

of the Town Law.

## ARTICLE 8

### NON CONFORMING BUILDINGS, LOTS AND SIZES

#### **8.10** GENERAL

At the time of the effective date of this ordinance, or any subsequent amendment, any existing building, structure, lot or use of land, which does not conform to the applicable district regulations, may be continued. However, such continuance shall be subject to the provisions of this Article.

#### **8.20** CONSTRUCTION STARTED PRIOR TO ENACTMENT OF ORDINANCE

Any building or structure for which construction was started prior to the effective date of this ordinance, may be completed and used in accordance with the plans and specifications for, the building or structure. However, copy of such plans and specifications must be submitted to the zoning enforcement officer within three (3) months after the date of the ordinance, or any subsequent amendment if they have not already been submitted.

#### **8.30** TERMINATION

##### **8.31** Discontinuance

Any non -conforming use of land, building or structure that has been discontinued for one (1) year shall not be reestablished. Any future use of this land, building or structure conform to the regulations of this ordinance.

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##### **8.32** Cessation

The following non-conforming uses and buildings shall be discontinued on or before of the specified period of time after the effective date of this ordinance, or any subsequent amendment.

- a. Signs. Any non-conforming sign shall be removed or altered, so as to conform, within three (3) years of the effective date.

- b. Open Storage Yards. Any yard used for the open storage of materials or equipment shall be removed or altered, so as to conform, within three (3) years of the effective date.

**8.40**      **CHANGE TO OTHER NON CONFORMING USE**

A non-conforming use of a building, structure or land may be changed to another non-conforming use more nearly conforming to the requirements of the district in which it is situated. Such change shall require the approval of the Board of Appeals.

**8.50**      **RESTORATION**

Any nonconforming building or structure, or any building or structure containing a nonconforming use that is damaged by fire or other causes shall not be reused, reoccupied and or reconstructed with the exception, of the replacement of a non- conforming structure or non-conforming residential accessory use to its original form compliant with current New York State Building and Fire Code after destruction by fire or natural disaster, which shall be permitted as a special use in C1 (commercial) districts.

**8.60**      **ALTERATIONS AND EXTENSIONS**

Alterations and extensions to a non conforming building or structure, a non conforming structure containing a non conforming use are permitted. However, such alteration or extension shall comply with the provisions of this ordinance, and it shall not increase the degree of, nonconformity which existed prior to such alteration or extension. Alterations and extensions are subject to building code regulations.

**8.70**      **UNDERSIZED LOTS**

There shall be but one dwelling constructed on any one lot in an A and R-District, providing the following conditions exist or are met:

- a. Availability of Adjacent Vacant Land. No structure shall be erected on any non-conforming lot if the owner of said lot owns any adjoining vacant land that would create a conforming lot if said vacant land were combined with the lot deficient in area.
- b. Side Yards. No structure shall be constructed on a non- conforming lot unless it shall have a minimum side yard of ten (10) feet, or a minimum side yard of twenty-five (25) feet where adjacent to any street.
- c. Front and Rear Yards. No structure shall be constructed on a non conforming lot unless it shall have front and rear yards conforming to the minimum required for the District in which said lot is located.

**8.80**      **AREA OR SPACE CANNOT BE REDUCED**

The area or dimension of any lot, yard, parking area or other space shall not be reduced to less than the minimum required by this ordinance except as provided by this ordinance; and, if already less than the minimum required by this ordinance, said area or dimension may be continued but shall not be further reduced.

**ADMINISTRATION AND ENFORCEMENT**

**9.10**      **GENERAL PROCEDURE**

**9.11**      **General Sequence of Steps**

All persons desiring to undertake any new construction, structural alteration, or changes in the use of a building or lot shall apply to the Zoning Officer for a Building Permit by filling out the appropriate application form and by submitting the required fee. The Zoning Officer will then either (1) submit the application to the Planning Board for site plan review, or (2) issue or (3) refuse the Building Permit . After the Building Permit has been received by the applicant, he may proceed to undertake the action permitted in the Building Permit and upon completion of such action, shall apply to the Zoning Officer for a Certificate of Occupancy. If the Zoning Officer finds, that the action of the applicant has been taken in accordance with the Building permit, he will then issue a Certificate of Occupancy allowing the premises to be occupied.

