§ 211-43. Appeals.**

- A. Unless specifically exempted in the decision of the Planning Board, any regulation or conditions of such special permit shall not be subject to appeal before the Board of Appeals, and any such appeal render such permit void and without effect without necessity of further action by the Village. Any person aggrieved by any decision of the Planning Board hereunder shall, within 30 days of the filing of the decision, apply to a court of competent jurisdiction pursuant to the Village Law and Article 78 of the Civil Practice Law and Rules.
- B. No requirement or conditions imposed by this chapter for any special permit use shall be waived or reduced by the Board of Appeals or Planning Board and shall be considered to be the minimum requirements for any authorization hereunder. The grant of a special permit shall authorize only one special permit use and shall be limited only to the use described and approved in such permit. Special permits shall be deemed to be indefinite authorization unless otherwise specified in the approval thereof but, in any case, shall expire within 18 months of the date of approval unless building permits or certificates of occupancy have been issued for the special permit use. Such period may be extended on separate application to the Board of original jurisdiction.

ARTICLE XI

**Administration and Enforcement**

**[Amended 4-6-1981 by L.L. No. 2-1981; 1-2-1990 by L.L. No. 1-1990; 6-18-1990 by L.L. No. 10-1990]**

**§ 211-44. Compliance required prior to approval.**

No board, agency, officer or employee of the Village shall issue, grant or approve any permit, license, certificate or other authorization for any construction, reconstruction, alteration, enlargement or moving of any building or for any use of land or building that would not be in full compliance with the provisions of this chapter, except as permitted under § 211-38. Any such permit, license, certificate or other authorization issued, granted or approved in violation of the provisions of this chapter shall be null and void and of no effect without the necessity of any proceeding or revocation or nullification thereof.

**§ 211-45. Enforcement officials.**

This chapter shall be enforced by the Building Inspector and such Deputy Inspectors as may be required.

**§ 211-45.1. Inspection and reinspection. [Added 10-3-2017 by L.L. No. 4-2017]**

In order to safeguard the safety, health and welfare of the public, the Building Inspector is authorized to develop and carry out plans for the inspection and reinspection of all premises in the Village of Buchanan including:

- A. Investigate all complaints of alleged housing violations or other unsafe, unsanitary conditions.
- B. A procedure for reinspection of all residential premises or parts thereof in violation of this chapter.
- C. All residential properties shall be inspected/reinspected by the Building Department before transfer of ownership or the issuance of a certificate of occupancy at a fee as set from time to time by the Board of Trustees. Such fee shall include issuance of a new certificate of occupancy for the property.

**§ 211-46. Right of entry; complaints; penalties for offenses. [Amended 10-3-2017 by L.L. No. 4-2017]**

- A. Right of entry. The Building Inspector or his authorized agent, upon the showing of proper credentials and in the discharge of his duties, may enter upon any land or building or structure between the hours of 7:00 a.m. and 8:00 p.m. for the purpose of making inspections and performing duties under this chapter, subject to all applicable laws.
  - (1) If admission is refused or cannot be obtained from any owner, occupant or operator of a residential structure, the Building Inspector or his/her authorized agent shall be authorized to obtain a search warrant and make an inspection, provided reasonable or probable cause is shown.
  - (2) In case of an emergency, the Building Inspector and his/her authorized agent may, without a search warrant, enter any premises or parts of premises to inspect at any time without the permission of the owner, occupant or operator.
- B. Violations. Any person, including any firm, corporation or other entity, owner, builder, architect, engineer, tenant, contractor, subcontractor, construction superintendent, agent or other person taking part or assisting in the construction or use of any building, structure or land shall be guilty of a violation of this chapter if he:
  - (1) Violates any provision of this chapter.
  - (2) Builds, alters or uses any structure or uses any land in violation of any statement, plan, map or application submitted to the Village of Buchanan.
  - (3) Fails to comply with a written order or notice of the Building Inspector within the time fixed for compliance therewith.
  - (4) Violates any order, notice, directive, permit or certificate or approval of the Building Inspector or other authority or agency of the Village of Buchanan.
- C. Complaint of violation whenever a violation of any provision of this chapter occurs. Any person may file a complaint with the Building Inspector, who shall properly record such complaint and investigate the same.
- D. Criminal penalties for offenses. Any person committing a violation of any provision of this chapter shall be guilty of an offense punishable by a fine of not less than \$150 nor more than \$500 or by imprisonment for a period not to exceed six months, or both, for conviction of a first offense. For conviction of a second offense, both of which were committed within a period of five years, a fine of not less than \$500 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both, shall be imposed; and, upon conviction for a third or subsequent offenses, all of which were committed within a period of five years, a fine of not less than \$1,000 nor more than \$1,500 or imprisonment for a period not to exceed six months, or both, shall be imposed. Each week's continued violation shall constitute a separate additional violation hereunder.
- E. Civil penalties for offenses. Any person who fails to abate, cure or terminate any violation of this chapter within 10 calendar days of receiving notice of the same shall be subject to a civil penalty. Notice of violations may be personally served or sent by certified mail to the person's home or business address. Said civil penalty shall not be less than \$500 nor more than \$3,000. The civil penalty shall be recovered by suit brought by the Village of Buchanan and shall be retained by the Village of Buchanan. Each week's continued violation shall constitute a separate and additional violation hereunder and shall subject the person to an additional civil penalty.
- F. Cumulative remedies. The remedies provided for herein shall be cumulative and shall be in addition to any other remedies provided by law.

**§ 211-47. Additional remedies.**

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In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained or any building, structure or land is used in violation of this chapter or any regulation made under authority conferred thereby, the Village Board or any Village officer designated by said Village Board or the Building Inspector, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful maintenance, or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

**§ 211-48. Building permits required.**

No building or structure shall be erected, constructed, enlarged, structurally altered or moved until a permit therefor has been issued by the Building Inspector, in accordance with Chapter 67, Building Construction, of the Code of the Village of Buchanan.

**§ 211-49. Certificates of occupancy and/or use.**

- A. Except for buildings constructed prior to 1951, no building shall be used or occupied in whole or in part unless or until a certificate of occupancy, as appropriate, shall have been issued by the Building Inspector and then only in conformity with said certificate(s).
- B. No change shall be made in the use or occupancy of any building or structure, including those constructed prior to 1951, unless a certificate of occupancy authorizing the change of use shall have been issued. A change in use shall include but not be limited to a change in or of the type, class, nature or scope of the goods, services or operation. A change of occupancy shall include a change of owner, tenant, subtenant or occupant of any use in any structure, building or location other than a single-family residence.

**§ 211-50. Continued conformity required.**

- A. A certificate of occupancy shall be deemed to authorize and is required for both initial and continued occupancy and use of the building or land to which it applied and shall continue in effect as long as such building and the use thereof, or of such land, is in full conformity with the provisions of this chapter and any requirements made pursuant thereto.
- B. On the serving of notice by the Building Inspector of any violation of any of said provisions or requirements in respect to any structure or land or the use thereof, the certificates shall thereupon become null and void, and a new certificate shall be required for any further use of such structure or land.

**§ 211-51. Existing structures.**

Upon written request from the owner and on payment of a fee in accordance with the standard schedule of fees as adopted by the Village Board, the Building Inspector shall issue a certificate of occupancy for any building or premises existing at the time of the enactment of this chapter, certifying, after inspection, the extent and kind of use or disposition of the building or premises and whether such use or disposition of the building or premises conforms to the provisions of this chapter.

**§ 211-52. Review of decisions by Building Inspector.**

Whenever the Building Inspector shall approve or disapprove, act or fail to act or otherwise perform any of his duties and shall render a decision thereon, such decision shall be reviewable by appeal to the Board of Appeals from the Building Inspector's decision. Such appeal shall be taken not more than 30 days after the filing of the decision of the Building Inspector in the office of the Building Inspector.

**ARTICLE XII  
Amendments****§ 211-53. Procedure.**

The Village Board may, from time to time, on its own motion or on petition or on recommendation from the Planning Board, amend the regulations and districts established under this chapter after public notice and hearing in each case. All petitions for any amendment of the regulations or districts herein established shall be filed, in writing, in a form required by the Village Board.

**§ 211-54. Advisory report by Planning Board.**

Every proposed amendment, unless initiated by the Planning Board, shall be referred to the Planning Board. The Planning Board shall report its recommendations thereon to the Village Board, accompanied by a full statement of the reasons for such recommendations, prior to the public hearing. If the Planning Board fails to report within a period of 45 days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Village Board, the Village Board may act without such report. If the Planning Board disapproves the proposed amendment or recommends modification thereof, the Village Board shall not act contrary to such disapproval or recommendation except by the adoption of a resolution fully setting forth the reasons for such contrary action.

