

**REVISED
TOWN OF FENNER**

LAND USE REGULATIONS

8/12/97

TABLE OF CONTENTS

<u>INTRODUCTION</u>		<u>PAGE</u>
 <u>ARTICLE 1 – ENACTMENT AND APPLICATION</u>		
Section 100.1	Title	1
Section 100.2	Enacting Clause	1
Section 100.3	Purposes of the Land Use Local Law	1
Section 100.4	Application of Regulations	1
 <u>ARTICLE 2 – DISTRICTS AND BOUNDARIES</u>		
Section 201	Establishment of Districts	2
Section 202	Land Use Map	3
Section 203	Land Use Schedule (Table 1)	3
Section 204	Interpretation of District Boundaries	5
 <u>ARTICLE 3 – LAND USE DISTRICTS</u>		
Section 301	District A	6
Section 301.1	Principal Uses Permitted	6
Section 301.2	Accessory Uses Permitted	6
Section 301.3	Uses Requiring a Special Use Permit	6
Section 301.4	Uses Prohibited	7
Section 302	District B	7
Section 302.1	Principal Uses Permitted	7
Section 302.2	Accessory Uses Permitted	8
Section 302.3	Uses Requiring a Special Use Permit	8
Section 302.4	Uses Prohibited	8
 <u>ARTICLE 4 – SUPPLEMENTARY REGULATIONS</u>		
Section 401	Additional Regulations for All Lots	8
Section 402	Obstruction of Vision	8
Section 403	On-premises Parking Space for Vehicles	9
Section 404	Menace or Nuisance Conditions	9
Section 405	Storage of Flammable Liquids, Chemicals and Explosives	9
Section 406	Extraction of Topsoil, Sand, Gravel or Stone	9
Section 407	Conservation of Steep Slopes	10
Section 408	Non-Conforming Uses	10

SECTION 5 – EXISTING SUPPLEMENTAL REGULATIONS

Section 501	Flood Hazard Law	11
Section 502	Freshwater Wetlands Protection Law	11
Section 503	Sanitary Disposal Requirements	11
Section 504	Automobile Junk Yard Local Law	11
Section 505	Prohibition of Dump, Refuse, Disposal Site Landfill	11
Section 506	Subdivision Regulations	11

ARTICLE 6 – ADMINISTRATION AND ENFORCEMENT

Section 601	Enforcement	11
Section 602	Fees	11
Section 603	Building Permit Procedure	12
Section 603.1	Certificate of Compliance Procedure	12
Section 604	Minor Alterations	13
Section 605.1	Appointment of Board of Appeals	13
Section 605.2	Powers and Duties of the Board of Appeals	13
Section 605.3	Application to the Board of Appeals	13
Section 605.4	Variance	14
Section 605.5	Granting of Variances	14
Section 605.6	Standards for Grant Variances	15
Section 606	Planning Board	16
Section 606.1	Special Permits	16
Section 606.2	Applications for Special Use Permits	17
Section 606.3	Standards for Granting Special Use Permits	17
Section 606.4	Submission of Site Plan and Supporting Data	18
Section 606.5	Site Plan Approval	19
Section 607	Changes & Amendments of the Land Use Local Law	19
Section 607.1	Periodic Review	19
Section 607.2	Procedure for Amendments	19
Section 608	Referral to County Planning Agency	20
Section 609	Violations	20
Section 610	State Supreme Court Review	20
Section 611	Separability	21
Section 612	Enforcement	21
Section 613	Effective Date	21

APPENDIX 1

Definitions	22
District Boundary Map	29

ARTICLE 1 – ENACTMENT AND APPLICATION

Section 100.1 - Title

This local law shall be known and may be cited as the Revised Town of Fenner Land Use Local Law.

Section 100.2 - ENACTING CLAUSE

The Town Board of the Town of Fenner in the County of Madison under the authority of Section 261 of the New York State Town Law hereby ordains, enacts and publishes as follows.