**9.12**      **Building Permit Types**



Under the terms of this ordinance, the following classes of Building Permits may be issued:

- a. Permitted Use. A Building Permit for a Permitted Use may be issued by the Zoning Officer upon the approval of the Planning Board where site plan review is required or upon the authority of the Zoning Officer.
- b. Special Uses. A Building Permit or a Request for a variance. A Building Permit may be issued by the Zoning Officer upon the order of the Zoning Board of Appeals and after a public hearing held by the Zoning Board of Appeals to decide upon the Appeal or a request for a variance.
- c. Building Permit After and Appeal or a Request for a Variance. A Building Permit may be issued by the Zoning Officer upon the order of the Zoning Board of Appeals after a public hearing held by the Zoning Board of Appeals to decide upon the Appeal or a request for a variance.
- d. Temporary Permit. A temporary permit is a preliminary permit issued for the sole and express permission to start site preparation, grading, installation of utilities, well or waterlines, septic system, marking off location for stakes for foundation for the structure intended, for which application has been filed for. No other construction or preparation shall be undertaken until the Zoning Officer gives his approval on all the preparation of the site, to be sure work already accomplished meets the requirements of the Town of Augusta ordinance and the specifications of the Building Code.
- e. Emergency Permit. An emergency permit may be issued by the Zoning Officer for the temporary placement of a mobile home after the complete or partial destruction of a residential structure by fire or other natural disaster. The emergency permit shall be granted for not more than ninety (90) days and shall only be issued after the Zoning Officer has certified that the water supply and sewage disposal facilities comply with the State Department of Health Standards and has approved the location of the Mobile Home.

## 9.20 BUILDING PERMIT PROCEDURE

This ordinance shall be enforced by the Zoning Officer who shall be appointed by the Town Board. No Building Permit or Certificate of Occupancy shall be issued by him except where all the provisions of this ordinance and the Building Code have been complied with.

**No building permit shall be required for a detached building of a size less than 130 square feet.**

### 9.21 Building Permits

- a. General (No building or structure shall be erected, added to, or structurally altered until a permit therefore has been issued by the Zoning Officer. Except upon a written order of the Zoning Board of Appeals, no such Building Permit or Certificate of Occupancy shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of the Ordinance and the Building Code.)
- b. There shall be submitted with all applications a master copy of layout or plot plan requested by the Zoning Officer showing the exact size of the building site with the location of all other structures on the site and the proposed improvement or structure. Such copy shall be in black ink capable of being photocopied. Also, a photograph of the building site must accompany the application.
- c. Public Record. One copy of such layout or plot plan shall be returned when approved by the Zoning Officer together with such permit to the applicant upon the payment of a fee as indicated in this Article. The second copy with a copy of each application with accompanying plan and photograph shall become a public record after a Permit is issued or denied.

d. TIME AND/OR LIMITED TERM PERMITS is hereby repealed in its entirety and deleted from the Zoning Ordinance.

e. Upon payment of a fee (see fee schedule), or such other or additional fees as may hereafter be adopted by the Town Board of the Town of Augusta, permits shall be issued and bear the name and signature of the Zoning Enforcement Officer of the Town of Augusta and shall specify:

Activity or operation for which permit is issued.

Address or location where activity or operation is to be conducted.

Name and address of permittee.

Permit number and date of issuance.

Period of permit validity.

Upon any application to the Board of Review for a variance, pre-payment of a fee in the sum of \$20.00, or such other or additional fee as may hereafter be adopted by the Town Board of the Town of Augusta shall be paid.

Permits shall not be transferable and any change in activity, operation, location, ownership or use shall require a new permit.

Permits shall continue until revoked, or for a period of time designated at the time of issuance. An extension of the permit time period may be granted provided a satisfactory reason can be shown for failure to start or complete the work or activity authorized within the required time period.