**§ 211-55. Public notice and hearing.**

The Village Board, by resolution, shall fix the time and place of the public hearing and cause notice to be given as follows:

- A. By publishing a notice of the proposed amendment and the time and place of the public hearing in the official paper of the Village not less than 10 days prior to the date of public hearing.
- B. County referral. Should any amendment involve any change in the boundaries of any district, which change would occur within a distance of 500 feet of the boundary of any Village, town or city or change the regulations applying to any district so located or within 500 feet of any existing or proposed county or state park or other recreation area; right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; right-of-way of any stream or drainage channel owned by the state or county or for which the county has established channel lines; or boundary of any state- or county-owned land on which a public building or institution is situated, including public housing projects or lands of such authorities, such amendment, accompanied by notice of public hearing, shall be forwarded to the Westchester County Planning Department by the Village Clerk in accordance with the Westchester County Administrative Code, at least 10 days prior to the public hearing. The Village Clerk shall also cause notice to be sent to the Clerks of any effected municipalities. If the County Planning Department disapproves the proposed amendment or recommends modification thereof, the Board of Trustees shall not act contrary to such disapproval or recommendation except by affirmative vote of four members, setting forth in such resolution the reasons for such contrary action.

**§ 211-56. Protests by landowners.**

If a protest against a proposed amendment is presented to the Village Board, duly signed and acknowledged by the owners of 20% or more of the area of land included in such proposed amendment or by the owners of 20% or more of the area of the land immediately adjacent extending 100 feet therefrom or by the owners of 20% or more of the area of land directly opposite thereto, such amendment shall not be passed except

by the favorable vote of at least 3/4 of the members of the Village Board.

**§ 211-57. Publication and posting.**

Every amendment to this chapter, including any map incorporated therein, adopted in accordance with the Village Law shall be entered in the minutes of the Village Board, and a copy of such amendment, together with a copy of any map incorporated therein, shall be posted on a signboard maintained by the Village Clerk pursuant to the Village Law. Affidavits of the publication and posting thereof shall be filed with the Village Clerk and Secretary of State's office.

**§ 211-58. Periodic review.**

From time to time, at intervals of not more than five years, the Planning Board shall reexamine the provisions of this chapter and the location of district boundary lines and shall submit a report of its findings and recommendations to the Village Board.

ARTICLE XIII

**Communications Towers and Personal Wireless Facilities**

**[Added 10-6-1997 by L.L. No. 4-1997]**

**§ 211-59. Title.**

This article may be known and cited as the "Communications Tower/Personal Wireless Facility Special Use Permit Ordinance for the Village of Buchanan."

**§ 211-60. Definitions; word usage.**

For purposes of this article and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

**ANTENNA** — Any device used to transmit or receive electromagnetic waves or frequency signals. The term "antenna" includes frequency signals for radio, television, paging, personal communications services (PCS) and microwave communications.

**APPLICANT** — A person submitting an application to the Village of Buchanan for a special use permit for a communications tower or personal wireless facility.

**APPLICATION** — The form approved by the Village, together with all necessary and appropriate documentation, that an applicant submits in its quest to receive a special use permit for a communications tower or personal wireless facility.

**BOARD** — The Village Board of the Village of Buchanan.

**BREAK POINT** — The location on a communications tower or personal wireless facility which, in the event of a failure of the communications tower or personal wireless facility, would result in the communications tower or personal wireless facility falling or collapsing within the boundaries of the property on which the communications tower or personal wireless facility is placed.

**CAMOUFLAGED TOWER** — Any tower or supporting structure that, due to design, location or appearance, partially or completely hides, obscures, conceals or otherwise disguises the presence of the tower and one or more antennas or antenna arrays affixed thereto.

**COLLAPSE ZONE** — The area in which any portion of a communications tower or personal wireless

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facility could or would fall, collapse or plunge to the ground or into a river or other body of water. The collapse zone shall be no less than the lateral equivalent of the height of the communications tower or personal wireless facility, plus 10 feet.

COMMUNITY — The Village of Buchanan, New York.

COUNTY — Westchester County, New York.

DIRECT-TO-HOME SATELLITE SERVICES or DIRECT BROADCAST SERVICE or DBS — Only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground receiving equipment, except at the subscribers' premises or in the uplink process to the satellite.

DUAL PURPOSE ANTENNA — Any structure, other than a tower, that facilitates the attaching, placement, locating or mounting of an antenna.

DUAL PURPOSE TOWER — Any structure that serves a dual or multiple purpose, including, for example, such a tower located within or outside a bell or church steeple or a tower located within or outside a smokestack or chimney.

DURATION — The length, either in months or years, of a grant for a special use permit for a communications tower or personal wireless facility and any related or appurtenant facilities.

EXPIRATION DATE — The date on which the special use permit for a communications tower or personal wireless facility expires. On the expiration date and thereafter, the continued use of a communications tower or a personal wireless facility (including the use of any and all antennas or other telecommunications equipment) is prohibited, unless the holder of the special use permit for a communications tower or personal wireless facility has received either an extension or renewal of such special use permit by the Planning Board.

EXTENSION — An initial or subsequent extension or continuance of a special use permit for a communications tower or personal wireless facility for a definitive period of time beyond the expiration date of a then existing special use permit for a communications tower or personal wireless facility.

FAA — The Federal Aviation Administration or its duly designated and authorized successor agency.

FCC — The Federal Communications Commission, or its duly designated and authorized successor agency.

FREESTANDING TOWER — A tower that is not supported by guy wires and ground anchors or other means of attached or external support.

HEIGHT — When referring to a tower or other structure, the distance measured from the ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

PERSON — Any individual, corporation, estate, trust, partnership, joint-stock company, association of two or more persons having a joint common interest or governmental entity.

PERSONAL WIRELESS FACILITIES or PERSONAL WIRELESS FACILITY — A facility or facilities used for the provision of personal wireless services. For purposes of this article, a communications tower or personal wireless facility includes any antenna used for the provision of personal wireless services. For purposes of this article, the term "a communications tower or personal wireless facility" does not include an antenna, satellite dish or other type of satellite or video-receiving device that is mounted or located on an individual residential unit or an amateur radio operator's tower or antenna, provided that the amateur radio operator's tower and antenna does not exceed 50 feet in height above ground level.

PERSONAL WIRELESS SERVICES or PWS or PERSONAL COMMUNICATIONS SERVICE or PCS — Commercial mobile services, unlicensed wireless services and common-carrier wireless exchange access services.

PLANNING BOARD — The officially designated agency of the Village to whom applications for a special use permit must be made and that is authorized to review, analyze and evaluate an application for a special use permit and that the Board relies on to make recommendations to the Board with respect to granting or

not granting, renewing or not renewing, or revoking a special use permit for a communications tower or personal wireless facility.

PWFO — A personal wireless facilities owner, which means the person who owns, controls or otherwise manages and has financial responsibility for a telecommunications facility.

STATE — The State of New York.

SUBSTANTIALLY COMPLETED APPLICATION — An application that contains all information and/or data necessary in order for the Village to evaluate the merits of the application and to make an informed decision with respect to the effect and impact of the communications tower or personal wireless facility on the Village in the context of the permitted land use for the particular location requested.

SUPPORTED TOWER — A tower that is supported, in whole or in part, by guy wires and ground anchor or other permissible and reliable means of support in addition to the superstructure of the tower itself.

TEMPORARY — With respect to any structure or facility associated with a communications tower or personal wireless facility, any structure or facility intended to or that does exist for fewer than 30 days.

TOWER or COMMUNICATIONS TOWER — Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, freestanding towers and supported towers. The term "tower" or "communications tower" includes radio and television transmission towers, microwave towers, common-carrier towers, cellular phone towers, dual tower structures and camouflaged tower structures.

UNLICENSED WIRELESS SERVICE — The offering of telecommunications services using duly authorized devices which do not require individual licenses but does not mean the provision of direct-to-home satellite services.

**§ 211-61. Overall policy and desired goals for special use permits.**

- A. The Board recognizes that, under Section 704 of the Telecommunications Act of 1996, the Congress has preserved the authority of the Board to make decisions with respect to the placement, construction and modification of personal wireless facilities.
- B. The Board further recognizes that to the extent permitted by federal law, the placement, construction and modification of communications towers and personal wireless facilities must be consistent and compatible with the Village's zoning or land use code.
- C. In order to ensure that the placement, construction and modification of personal wireless facilities conforms to the Village's zoning or land use code, the Board creates a special use permit for a communications tower or personal wireless facility.
- D. As such, the Board adopts an overall policy with respect to special use permits for a communications tower or personal wireless facility for the express purpose of achieving the following goals:
  - (1) Implementing an application process for persons seeking a special use permit for a communications tower or personal wireless facility.
  - (2) Establishing a policy for examining and issuing a special use permit for a communications tower or personal wireless facility that is both fair and consistent with the current zoning or land use code of the Village.
  - (3) Establishing reasonable time frames for the examination of a completed application for a special use permit for a communications tower or personal wireless facility.
  - (4) Ensuring that the Planning Board's decision on an application for a special use permit for a communications tower or personal wireless facility is supported by substantial evidence contained in a written record.