Section 100.3 - PURPOSES OF THE LAND USE LOCAL LAW

The Town of Fenner is noted for its pastoral character, rolling hills and magnificent vistas. It has an agricultural history and is currently experiencing residential development due to its rural nature, clean air and water, and proximity to urban and suburban areas. It is also home to a wide variety of wildlife including native mammal, fish and bird species. The purpose of this Land Use Local Law and the Land Use District Regulations herein and as outlined on the Land Use Map are to provide for the orderly growth of the Town; to encourage the appropriate use of land; to protect and conserve the value or property; to prevent the overcrowding of land; to promote the health, safety and general welfare of the public; and to preserve the character of the Town.

Section 100.4 - APPLICATION OF REGULATIONS

- A. Except as hereinafter provided, no building or structure shall be erected, moved, altered or extended, and no land, building or structure or part thereof, shall be occupied or used unless in conformity with the regulations specified for the district in which it is located.
- B. No building shall hereafter be placed, 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, than is specified herein for the district in which such building is located.
- C. No part of a yard or other space about any building required for the purpose of complying with the provisions of this local law shall be included as part of a yard or other open space similarly required for another building.

- D. Unless a use variance is granted, all uses not specifically permitted in a district or permitted after obtaining a special permit shall be deemed prohibited.
- E. Except as otherwise provided herein, no more than one principal use structure is permitted on any single lot

ARTICLE 2 – DISTRICTS AND BOUNDARIES

Section 201- ESTABLISHMENT OF DISTRICTS

Existing Land Use Districts are classified as:

A. District A. (Section 301)

District A shall consist of all lands located within the 500 feet of each side of the center line of the following roads.

1. Fenner Road (Co. Rt. 28) – Cazenovia Line to Nelson Road
2. Cody Road – Nelson Road to Smithfield Line
3. Hill Road – All
4. Roberts Road – All
5. Shephards Road – All
6. Moraine Road – All
7. Francis Road – All
8. Mutton Hill Road – from Cody Road to Radio Tower Drive (private drive)
9. South Road – All
10. Bear Swamp Road – All
11. Irish Ridge Road – from Bingley Road to Bear Swamp Road
12. Fall Road – All
13. Oxbow Road (Co. Rt. 25) – All
14. East Mile Strip Road – All
15. Milestrip Road – Oxbow Road to Rouse Road
16. Nelson Road (Co. Rt. 23) – All
17. Bingley Road (Co. Rt. 26) – All
18. Rouse Road – All
19. Peterboro Road – Oxbow to Rouse Road

B. District B. (Section 302)

District B shall consist of all lands within the Town of Fenner which are not contained in District A.

Section 202 - LAND USE MAP

The “Land Use Map” attached hereto as Appendix B is hereby made a part of this local law. All land use districts are shown on the Land Use Map, and defined as hereinbefore stated. Future district changes or additions may be shown on this map, the master of which will be kept on file in the Town Clerk’s Office.

Section 203 - LAND USE SCHEDULE (Table 1)

The Land Use Schedule shows, for all districts, the permitted minimum size and dimensions of lots, bordering yards, and maximum building heights.

TABLE 1

LAND USE SCHEDULE
Minimum Dimensions

	Lot Area	Lot		Yards*			Maximum Structure Height Ft.	Notes (See Page)
		Frontage**** Ft.	Depth Ft.	Front Ft.	Side Ft.	Rear Ft.		
“DISTRICT “A”								
Single-family unit	1 acre**	200	200	50	40	50	35	a, b
Two-family unit	1.5 acre	200	200	50	40	50	35	b
Multi-family	1.5 acre + 10,000 sq ft/unit	200	200	50	40	50	45	d, e
Farm	5 acres	200	200	50	40	50	None	c, g
DISTRICT “B”								
All “A” as above								
Mobile dwelling	1 acre	200	200	50	40	50	35	b
Mobile dwelling park*	5 acres	200	300	50	30	50		b, d, e, f
Individual Park Site	@ 10,000 sq. ft/unit	70	120	30	20	20	35	f
Business, professional, or Industrial, on separate lots	1 acre	200	200	50	40	50	35	b, d, e
DISTRICT “C”								
All “B”, as above								

*Corner lots are considered to have two front yards along the two roadways and two side yards.