Location of Permits. Permits shall be kept on property or premises covered by the permit or carried by the permit holder.

Revocation of permits. Permits may be suspended or revoked when it is determined there is a violation of a condition under which the permit was issued, or there has been misrepresentation or falsification of material facts in connection with the permit application or a condition of the permit.

9.30

#### **SITE PLAN REVIEW BY THE PLANNING BOARD.**

Prior to the issuance of building permits for the construction of any principal, buildings other than single family residential dwellings, and customary farm buildings, the Zoning Officer shall submit the Building Permit application to the Planning Board for site plan review. In reviewing the plan, the Planning Board shall approve the application if it finds that it conforms to the regulations of the Zoning Ordinance and provides for:

- a. Safe and convenient vehicular and pedestrian access and circulation
- b. Adequate parking. The Board may establish standards for uses not covered in the parking schedule.
- c. Proper location placement of all buildings, facilities and landscaping to provide for future growth and development as well as harmony and compatibility with surrounding uses.
- d. The elimination and proper treatment of possible hazards and nuisances within the site, and to surrounding uses.
- e. The elimination of unaesthetic elements that may depress property valued in the area and cause a blighting influence in the Town.
- f. Proper consideration of historic buildings or elements, and notable landmarks on or in the vicinity of the site in the design and placement of buildings and facilities.
- g. Conservation and improvement of the natural landscape. Conservation of trees and other natural features where feasible and desirable along with proper grading and filling where needed.
- h. Installation of solar energy must not cause view obstruction, glare or other personal hardship to any neighbors. If already installed, any person building



next to solar energy system shall not interfere with the sun's rays from reaching the system.

#### **9.40**            **ISSUANCE OF PERMITS**

It shall be the duty of the Zoning Officer to issue a Building Permit, when he finds that the structure, building, a sign, parking area on premises, and the proposed use thereof, conforms with all requirements of this ordinance, and that all other review and action, if any is called for in this ordinance has been complied with and all necessary approvals therefore.

All Building Permits shall be issued in triplicate and one copy shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, workman, or other person shall perform any building operations of any kind unless a Building Permit covering such operation has been displayed as required by this ordinance, nor shall they perform building operations of any kind after notification of the revocation of said Building Permit.

#### **9.41**            **Denial of Permits**

When the Zoning Officer finds that the applicant is proposed development will not meet the requirements of this ordinance, he shall refuse to issue a Building Permit and the applicant may appeal the Zoning Officer's decision to the Zoning Board of Appeals.

**Where Planning Board review is not required, the Zoning Officer shall issue a Building Permit on his own authority.**

#### **9.42**            **Expiration of Building Permit**

Building permits shall become null and void unless construction has been started within three (3) months of the date of issuance, except that construction shall be completed within fifteen (15) months from the date of issuance. When the time of starting construction exceeds the above periods, application may be made for a new permit that shall be issued upon payment of a fee in accordance with fee schedule available at the Town Clerk's office and shall be valid for three (3) months from the date of issuance.

Building Code Rule. A Building Permit shall be effective to authorize the commencing of work in accordance with the application, plans and specification on which it is based for three (3) months after the date of its issuance. For good cause, the Zoning Officer may allow a maximum of two (2) extensions for periods not exceeding three (3) months each.

#### **9.43**            **Action on Building Permits**

The Zoning Officer shall act on all building permit applications within thirty (30) days from the filing thereof.

### **9.50**            **CERTIFICATE OF OCCUPANCY**

#### **9.51**            **General**

No land shall hereafter be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy shall have been issued by the Zoning Officer, stating that the building or proposed use thereof complied with the provisions of this ordinance. Said certificate shall be issued within seven (7) days after the erection or alteration shall have been approved as complying with the provisions of this ordinance.

#### **9.52**            **Record**

The Zoning Officer shall maintain a record of all certificates and copies shall be furnished upon request to any person having a proprietary interest in the building affected. The Town Clerk of the Town of Augusta shall keep official records of all permits, inspection reports, recommendations, complaints and violation orders, and the Zoning enforcement officer of the Town of Augusta shall furnish and supply to said Town Clerk all relevant and pertinent data, information and documents necessary for the maintenance by the Town Clerk of such official records.