- (5) Establishing reasonable parameters and conditions for special use permits for a communications tower or personal wireless facility.
- (6) Promoting and encouraging, wherever possible, the sharing and/or collocation of a communications tower or personal wireless facility among service providers.
- (7) Minimizing the potential negative effects on property values of properties adjacent to, or in reasonably close proximity to, the communications tower or personal wireless facility, such as a surrounding neighborhood with a distinctive character or appearance.
- (8) Promoting and encouraging, wherever possible, the placement of a communications tower or personal wireless facility in such a manner as to cause minimal disruption to aesthetic considerations of the land, property, buildings and other facilities adjacent to, surrounding, and in generally the same neighborhood as the requested location of such a communications tower or personal wireless facility.

**§ 211-62. Special use permit required; exceptions.**

- A. No person shall be permitted to place, construct or modify a communications tower or a personal wireless facility without having first obtained a special use permit for a communications tower or personal wireless facility.
- B. Notwithstanding Subsection A of this section, for purposes of this article, satellite dishes and equipment necessary to receive direct-to-home satellite video services shall not be considered a communications tower or personal wireless facility. As such, they are not subject to the provisions of this article and do not require a special use permit for placement, construction and modification.
- C. Notwithstanding Subsection A of this section, for purposes of this article, handheld, vehicular or other portable transmitters or receivers or the antennas needed for such portable transmitters or receivers, including but not limited to cellular phones, CB radios and emergency services radios, shall not be considered a communications tower or personal wireless facility. As such, they are not subject to the provisions of this article and do not require a special use permit for placement, construction and modification.
- D. Notwithstanding Subsection A of this section, but nevertheless subject to Subsection F of this section, any communications tower or personal wireless facility existing on the effective date of this article shall be grandfathered and not required to apply for and receive a special use permit for a communications tower or personal wireless facility unless and until any permit granted allowing for the construction of such either expires or is revoked. For the purpose of this section, an existing communications tower or personal wireless facility includes an existing dual-purpose antenna structure.
- E. Notwithstanding Subsection A of this section, but nevertheless subject to Subsection F of this section, any person who has applied for or submitted a request for the construction, erection or installation of a communications tower or personal wireless facility prior to October 6, 1997, which is the effective date of this article, shall be subject to the provisions of this article and shall be required to comply with its terms and provisions.
- F. For communications towers or personal wireless facilities that are covered under Subsections D and E of this section, the owners of such communications towers or personal wireless facilities will nonetheless be required to secure, obtain and maintain a special use permit for a communications tower or personal wireless facility prior to the time that such facility is relocated, rebuilt or modified or prior to the expiration of a current permit.

**§ 211-63. Prescreened, preevaluated Village-owned locations.**

- A. Consistent with the Village's desire to have communications towers or personal wireless facilities placed and located in areas that are deemed compatible with the surrounding designated zoning or land use and which should cause minimal disruption to or conflict with the surrounding aesthetics of a particular zoned land use, the Village will, within six months from the effective date of this article, conduct an examination of property that it owns and/or controls to determine what, if any, property meets the overall criteria noted in this article and as a result would support the location of a communications tower or personal wireless facility on such property owned by the Village.
- B. For prescreened, preevaluated Village-owned property that meets the overall criteria in this article and that is consequently deemed compatible with the designated surrounding zoning/land use, the Planning Board designates such property and locations as preapproved for the placement, construction and modification of a communications tower or personal wireless facility. As a result, a special use permit for a communications tower or personal wireless facility shall be issued, so long as the Planning Board determines that:
- (1) That the applicant's proposed communications tower or personal wireless facility is designed to be and will be structurally sound.
  - (2) The applicant's proposed communications tower or personal wireless facility will be maintained in a safe manner and in compliance with the conditions of the special use permit, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules and regulations.
  - (3) The applicant is financially sound.
  - (4) The construction of the communications tower or personal wireless facility is otherwise legally permissible, including but not limited to the following:
    - (a) All applicable fees, taxes and/or charges have been paid;
    - (b) All necessary and required licenses and permits have been acquired;
    - (c) All necessary and required insurance has been obtained and is in force and effect;
    - (d) The corporate or other business structure has not lapsed in the state;
    - (e) There is no history of violations or a lack of compliance with similar permits and applicable codes in other communities in the past three years;
    - (f) There is no other legal impediment to constructing such a facility;
    - (g) That the construction of the communications tower or personal wireless facility will occur no later than six months after the issuance of a special use permit;
    - (h) That the communications tower or personal wireless facility will be used for the provision of service, as represented in the application, within one year of the date of placement or modification;
    - (i) That the construction of the communications tower or personal wireless facility is intended primarily to provide service within the Village and is not intended primarily to provide service within an adjacent, adjoining or neighboring municipality, with service in the Village being merely incidental to the primary service area or the majority of the service area; and
    - (j) That the proposed communications tower or personal wireless facility is designed to and will accommodate at least one other provider of telecommunications service.

- C. The special use permit for a communications tower or personal wireless facility that the Planning Board issues as a result of said prescreening and preevaluation shall be a standard special use permit for a communications tower or personal wireless facility that meets at least the minimum requirements for such a special use permit, which are listed elsewhere in this article, including any required or negotiated amendments thereto.

**§ 211-64. Duration of special use permit; inspection; renewal; changed circumstances.**

- A. A special use permit for a communications tower or personal wireless facility shall have a duration of five years from the date that the special use permit for a communications tower or personal wireless facility is issued, which shall be measured from the date that the special use permit for a communications tower or personal wireless facility is executed by the Village. The Village specifically reserves the right to be the last signatory to the special use permit and any related agreement. A permit for a term longer than five years may be requested, but the Village shall not be obligated to grant such longer term unless the applicant proves, to the satisfaction of the Planning Board, that such is needed to make the project economically viable in the context of the time required to realize the payback of the initial investment with a reasonable rate of return. In other words, the test for a longer term shall be one of commercial impracticability, as defined under the Uniform Commercial Code.
- B. At any time between 12 months and six months from the date that the special use permit for a communications tower or personal wireless facility is set to expire, the holder of such a special use permit may submit a written request for renewal, but in no event shall the request be accepted later than six months from the date of expiration of the special use permit. In the event that a request for renewal is not received by the Planning Board in a timely manner, then the holder of the special use permit for a communications tower or personal wireless facility shall have been deemed to have waived any right to renewal, absent a written waiver of the requirements of this subsection by the Planning Board. In the written request for renewal, the holder of such special use permit shall note the following:
- (1) The name of the holder of the special use permit for the communications tower or personal wireless facility;
  - (2) If applicable, the number or title of the special use permit;
  - (3) The date of expiration of the special use permit;
  - (4) The requested duration or term of the special use permit, if the requested duration is for a period of time that is other than five years;
  - (5) Whether the communications tower or personal wireless facility has been moved, relocated, rebuilt, repaired or otherwise modified since the issuance of the special use permit;
  - (6) If the communications tower or personal wireless facility has been moved, relocated, rebuilt, repaired or otherwise modified, then whether the Planning Board approved such action and under what terms and conditions and whether those terms and conditions were complied with and abided by; and
  - (7) Any requests for waivers or relief of any kind whatsoever from the requirements of this article and any requirements for a special use permit.
- C. Within 90 days from the date that the special use permit is set to expire, an authorized and qualified

representative of the Village shall inspect the permitted communications tower or personal wireless facility to verify construction in compliance with the special use permit and compliance with all applicable codes, laws, rules and regulations.

- D. If, after such review, the Village determines that the permitted communications tower or personal wireless facility in compliance with the special use permit and all applicable codes, laws, rules and regulations, then the Village shall issue a renewal special use permit for a communications tower or personal wireless facility, which may include any new provisions that are mutually agreed upon or required by the force of law or regulation.
- E. If the Planning Board does not complete its review, as noted in Subsection C of this section, prior to the expiration date of the special use permit, then the applicant for the permitted communications tower or personal wireless facility shall receive an extension of the special use permit for up to six months, in order for the Village to complete its review as noted in Subsection C of this section.
- F. If the holder of a special use permit for a communications tower or personal wireless facility does not submit a request for renewal of such special use permit within the time frame noted in Subsection A of this section, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of expiration, unless the holder of the special use permit adequately demonstrates to the Planning Board that extenuating circumstances prevented a timely renewal request. If the Planning Board agrees that there were legitimately extenuating circumstances, then the holder of the special use permit may submit a renewal request within the Planning Board's new time frame under the conditions noted in Subsection B of this section. If time considerations warrant, then the existing special use permit for a communications tower or personal wireless facility may be extended for up to six months in order to allow the Village adequate time to review the renewal request.