### **9.60**            **PLANNING BOARD REVIEW OF SPECIAL USES**

## **9.61 Review Applications and Appeals**

- a. **Referral from the Board.** The Zoning Board of Appeals shall refer to the Planning Board all applications for special uses, and other applications or appeals which, in their opinion, required by the Planning Board.
- b. **Criteria for Review** The Planning Board shall review such applications in accordance with applicable criteria set forth in Article 6 and Section 9.30.
- c. **Report to the Board of Appeals** The Planning Board shall report its findings to the Zoning Board of Appeals, and the applicant, within thirty (30) days of receipt thereof.

## **9.70 VIOLATIONS**

### **9.71 Complaints of Violations**

A person owning, operating, occupying or maintaining property or premises within the scope of the State Building Construction Code applicable to Multiple Dwellings (including factory manufactured homes) as printed April 30, 1980, with all current amendments thereto, hereto promulgated by the State Building Code Compilation of Codes, Rules and Regulations of the State of New York as published by the Secretary of State and designated 9 NYCRR or within the scope of this local law, shall comply with all of such State provisions, and shall comply with all provisions of this local law and with all orders, notices, rules, regulations or determinations issued in connection therewith.

Whenever the Zoning enforcement officer feels that there has been a violation of such State provisions, or a violation of this local law or a violation of any rule or regulation adopted pursuant to this local law, a violation order shall be issued to the person or persons responsible.

Violation orders shall be in writing; shall identify the property or premises; shall specify the violation and remedial action to be taken; shall provide a reasonable time limit for compliance; and shall state the time within which an appeal may be taken.

In case the owner, lessor, occupant or the agent of any of them shall fail, neglect or refuse to remove, eliminate or abate the violation within the time specified in the violation order, a request to take appropriate legal action shall be made by the Zoning Officer to the Town Board of the Town of Augusta, Oneida County, New York.

To comply with this local law or failure to comply with any rules or regulations adopted pursuant to this local law, or failure to comply with any violation order, shall be deemed a violation and the violator shall be liable for a fine of not less than \$250.00 or imprisonment not to exceed thirty (30) days, or both, and each day such violation continues shall constitute a separate violation.

### **9.72 Penalties**

Failure to comply with any provision of such State provisions or regulations, or failure to comply with any provision of this local law, or failure to comply with any violation order, or failure to comply with any rule or regulation adopted pursuant to this local law, or failure to comply with any rule or regulation adopted pursuant to this local law, may be commenced in any Court of competent jurisdiction to compel compliance with, or to restrain by injunction any such violation or violations, or to compel the vacating of the occupancy of any building or structure in the case of imminent danger to life, or property. Such remedy shall be in addition to penalties otherwise prescribed by law.

### **9.73 Procedure for Abatement of Violations**

In case any building or structure is erected, constructed, demolished, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this ordinance, or of any ordinance or regulation made under authority conferred hereby the Town Board, or with their approval, the Zoning Officer or other proper official, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, demolition, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any



illegal act, conduct business or use in or about such premise.

9.80

## **APPEALS**

### **9.81 Appeal from Zoning Officer**

#### **a. Procedure for Appellant**

1) An appeal to the Zoning Board of Appeals from any ruling of any Zoning Officer administering any portion of this ordinance may be taken by any person aggrieved, or by an officer, board, or bureau of the Town of Augusta affected. Such appeal shall be taken to the Zoning Board of Appeals by filing with the secretary thereof and the Zoning Officer, a notice of appeal, specifying the grounds therefor.

2) All applications and appeals made to the Zoning Board of Appeals shall be in writing on forms supplied by the Zoning Officer. The notice of appeals in any case where a permit has been granted or denied by the Zoning Officer shall be filed within such time as shall be prescribed by the Zoning Board of Appeals under general rule or denying the permit has been granted or denied to the applicant. Every application or appeal shall refer to the specific provision of this ordinance, and shall exactly set forth the interpretation that is claimed, the plans for a special use or the details of the variance that is applied for, in addition to the following information.