#### **§ 211-65. Authorization to issue special use permit.**

Consistent with the authority granted by Congress in Section 704 of the Telecommunications Act of 1996, the Planning Board is authorized to issue a special use permit for the placement, construction and modification of a communications tower or personal wireless facility.

#### **§ 211-66. Contents of application for special use permit; application fee.**

- A. Except as noted in Subsection B of this section, an application, at a minimum, must contain the following information:
  - (1) The name of the applicant.
  - (2) Whether the applicant is an individual, partnership, limited partnership, limited liability company, professional corporation, corporation, professional association, governmental entity or other type of legal group or association.
  - (3) A complete, thorough and accurate description of the proposed communications tower or personal wireless facility, including a scale drawing or model of the proposed communications tower or personal wireless facility at a scale and in sufficient detail to enable the determination of the adequacy of the design and the structural integrity of the communications tower or personal wireless facility, as well as its location and placement with respect to the requested site, including required setbacks.
  - (4) The intended use of the proposed communications tower or personal wireless facility and, where applicable, noting whether the applicant has a contract, license, lease, letter of understanding,

agreement in principle or other type of agreement or arrangement with another person or persons for the use of the proposed wireless facility and, if so, a summary of the agreement or arrangement, disclosing all material terms and conditions of such, so long as such disclosure would not reasonably be expected to place the applicant at a competitive disadvantage.

- (5) The proposed location of the communications tower or personal wireless facility, including both a legal description of the location and a map of sufficient detail so as to pinpoint the exact location of the tower and other facilities on the property within 12 inches of their exact intended location.
- (6) The zoning or land use designation for the site of the proposed communications tower or personal wireless facility.
- (7) Whether the communications tower or personal wireless facility is a tower, freestanding tower, supported tower or a dual-purpose tower and whether the proposed communications tower or personal wireless facility is a camouflaged tower structure.
- (8) Whether the antennas (transmission and receiving facilities) proposed are to be located on an existing tower, freestanding tower, supported tower, a dual-purpose tower or a camouflaged tower structure or a dual-purpose antenna structure.
- (9) If it is a tower, the height of the proposed communications tower or personal wireless facility when fully and completely constructed and erected.
- (10) A certified engineering analysis and/or other data and/or documents that adequately demonstrate that, in the event of a catastrophic failure, fall or collapse of the proposed communications tower or personal wireless facility, said communications tower or personal wireless facility would fall or collapse completely within the collapse zone of the communications tower or personal wireless facility and would not damage, endanger or otherwise negatively impact the real or personal property of the surrounding property owners or the owner of the proposed site, if the property on which the communications tower or personal wireless facility is to be located is leased or rented, or endanger the safety of persons outside the collapse zone.
- (11) Written evidence that any and all applicable requirements regarding RF emission standards, as such may exist at any time, will be complied with, pursuant to applicable authority.
- (12) Documentation that the proposed communications tower or personal wireless facility will be constructed in a manner that will withstand sustained winds of at least 150 miles per hour or the expected wind load created by a five-hundred-year storm, whichever is greater.
- (13) A description of proposed steps to be taken to ensure that aesthetic considerations are properly and adequately addressed, including a rendering or other visual representation showing the effect of light emanating from the site on neighboring residences within 1/4 mile.
- (14) An acknowledgment that all property owners within 750 feet of the communications tower or personal wireless facility have been previously notified of the intended construction and use of the tower or personal wireless facility.
- (15) Whether the applicant has previously sought a special use permit for a communications tower or personal wireless facility elsewhere in the state and, if so, where and what the ultimate disposition of the application was.
- (16) Whether the applicant has ever had a special use permit, a license, a franchise, a contract or any

other legal authority revoked, rescinded, canceled or terminated, which authorized the placement of a communications tower or personal wireless facility.

- (17) A reasonably detailed description of the construction methods to be used to construct the communications tower or personal wireless facility.
- (18) The estimated time for completing constructing and/or locating the communications tower or personal wireless facility.
- (19) The proposed completion date for constructing and/or locating the communications tower or personal wireless facility.
- (20) If a tower is proposed, a detailed plan for sufficient lighting of an unobtrusive and inoffensive effect as is permissible under state and federal regulations and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring residences within 1/4 mile.
- (21) A detailed plan outlining proposed security measures, including limiting access to the communications tower or personal wireless facility and associated equipment, in order to reduce the likelihood of trespass and injury from children and others.
- (22) If a tower is proposed, a detailed plan for ingress and egress, including, where warranted and/or needed, special ingress and egress routes for emergency vehicles, such as emergency medical technician vehicles and ambulances and fire, police and other emergency and law enforcement vehicles, as well as vehicles needed for the maintenance and emergency repair of the permitted facilities.
- (23) If a tower is proposed, a reasonably detailed preventive maintenance plan, including a proposed schedule for the regular inspection of the entire structural facility and any component parts of the structural facility, in the context of a minimum commitment.
- (24) If a tower or other type of structure is proposed, certification by a professional engineer with appropriate qualifications and related experience that a topographic and geomorphologic study and analysis has been conducted and, taking into account the subsurface and substrata and the proposed drainage plan, that the site is adequate to assure the stability to the proposed communications tower or personal wireless facility on the proposed site.
- (25) An acknowledgment that the applicant has read, understands and intends to comply with this article and the applicable rules and regulations governing the issuance and enforcement of special use permits for a communications tower or personal wireless facility.
- (26) The names and qualifications of personnel who will construct the proposed communications tower or personal wireless facility, or if that is not known, then data or documentation sufficient to demonstrate to the Village that the applicant or representatives of the applicant has the technical ability, experience and wherewithal to construct the proposed communications tower or personal wireless facility.
- (27) A complete description of the services to be offered that are enabled to be provided using the communications tower or personal wireless facility, including but not limited to the frequencies to be used for each type of service, all relevant and needed RF emissions information related to the use of the facilities and the height of attachment to the tower of any and all equipment and antennas or other arrays to be attached.

- (28) An artist's rendering of the site showing the site after the completion of all construction and construction-related activity, including but not limited to the means of vehicular ingress/egress, drainage work and landscaping and screening or camouflaging work.
  - (29) Sufficient data and documentation to demonstrate that applicant has the finances and funds committed and available that are needed to construct the proposed communications tower or personal wireless facility in the manner and in the time frame proposed or as otherwise required by this article.
  - (30) If required by the Planning Board, a map showing any and/or all alternative locations in the Village that would achieve the desired service or coverage area, including situations that would require multiple towers and facilities of a lower height to achieve the desired service or coverage area, and accompanied by a cost comparison showing the estimated cost for each approach compared to the cost for the requested or preferred location, as well as a narrative describing any anticipated problems associated with the use of any alternative site or combination of sites.
  - (31) Evidence that any and all applicable state requirements have been or will be fulfilled, including obtaining any required permits or other required authorization.
- B. Notwithstanding Subsections A and C of this section, a person (including the Village) seeking a special use permit for a communications tower or personal wireless facility, in order to place such facility on land that is owned by the Village, shall, in addition, follow the procedure detailed in § 211-63 of this article.
- C. At the time that a person submits an application for a special use permit for a communications tower or personal wireless facility, such person shall also submit an application fee in an amount as set from time to time by resolution of the Board of Trustees. The application fee is in addition to any costs that the Village incurs, encounters, expends or absorbs during its review and evaluative process, and such additional costs and expenses shall be charged in accordance with the appropriate provisions of this chapter. The application fee is nonrefundable, regardless of whether or not the person receives a special use permit for a communications tower or personal wireless facility. **[Amended 2-7-2011 by L.L. No. 9-2011]**
- D. An application fee in an amount as set from time to time by resolution of the Board of Trustees is required in order to make application to extend or renew a special use permit for a communications tower or personal wireless facility. **[Amended 2-7-2011 by L.L. No. 9-2011]**
- E. In the case of a change or modification of an application during the application process and prior to the issuance or denial of a special use permit for a communications tower or personal wireless facility or a change or modification in the plans submitted as part of an application for a special use permit for a communications tower or personal wireless facility, the applicant shall pay to the Village a nonrefundable change of request fee, in an amount as may be established by the Village from time to time. Moreover, to minimize changes or revisions in applications that are primarily for the convenience of the applicant or service provider and on which the efficacy of the project or venture does not hinge, after the first change or modification, each additional or subsequent change or modification of the application or of the plans submitted as part of an application for a special use permit for a communications tower or personal wireless facility prior to the issuance or denial of the special use permit shall require an additional fee that shall increase in increments as established by the Village, which shall accompany each requested change submitted either for the same site or under the same permit application. For purposes of example only, a second change or modification would require a fee consisting of the amount for an initial application plus the increment established by the

Village for considering changes or revisions to an initial application.

**§ 211-67. Review of certain factors in evaluating application and merits for special use permit.**

- A. In its review of the application for a special use permit for personal wireless facilities, the Planning Board shall evaluate certain factors in determining whether to grant or deny a special use permit for personal wireless facilities. Those certain evaluative factors are as follow:
- (1) The proposed duration of the special use permit.
  - (2) The proposed location of the communications tower or personal wireless facility.
  - (3) The zoning or land use designation of the proposed wireless facility.
  - (4) If the proposed communications tower or personal wireless facility is a tower or a freestanding antenna or supported antenna, then the height of the tower or freestanding antenna or supported antenna.
  - (5) The proposed or the expected or the actual means of access to the communications tower or personal wireless facility.
  - (6) The number of communications towers or personal wireless facilities already existing within a specific section or grid of the Village or already existing within the existing zoning or land use designation and the identification of such on a map to a scale of one inch to 1,000 feet, such map to be provided by the applicant.
  - (7) The proximity of the proposed communications tower or personal wireless facility to residential units or residential subdivisions within 1/2 mile of the proposed site.
  - (8) The proposed aesthetic treatment surrounding the communications tower or personal wireless facility, showing the type of structure and showing any proposed landscaping, plantings, screening, etc., of the property immediately surrounding the communications tower or personal wireless facility.
  - (9) The projected collapse zone of the proposed communications tower or personal wireless facility in relation to surrounding buildings and property adjacent to the site.
  - (10) Plans to visually blend the proposed communications tower or personal wireless facility with the character of surrounding buildings and facilities.
  - (11) If the proposed communications tower or personal wireless facility is part of a camouflaged tower or antenna, then the manner in which it is to be camouflaged.
  - (12) If the transmission facilities to be attached to or associated with the proposed communications tower or personal wireless facility will comply with all applicable RF emissions limits and requirements.
  - (13) Any other factors that are required to be evaluated by the zoning or land use code of the Village.
  - (14) Any other factors that are necessary to be evaluated in order to protect the health, safety and welfare of the residents of the Village, including, but not limited to, those items listed in § 211-66 of this article.
- B. In addition to the factors listed in Subsection A of this section, the Planning Board may consider



alternatives, if there are any, to granting and/or issuing a special use permit for a communications tower or personal wireless facility in a different section, quadrant or grid of the Village in relation to the Zoning Map of the Village or at a different location within the Village. Among the alternatives are the grant of a special use permit for a communications tower or personal wireless facility at a preapproved or prescreened Village-owned location.

- C. If the proposed or requested site or location for the communications tower or personal wireless facility is unacceptable for any permissible reason and if there are alternative locations that are acceptable to the Village, the Village may require the applicant to locate at one or more of the alternative sites, so long as doing so does not have the effect of prohibiting the emergence of a new service provider or is not commercially impracticable as defined under the United States Uniform Commercial Code.

**§ 211-68. Time frames for examination and evaluation of application; submittal to Planning Board.**

- A. From the date that a person submits a completed application for a special use permit for a communications tower or personal wireless facility, the Village shall have up to 120 days in which to examine and evaluate the application in a manner consistent with both the policies and evaluative criteria outlined in this article.
- B. Notwithstanding Subsection A of this section, the Village may request additional information from an applicant if needed, even if the application is substantially completed, in order for the Village to conclude its evaluation and examination of said application. The applicant shall comply with such a request in a timely manner. However, such a request shall not extend the time frame for the Village to conclude its evaluation and examination of said application, unless the information is not provided within the time frame established by the Village. In the event that the requested information is not provided in a timely manner, the time for the evaluation and examination of said application shall be tolled until the requested information is provided.
- C. On the date that the Village concludes its examination and evaluation of an application for a special use permit for a communications tower or personal wireless facility, it shall:
- (1) Stamp, mark or otherwise note on the application that the examination and evaluation process (together with a recommendation, if one is made) has concluded; and
  - (2) Process the application and refer the application to the Planning Board to conduct the necessary evaluation and review.

**§ 211-69. Planning Board action on special use permit application.**

- A. The Planning Board shall complete its examination and evaluation within a reasonable period of time as prescribed by law.
- B. The Planning Board shall consider an application for a special use permit for a communications tower or personal wireless facility at a hearing open to the public that is duly noted and/or advertised to the public according to applicable rules. The public hearing shall allow for public input from interested parties.
- C. The Village shall give the applicant at least 21 days' notice in advance of the public hearing to consider the applicant's application for a special use permit for a communications tower or personal wireless facility. The applicant may request a rescheduling of the public hearing date, and for sufficient cause, the Planning Board may reschedule the public hearing date. However, in such a case,

the Planning Board shall be under no obligation to formally consider the application within the time frame noted in Subsection A of this section. This specifically means that if an applicant requests an earlier date for the public hearing than was originally set and such a request is granted, then the Planning Board shall have until the expiration of time allowed under Subsection A as measured from the date of the hearing as originally set.

- D. During the hearing, the Planning Board shall receive input from the applicant; staff, representatives and consultants for the Village; the Planning Board; and the public, which includes representatives from homeowners' or civic associations. During the public hearing, the Planning Board may question any person that speaks for or against the issuance of a special use permit for a communications tower or personal wireless facility.
- E. After formally considering the application, the Planning Board may take one of three actions:
  - (1) Approve the special use permit for a communications tower or personal wireless facility.
  - (2) Conditionally approve the special use permit for a communications tower or personal wireless facility.
  - (3) Deny the special use permit for a communications tower or personal wireless facility.
- F. If the Planning Board approves the special use permit for a communications tower or personal wireless facility, then the applicant shall be notified in writing within 10 calendar days of the Planning Board's action, and the special use permit shall be issued and executed within 30 days after such approval, with the Village reserving the right to be the last signatory to the special use permit and any related agreement.
- G. If the Planning Board denies the special use permit for a communications tower or personal wireless facility, then the applicant shall be notified in writing within 10 calendar days of the Planning Board's action. The notification shall explain in detail the reasons for the denial and shall, where practical, reference any deficiencies among the evaluative criteria noted elsewhere in this article.
- H. If the Planning Board conditionally approves the special use permit for a communications tower or personal wireless facility, then the applicant shall be notified within 10 calendar days of the Planning Board's action. The notification shall precisely detail the reasons for the conditional approval. A conditional approval for a special use permit for a communications tower or personal wireless facility may be granted in those circumstances where only minor deficiencies or issues in the evaluative process remain, such as final approval of specific details of an acceptable plan regarding the aesthetic treatment. Under no circumstances shall such conditional approval extend beyond 60 days from the date of the Planning Board's action.
- I. In the case of a conditional approval of a special use permit for a communications tower or personal wireless facility, such special use permit shall not be issued until the Planning Board is satisfied that all legal, technical, safety, aesthetic, financial and conditional concerns have been met or exceeded.

#### **§ 211-70. Extent and parameters of special use permit.**

The extent and parameters of a special use permit for a communications tower or personal wireless facility shall be as follows:

- A. Such special use permit shall be nonexclusive;
- B. Such special use permit shall not be assignable or transferable without the express written consent of

the Planning Board;

- C. Such special use permit shall not be extended or renewed, except in accordance with the procedures detailed in this article; and
- D. Such special use permit may be revoked, canceled or terminated for a violation of the conditions and provisions of the special use permit for a communications tower or personal wireless facility or for a violation of this article.

**§ 211-71. Compatible/noncompatible zoning or land use designations or locations; waivers.**

- A. Except as noted in Subsection E of this section, a communications tower or personal wireless facility must be located in a compatible location and/or zoning or land use designation.
- B. Consistent with the Village's zoning or land use code, a permitted communications tower or personal wireless facility may be placed in areas designated as M-1 of the Village Zoning Map.
- C. Consistent with the Village's zoning or land use code, a communications tower or a personal wireless facility may not be placed in any other location and/or zoning or land use designated on the Village Zoning Map other than those locations designated as an M-1 Zone on the Village Zoning Map.
- D. While not limited to the following, locating a communications tower or personal wireless facility in a zoning or land use designation noted in Subsection C of this section would not be compatible for the following reasons:
  - (1) Conflict with safety and safety-related codes and requirements;
  - (2) Conflict with traffic needs or traffic laws or definitive plans for changes in traffic flow or traffic laws;
  - (3) Conflict with the historic nature of a neighborhood or residential section of the Village;
  - (4) The use or construction of a communications tower or personal wireless facility is contrary to an already stated purpose of a specific zoning or land use designation; or
  - (5) The placement and location would create an unacceptable risk or the probability of such to residents, the public, Village employees and agents or employees of the service provider.
- E. Notwithstanding the other provisions of this section, a person may seek to locate a communications tower or personal wireless facility within a noncompatible zoning or land use designation. However, the person seeking such an exception must satisfactorily demonstrate to the Planning Board the reason or reasons why such a waiver should be granted and the hardship that would be incurred by the applicant or service provider if not granted or the benefits that might inure because of the exemption and the beneficiaries of the exemption.
- F. The Planning Board may grant a waiver for one or more of the following reasons:
  - (1) The ruling of a state or federal agency of competent jurisdiction and authority requires the location of a communications tower or personal wireless facility within a noncompatible zoning or land use designation.
  - (2) Federal or state law requires the location of a communications tower or personal wireless facility within a noncompatible zoning or land use designation.