- a. The name and address of the applicant, appellant.
- b. The name and address of the owner of the district lot to be affected by such proposed change or appeal.
- c. A brief description and location of the district lot to be affected by such proposed change or appeal.
- d. A statement of the present zoning classification of the district lot in question, the improvements thereon and the present use thereof.
- e. 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 real property to be affected, indicating the location and size of the lot and size of improvements thereon and proposed to be erected thereon.

b. **Procedure for Zoning Officer** Upon receipt of the notice of an appeal, the Zoning Officer shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record upon which the action appealed from was taken, or in lieu thereof certified copies of said papers.

c. **Procedure for the Zoning Board of Appeals.** The Zoning Board of Appeals shall decide each appeal within sixty (60) days of the final hearing. Upon the hearing, any party may appear in person or be represented by an agent or attorney. The Zoning Board of Appeals' decision shall be immediately filed in the office of the Town Clerk and be a public record. In the exercise of its functions upon such appeals or upon exceptions, the Zoning Board of Appeals may in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from or may make such order, requirements, decision or determination in accordance with the provisions thereof.

d. **Expiration of Appeal Decision.** Unless otherwise specified by the Zoning Board of Appeals, a decision on any applicant fails to obtain any necessary Building Permit or comply with the conditions of said authorized permit within six (6) months from the date of authorization thereof.

e. **Stay of Proceedings.** An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Officer certified for the Zoning Board of Appeals, after the notice of appeals shall have been filed, that by reason of facts stated in the certificate, they would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals, or by the Court of Record on application, on notice to the Zoning Board of Appeals, or by the court of Record on application, on

notice to the Zoning Officer and on the cause shown.

f. **Appeal from Decision of Zoning Board of Appeals.** All decisions of the Zoning Board of Appeals are subject to court review in accordance with applicable laws of the State of New York. Decision of the Zoning Board of Appeals shall be filed with Town Clerk.

## **9.90 PUBLIC HEARINGS AND NOTICE**

The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice thereof by the publication in the official paper of a notice of such hearing at least five (5) days prior to the date thereof and shall at least five (5) days before such hearing mail notices thereof to persons and owners of properties involved in accordance with the requirements of this ordinance and the Consolidated Laws of the State of New York.

### **9.91 When Appealing Action of the Zoning Officer**

In case of an appeal error or misinterpretation in any order or other action by the Zoning Office, the following person shall be notified. The appellant and the person or persons, if any, who benefit from the order, requirement, regulation or determination.

### **9.92 When Appealing for Variance Special Use**

In case of an appeal for a variance or in case an application for a special exception use, as provided for in this ordinance, the following persons shall be notified: All owners of property for which the variance or special exception use is sought.

### **9.93 Required Interval for Hearings on Applications and Appeals After Denial**

Whenever the Board after hearing all the evidence presented upon an application or appeal, under the provisions of this ordinance, denies the same, the Zoning Board of Appeals shall refuse to hold further hearings on the said or substantially similar application or appeal by the same applicant, his successor, or assign except and unless the Zoning Board of Appeals shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity, and general welfare, and that reconsideration is justified.

### **9.94 Fees**

Fees to cover the costs of processing applications for building permits shall be payable to the Town of Augusta according to a schedule of fees as adopted by the Town Board.

## **ARTICLE 10**

### **ZONING BOARD OF APPEALS**

## **10.10 ORGANIZATION AND PROCEDURES**

### **10.11 Establishment**

The Zoning Board of Appeals, heretofore created pursuant to the provision of the Town Law, is hereby continued as not constituted. Each member of said Board of Appeals shall continue to hold office to the expiration of his present term. The Town Board shall appoint a successor as provided by law.

### **10.12 Appointment to Fill Vacancies**

Appointment to fill vacancies shall be for unexpired term of the member or members whose term or terms become vacant.

### **10.13 General Grant of Power**

The Board shall perform all the duties and have all the powers prescribed by the laws of the State of New York and as herein described.

### **10.14 Voting Necessary for Decision**