- (3) A court or administrative body of competent jurisdiction and authority requires or orders the location of a communications tower or personal wireless facility within a noncompatible zoning or land use designation.
  - (4) There is no other location or combination of locations available within the Village that would serve the intended purpose of the proposed site for the communications tower or personal wireless facility.
  - (5) The proposed location for the proposed communications tower or personal wireless facility is an essential and/or necessary component of an overall telecommunications network for which there is no comparable or functional siting alternative as regards the desired service area.
  - (6) The proposed location for the proposed communications tower or personal wireless facility is an essential and/or necessary component of an overall telecommunications plan of the Village.
- G. Notwithstanding the fact that the Planning Board may grant a waiver with respect to the zoning or land use designation, a proposed communications tower or personal wireless facility must still satisfy all other evaluative criteria before the Planning Board grants a special use permit for a communications tower or personal wireless facility.

**§ 211-72. Minimum contents of special use permit.**

- A. Should the Planning Board issue a special use permit for a communications tower or personal wireless facility, such special use permit shall be sufficiently detailed so as to clearly delineate the rights, duties and obligations of the parties concerned.
- B. At a minimum, the special use permit shall contain provisions addressing and clearly delineating the following:
- (1) Duration of the special use permit, including a specific expiration date;
  - (2) Insurance requirements and obligations;
  - (3) Indemnification requirements and obligations;
  - (4) Agreement to adherence to all applicable laws, codes, rules, regulations and fees requirements;
  - (5) If applicable, conditions or provisions concerning all matters relating to site preparation;
  - (6) Conditions or provisions concerning the adherence to any and all maintenance standards and requirements;
  - (7) Conditions or provisions concerning an assignment or transfer of the special use permit;
  - (8) Conditions or provisions concerning the repair, rebuild or modification of the communications tower or personal wireless facility;
  - (9) Conditions or provisions concerning the removal of any communications tower or personal wireless facility; and
  - (10) Termination, revocation, and/or cancellation of the special use permit.

**§ 211-73. Adherence to state and/or federal rules and regulations.**

- A. To the extent that the holder of a special use permit for a communications tower or personal wireless facility has not received relief or is otherwise exempt from appropriate state and/or federal agency rules or regulations, then the holder of such a special use permit shall adhere to and comply with all applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards and provisions of any state or federal agency including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security, are changed and/or are modified during the duration of a special use permit for a communications tower or personal wireless facility, then the holder of such a special use permit shall conform the permitted communications tower or personal wireless facility to the applicable changed and/or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision or sooner as may be required by the issuing entity.

#### **§ 211-74. Insurance.**

- A. A holder of a special use permit for a communications tower or personal wireless facility shall secure and at all times maintain public liability insurance, property damage insurance and umbrella insurance coverage for the duration of the special use permit in at least the following amounts:
  - (1) Public liability: \$1,000,000 per person/per occurrence.
  - (2) Property damage: \$1,000,000 per any one claim.
  - (3) Umbrella liability: \$5,000,000.
- B. The public and personal liability and property damage insurance policy shall specifically include the Village and its officials, employees and agents as additional insureds.
- C. The public and personal liability insurance and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the state and which has one of the three highest ratings or best ratings from the Alfred M. Best Company or an equally recognized rating company.
- D. The public liability and property damage insurance policy shall contain an endorsement obligating the insurance company to furnish the Planning Board with at least 30 days' written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the Planning Board at least 15 days before the expiration of the insurance which such policies are to renew or replace.
- F. Before construction of a permitted communications tower or personal wireless facility is initiated, but in no case later than 15 days after the grant of the special use permit, the holder of the special use permit shall deliver to the Village Clerk a copy of each of the policies or certificates representing the insurance in the required amounts.
- G. Absent a written extension of time for the delivery of the required copy(s) of the insurance policy or certificate(s) of insurance, should an applicant for a special use permit or a communications tower or personal wireless facility fail to provide said proof of insurance in a timely manner as set forth in Subsection F of this section, the special use permit shall be deemed revoked without the need for further proceedings or action by the Village, except that the Village must, within five days of the

deadline, notify the holder of the special use permit of the revocation in writing.

**§ 211-75. Indemnity.**

- A. Any special use permit issued for the construction and/or location of a telecommunications facility shall contain a provision with respect to indemnity. Such a provision shall require the holder of the special use permit to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless and exempt the Village, Board and Supervisor, their officers, agents, servants and employees, from any and all penalties, damage or charges arising out of claims, suits, demands, causes of action or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of or are caused by the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of a telecommunications facility, specifically including a tower or antenna, within the Village. With respect to the penalties, damages or charges referenced herein, reasonable attorney's fees, consultant fees and expert witness fees are included in those costs that are recoverable by the Village.
- B. Notwithstanding the requirements noted in Subsection A of this section, an indemnity provision will not be required in those instances where the Village itself applies for and secures a special use permit for a communications tower or personal wireless facility. The rationale for such an exemption is that the Village need not indemnify itself against loss or damage and, therefore, in such an instance, requiring an indemnity provision would be unnecessary.

**§ 211-76. Construction standards.**

- A. A person who holds a special use permit for a communications tower or personal wireless facility shall construct, operate, maintain, repair, modify or restore the permitted communications tower or personal wireless facility in strict compliance with all current technical, safety and safety-related codes adopted by the Village, the county, the state or the United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors.
- B. The codes referred to in Subsection A are codes that include but are not limited to construction, building, electrical, fire, safety, health and zoning or land use codes.

**§ 211-77. Maintenance standards.**

For the duration of any special use permit for a communications tower or personal wireless facility, the permitted communications tower or personal wireless facility must adhere to the following minimum maintenance standards:

- A. In order to minimize visual sighting concerns and the likelihood of deterioration affecting the structural integrity of the structural components of any permitted communications tower or personal wireless facility or a change in the condition of the structural components of the facility, if the permitted communications tower or personal wireless facility is a tower, then the tower shall be maintained in good condition at all times, shall be coated with a galvanized steel finish or other rust-resistant metal or be painted a neutral color using a rust-preventive paint or other treatment of proven good quality, subject to any applicable standards and requirements of the FAA and the National Association of Tower Erectors;

- B. If the permitted communications tower or personal wireless facility is a dual-purpose tower, then the openings in the other structure that is not a tower, such as a building or other enclosure and the equipment in the other structure shall be protected, including by fire sprinklers where applicable and/or required, against ingress or penetration and resultant damage by fire and windblown embers, or any other factor that could cause a fire;
- C. Any signs located on a permitted a communications tower or personal wireless facility must be consistent and compatible with the aesthetic treatment of the site as approved by the Planning Board, must be located so as not to interfere with routine, periodic and/or customary maintenance of the permitted communications tower or personal wireless facility and, if intended for the public, must be plainly visible and able to be read from a distance of no less than the outer limit of the collapse zone of the permitted communications tower or personal wireless facility; and
- D. Any debris, including but not limited to tree limbs, grass cuttings, abandoned solid waste or trash, construction materials or any other materials which would, in the sole determination of the Village, pose a threat to the health or safety of persons or property, whether real or personal, or reasonably create an aesthetic concern, shall not at any time be permitted to exist but, in any event, shall be removed within 24 hours of notification by the Village.

**§ 211-78. Reservation of authority to inspect.**

- A. In order to verify that not only the holder of a special use permit for a communications tower or personal wireless facility, but also any and all lessees, renters and/or licensees of a communications tower or personal wireless facility, places and constructs such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning or land use codes or other applicable requirements, the Village reserves the right to inspect all facets of said holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including but not limited to towers, antennas and buildings or other structures constructed or located on the permitted site. This specifically includes any temporary structure or facility, as defined in § 211-60 of this article.
- B. The Village shall pay for all of its costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information or necessary access to such facilities, including towers, antennas and appurtenant or associated facilities, or refusal to otherwise cooperate with the Village with respect to an inspection.
- C. Payment of such reimbursement shall be made to the Village within 30 days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this article, said reimbursement payment must still be paid to the Village, and the reimbursement shall be placed in an escrow account established by the Village specifically for this purpose, pending the final decision on appeal.

**§ 211-79. Permits and licenses.**

A holder of a special use permit for a communications tower or personal wireless facility shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or ordinance and must maintain the same, in full force and effect, for as long as required by the Village or other appropriate governmental entity or agency.

**§ 211-80. Default and/or revocation of special use permit.**

- A. When any permitted communications tower or personal wireless facility is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with either the Village's zoning or land use code or the provisions of this article or of the special use permit, then the Planning Board shall notify the holder of the special use permit for a communications tower or personal wireless facility of the specific inconsistent, noncompliant or violative use or situation. Such notice shall indicate that the communications tower or personal wireless facility and any appurtenant or related facilities located at the permitted site is in violation of or noncompliance with the requirements of this article or the special use permit and that the holder of the special use permit is in default of its special use permit and that the facilities must be returned to consistent, compliant use and status within 10 days of the date of the postmark of the notice or of the date of personal service of the notice, whichever is applicable. Notwithstanding anything to the contrary in this subsection, if the situation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, in the sole determination of the Village, the Village may, at its sole discretion, order the violative or noncompliant situation remedied within 24 hours.
- B. If, within 10 days, the affected and noncompliant communications tower or personal wireless facility is not brought into compliance with either the zoning or land use or with an applicable law, rule or regulation or substantial steps are not taken in order to bring the affected communications tower or personal wireless facility into compliance with either this article, the zoning or land use code or with applicable law, rule or regulation, then the Planning Board may revoke such special use permit for a communications tower or personal wireless facility and shall notify the holder of the special use permit within 48 hours of such action.

#### **§ 211-81. Removal.**

- A. Under the following circumstances, the Planning Board may determine that the health, safety and welfare interests of the Village warrant and require the removal of a communications tower or personal wireless facility:
- (1) A permitted communications tower or personal wireless facility has been abandoned for a period exceeding 30 days, which in this case means not used for the intended and permitted purpose for a period of 30 days, except for situations caused by the commonly recognized definition of force majeure or acts of God of an extraordinary and catastrophic nature and effect.
  - (2) A permitted communications tower or personal wireless facility falls into such a state of disrepair that it creates a health or safety hazard for the public.
  - (3) The Planning Board elects not to renew the special permit for a communications tower or personal wireless facility.
  - (4) A communications tower or personal wireless facility has been located, constructed or modified on property located within the Village without having obtained the required special use permit or other necessary authorization.
- B. If the Planning Board makes such a determination as noted in Subsection A of this section, then the Planning Board shall notify the holder of the special use permit for the communications tower or personal wireless facility within 48 hours that said communications tower or personal wireless facility must and shall be removed, unless the Planning Board approves an interim temporary use agreement/permit, such as to enable the sale of the communications tower or personal wireless facility.
- C. If a communications tower or personal wireless facility is not removed voluntarily within 90 days after the permit holder has received notice or substantial progress has not been made to remove the



communications tower or personal wireless facility within 90 days, then the Planning Board may order officials or representatives of the Village to remove the communications tower or personal wireless facility at the sole expense of the owner or permit holder or the Village may take possession of the communications tower or personal wireless facility.

- D. If, pursuant to Subsection C of this section, officials, employees or representatives of the Village remove a communications tower or personal wireless facility and the owner of the communications tower or personal wireless facility does not claim the property within 10 days of its removal, then the Planning Board may take whatever steps are available under state law to declare the communications tower or personal wireless facility surplus and sell the facility and its components.
- E. If the Planning Board approves an interim temporary use agreement/permit for the communications tower or personal wireless facility, such agreement/permit shall be for no more 90 days, during which time a suitable plan for removal or conversion or relocation of the affected communications tower or personal wireless facility shall be developed by the holder of the permit, subject to the approval of the Village, and an agreement to such plan shall be executed by the holder of the permit and the Village. If such a plan is not developed within the ninety-day time frame, then the Village may take possession of and dispose of the effected communications tower or personal wireless facility in the manner noted in Subsection C of this section.

#### **§ 211-82. Appeals.**

To the extent permitted by federal and state law, any person adversely affected by the Planning Board's actions with respect to an initial application, renewal application or revocation of a special use permit for a communications tower or personal wireless facility shall have the right to appeal the adverse decision to the Planning Board and, if necessary, subsequently to the Village Board Planning Board. In the event of such an internal administrative appeal, to be consistent with the spirit and intent of Section 704 of the Telecommunications Act of 1996, said appeal shall be handled on an expedited basis, within 30 days of the date of the appeal. In the event of an appeal to a state or federal court or administrative agency of competent jurisdiction (including, where applicable, the PSC the FCC and the FAA), said appeal shall be filed in the manner and procedure prescribed by federal and state law and within the time frames noted under federal and state law.

#### **§ 211-83. Periodic regulatory review by Board.**

- A. Between 210 and 30 days prior to the fourth and eighth anniversary dates of the effective date of this article, the Board shall conduct a review and examination of this entire article.
- B. In conducting such a periodic review and examination of this article, the Board shall consider, among other things, the following:
  - (1) Whether one or more provisions have been superseded, clarified or modified by federal or state law.
  - (2) Whether one or more provisions have been superseded, clarified or modified by a subsequent binding judicial decision.
  - (3) Whether one of more provisions are unnecessary or ineffective in light of emerging technologies.
  - (4) Whether new or different trends relating to a communications tower or personal wireless facility warrant or necessitate additional safeguards for the public at large.

- (5) Whether subsequent safety or technological advances and/or innovations have lessened the need for one or more provisions.
- C. If after such a periodic review and examination of this article, the Board determines that one or more provisions of this article should be amended, repealed, revised clarified, or deleted, then the Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Village, the Board may repeal this entire article at any time.
- D. Notwithstanding the provisions of Subsections A through C of this section, the Board may, at any time and in any manner (to the extent permitted by federal, state or local law), amend, add, repeal and/or delete one or more provisions of this article.

#### **§ 211-84. Penalties for offenses.**

- A. In the event of a violation of this article, the Village may impose and collect, and the holder of the special use permit for a communications tower or personal wireless facility shall pay to the Village, fines as set forth hereafter in this section.
- B. Each day that a violation exists after 48 hours following written notification by the Village to the permittee shall constitute a separate violation, subject to a separate fine.
- C. For situations that create an imminent threat to the health or safety of the public or the employees of any user or occupant of the communications tower or personal wireless facility, there shall be no requirement for written notification by the Village to the holder of the special use permit for a communications tower or personal wireless facility. Rather, in such situations, verbal notification, delivered personally or telephonically, shall be deemed sufficient notice.
- (1) For violation of any safety-related requirement: \$1,000 per day per occurrence.
- (2) For failure to maintain the permitted site in a safe condition and as required, \$500 per day per occurrence.
- (3) For undertaking any change or modification in or to a communications tower or personal wireless facility without the express written permission of the Village: \$500 per day per occurrence.
- (4) For failure to comply with any applicable Village, county, state or federal laws, ordinances, rules, regulations or requirements: \$100 per day per occurrence.
- D. Notwithstanding anything in this section or any other section of this article, the holder of the special use permit for a communications tower or personal wireless facility may not use the payment of fines, liquidated damages or other penalties as may permitted and assessed to evade or avoid compliance with this article or any section of this article. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit.

#### **§ 211-85. Relief.**

Any applicant desiring relief or exemption from any aspect or requirement of this article may request such from the Planning Board, provided that the relief or exemption is contained in the original application for either a special use permit or, in the case of an existing or previously granted special use permit, a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Planning Board. However, the burden of proving the need for

the requested relief or exemption and its lack of significant effect on the Village or its residents or other service providers is solely on the applicant to prove to the satisfaction of the Planning Board. The applicant shall bear all costs of the Planning Board or the Village in considering the request, and the relief shall not be transferable to a new or different holder of the permit or owner of the tower or facilities without the specific written permission of the Planning Board.

#### ARTICLE XIV

### **Stormwater Management and Erosion and Sediment Control**

**[Added 2-19-2008 by L.L. No. 7-2011]**

#### **§ 211-86. Title.**

This article may be known and cited as the "Stormwater Control Ordinance for the Village of Buchanan."

#### **§ 211-87. Definitions; word usage.**

For purposes of this article and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations and their derivations shall have the meanings given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number shall include the plural number. The word "shall" is always mandatory, and not merely directory.

**AGRICULTURAL ACTIVITY** — The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation or the construction of new structures associated with agricultural activities.

**APPLICANT** — A property owner or agent of a property owner who has filed an application for a land development activity.

**BUILDING** — Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

**CHANNEL** — A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

**CLEARING** — Any activity that removes the vegetative surface cover.

**DEDICATION** — The deliberate appropriation of property by its owner for general public use.

**DEPARTMENT** — The New York State Department of Environmental Conservation.

**DESIGN MANUAL** — The New York State Stormwater Management Design Manual, most recent, updated version, that serves as the official guide for stormwater management principles, methods and practices.

**DEVELOPER** — A person who undertakes land development activities.

**EROSION CONTROL MANUAL** — The most recent version of the "New York Standards and Specifications for Erosion and Sediment Control" manual, commonly known as the "Blue Book."

**GRADING** — Excavation or fill of material, including the resulting conditions thereof.

**IMPERVIOUS COVER** — Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

**INDUSTRIAL STORMWATER PERMIT** — A State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION — The process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND — An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

LAND DEVELOPMENT ACTIVITY — Construction activity, including clearing, grading, excavating, soil disturbance or placement of fill, that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER — The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

MAINTENANCE AGREEMENT — A legally recorded document that acts as a property deed restriction and which provides for long-term maintenance of stormwater management practices.

NONPOINT SOURCE POLLUTION — Pollution from any source, other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, mining, construction, subsurface disposal and urban runoff sources.

PHASING — Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN — Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PROJECT — Land development activity.

RECHARGE — The replenishment of underground water reserves.

SEDIMENT CONTROL — Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS — Cold-water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES (GP-02-01) — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS (GP-02-02) — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA-established water quality standards and/or to specify stormwater control standards.

STABILIZATION — The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER — An order issued which requires that all construction activity on a site be stopped.

STORMWATER — Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOTSPOT — A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT — The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

**STORMWATER MANAGEMENT FACILITY** — One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

**STORMWATER MANAGEMENT OFFICER** — An employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

**STORMWATER MANAGEMENT PRACTICES (SMPs)** — Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

**STORMWATER POLLUTION PREVENTION PLAN (SWPPP)** — A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

**STORMWATER RUNOFF** — Flow on the surface of the ground, resulting from precipitation.

**SURFACE WATERS OF THE STATE OF NEW YORK** —

- A. Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.
- B. Storm sewers and waste treatment systems, including treatment ponds or lagoons, which also meet the criteria of this definition are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

**WATERCOURSE** — A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

**WATERWAY** — A channel that directs surface runoff to a watercourse or to the public storm drain.

#### **§ 211-88. Purpose; objectives.**

- A. The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the following findings of fact:
  - (1) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition.
  - (2) This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species.
  - (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat.
  - (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing stream bank erosion and sedimentation.
  - (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream base flow.

- (6) Substantial economic losses can result from these adverse impacts on the waters of the municipality.
  - (7) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities.
  - (8) The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.
  - (9) Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.
- B. As such, the Board adopts an overall policy with respect to stormwater management and erosion control for the express purpose of achieving the following objectives:
- (1) Meet the requirements of minimum measures 4 and 5 of the SPDES general permit for stormwater discharges from municipal separate stormwater sewer systems (MS4s), Permit No. GP-02-02, or as amended or revised;
  - (2) Require land development activities to conform to the substantive requirements of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) general permit for construction activities, GP-02-01, or as amended or revised;
  - (3) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;
  - (4) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
  - (5) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
  - (6) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

**§ 211-89. Applicability; Stormwater Management Officer.**

- A. This article shall be applicable to all land development activities as defined in § 211-87.
- B. The municipality shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The Stormwater Management Officer may:
- (1) Review the plans;
  - (2) Upon approval by the Village Board of Trustees of the Village of Buchanan, engage the services of a registered professional engineer to review the plans, specifications and related documents, at a cost not to exceed a fee schedule established by said governing board; or

- (3) Accept the certification of a licensed professional that the plans conform to the requirements of this article.
- C. All land development activities subject to review and approval by the Planning Board under site plan development regulations shall be reviewed subject to the standards contained in this article.
- D. All land development activities not subject to review as stated in § 211-89C shall be required to submit a stormwater pollution prevention plan (SWPPP) to the Stormwater Management Officer, who shall approve the SWPPP if it complies with the requirements of this article.

#### **§ 211-90. Exemptions.**

The following activities may be exempt from review under this article:

- A. Agricultural activity as defined in this article.
- B. Routine maintenance activities that disturb less than one acre and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- C. Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- D. Any part of a subdivision if a plat for the subdivision has been approved by the Village of Buchanan on or before the effective date of this article.
- E. Land development activities for which a building permit has been approved on or before the effective date of this article.
- F. Cemetery graves.
- G. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- H. Emergency activity immediately necessary to protect life, property or natural resources.
- I. Activities of an individual engaging in home gardening by growing flowers, vegetables and other plants primarily for use by that person and his or her family.
- J. Landscaping and horticultural activities in connection with an existing structure.

#### **§ 211-91. Stormwater pollution prevention plan required.**

No application for approval of a land development activity shall be reviewed until the appropriate board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this article.

#### **§ 211-92. Contents of stormwater pollution prevention plan.**

- A. All SWPPPs shall provide the following background information and erosion and sediment controls:
  - (1) Background information about the scope of the project, including location, type and size of project;
  - (2) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance;

areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges. The site map should be at a scale no smaller than one inch equals 30 feet;

- (3) Description of the soil(s) present at the site;
  - (4) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than 2.5 acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
  - (5) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
  - (6) Description of construction and waste materials expected to be stored on site, with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
  - (7) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project closeout;
  - (8) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
  - (9) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
  - (10) Temporary practices that will be converted to permanent control measures;
  - (11) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
  - (12) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
  - (13) Name(s) of the receiving water(s);
  - (14) Delineation of SWPPP implementation responsibilities for each part of the site;
  - (15) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
  - (16) Any existing data that describes the stormwater runoff at the site.
- B. Land development activities as defined in § 211-87 of this article and meeting Condition A, B or C below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth below, as applicable:



- (1) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
- (2) Condition B: stormwater runoff from land development activities disturbing five or more acres.
- (3) Condition C: stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.

C. SWPPP requirements for Conditions A, B and C:

- (1) All information in § 211-92 of this article.
- (2) Description of each post-construction stormwater management practice.
- (3) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice.
- (4) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
- (5) Comparison of post-development stormwater runoff conditions with predevelopment conditions.
- (6) Dimensions, material specifications and installation details for each post-construction stormwater management practice.
- (7) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice.
- (8) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.
- (9) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 211-97 of this article.
- (10) For Condition A, the SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this article.

**§ 211-93. Other environmental permits.**

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

**§ 211-94. Contractor certification.**

- A. Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of

law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

- B. The certification must include the name and title of the person providing the signature; address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- C. The certification statement(s) shall become part of the SWPPP for the land development activity.

**§ 211-95. Copy of SWPPP to be retained at site.**

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

**§ 211-96. Performance and design criteria.**

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

- A. Technical standards. For the purpose of this article, the following documents shall serve as the official guide and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this article.
  - (1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual").
  - (2) The New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual").
- B. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in § 211-96A, and the SWPPP shall be prepared by a licensed professional.
- C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the state of New York.

**§ 211-97. Maintenance and repair of stormwater management facilities.**

- A. Maintenance and inspection during construction.
  - (1) The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
  - (2) For land development activities as defined in § 211-87 and meeting Condition A, B or C in § 211-92B, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and

within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site log book.

- B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village of Buchanan to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this article. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Village of Buchanan.
- C. Maintenance after construction.
- (1) The owner or operator of permanent stormwater management practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. Proper operation and maintenance also includes, as a minimum, the following:
    - (a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this article.
    - (b) Written procedures for operation and maintenance and training new maintenance personnel.
    - (c) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 211-96.
- D. Maintenance agreements. The Village of Buchanan shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule B of this article, entitled "Sample Stormwater Control Facility Maintenance Agreement."<sup>9</sup> The Village of Buchanan, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.
- E. Maintenance Guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the ((City/Town/Village) of ) with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the ((City/Town/Village) of ) may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- F. Recordkeeping. The ((City/Town/Village) of ) may require entities subject to this law to maintain records demonstrating compliance with this law.

**§ 211-98. Severability.**

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this article shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this article.

**§ 211-99. When effective.**

This article shall be effective upon filing with the office of the Secretary of State.

**§ 211-100. Performance guarantees.**

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Village of Buchanan in its approval of the stormwater pollution prevention plan, as a condition of approval of under this article, the SWPPP is subject to the same conditions as set forth in § 211-28.

**§ 211-101. Enforcement; penalties for offenses.**

- A. Notice of violation. When the Village of Buchanan determines that a land development activity is not being carried out in accordance with the requirements of this article, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
- (1) The name and address of the landowner, developer or applicant;
  - (2) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
  - (3) A statement specifying the nature of the violation;
  - (4) A description of the remedial measures necessary to bring the land development activity into compliance with this article and a time schedule for the completion of such remedial action;
  - (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
  - (6) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.
- B. Stop-work orders. The Village of Buchanan may issue a stop-work order for violations of this article. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Village of Buchanan confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.
- C. Violations. Any land development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.
- D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were

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

- E. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this article, the Stormwater Management Officer may prevent the occupancy of said building or land.
- F. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Village of Buchanan may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

**§ 211-102. Fees for services.**

The Village of Buchanan may require any person undertaking land development activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Village of Buchanan or performed by a third party for the Village of Buchanan.<sup>22</sup>

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10. Editor's Note: Former Art. XV, Senior Multifamily Housing, added 7-5-2016 by L.L. No. 1-2016, consisting of §§ 211-103 through 211-107, which immediately followed this section, was repealed 10-2-2018 by L.L. No. 4-2018.