**Acre = 43,560 sq. ft.

***Requirement of actual frontage along public highway, or if applicable, private access easement

All non-farm accessory buildings shall conform to front and side yard requirements of the district in which they are located

Notes for Table 1

- a. Measured from the road right-of-way. Applies to each side of a lot that adjoins a public road.

An alternative front yard minimum dimension measurement is permissible from the center of road-ways where neither road right-of-way bounds nor surveys are available: (1) on three rod roads (generally, but not necessarily, Town roads) set buildings back at least 75 feet from the centerline of the road; and (2) on four rod roads (generally, but not necessarily, County roads) set buildings back at least 83 feet from the centerline of the road.
- b. Where community water supply and sewer are used, one-half lot area and smaller bordering yards are permitted. Lot: 100 feet front x 150 feet depth. Yards: 30 feet front x 20 feet sides x 50 feet rear.
- c. Accessory farm buildings (silos, barns, etc.) are exempt from height limits.
- d. Requires a special use permit issued by the Planning Board.
- e. A landscaped screening zone at least 15 feet wide shall be maintained by the owner on those sides of his lot that adjoin any residential property owned by another party.
- f. Each mobile dwelling site shall connect to an access road within the mobile dwelling park, and the front yard of each lot shall be measured from the edge of this access road.
- g. Upon the issuance of a special permit by the Planning Board, not more than two units of supplementary housing for relative or hired hands employed by the farm; each unit must be provided with an adequate sewage disposal system; does not require separate lots.

Section 204 - INTERPRETATION OF DISTRICT BOUNDARIES

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

- A. Distances shown on the Land Use Map are perpendicular or radial distances from road center lines measured back to the district boundary line.
- B. Where district boundaries are so indicated that they are approximately parallel to the centerline of roads, such district boundaries shall be construed as being parallel thereto and at such distance from the road property line as indicated on the Land Use Map. If no distance is given,

the district boundaries shall be 500 feet back from the nearest road centerline.

ARTICLE 3 – LAND USE DISTRICTS

Section 301 - DISTRICT A

The purpose of this district is to provide attractive built-up housing areas in rural settings that will maintain health via proper sewage disposal, safe water supply, and the minimum of nuisance indifferent land uses.

Section 301.1 - PRINCIPAL USES PERMITTED

- A. One and two-family dwellings built on a foundation, including modular dwellings. Mobile dwellings are not permitted.
- B. Farms and farm building for related agricultural activities.

Section 301.2 - ACCESSORY USES PERMITTED

- A. Private garages.
- B. Customary accessory structures, other than private garages, (tool houses, playhouses, greenhouses) not to exceed 750 square feet and not to be less than 10 feet from the rear line of the lot.
- C. Animal shelters for domestic pets, and horses, properly maintained.
- D. Other structures such as private swimming pools and fireplaces.
- E. Customary buildings including roadside stand for the sale of seasonal produce and handmade items.
- F. Off-street parking.

Section 301.3 - USES REQUIRING A SPECIAL USE PERMIT

- A. Multi-family housing.
- B. Churches and other similar places of worship, parish houses, convents, and similar facilities for religious groups.
- C. Public and private recreation areas including parks, playgrounds and playfields.

- D. Public buildings, libraries, museums, public and non-profit private schools accredited by the State Education Department.
- E. Hospitals, nursing homes, colleges that are licensed or accredited by New York State.
- F. Homes businesses provided they are carried on in conjunction with the residential use of the property by residents, and with no evidence except sign.
- G. Public utility uses.
- H. Development of flood hazard areas, Special Flood Hazard Areas designed by the federal government, swamps, wetlands, streams, lakes, steep slopes, and agricultural districts certified by the New York State Department of Environmental Conservation.
- I. On farms only, not more than two residence structures, in addition to the principal residence structure, one or both of which may, but need not be, a mobile dwelling, for supplemental housing (See note (g) to Table 1).

Section 301.4 - USES PROHIBITED

All other uses prohibited in this district.

Section 302 - DISTRICT B

The purpose of this district is to preserve farmlands and adjoining settlements as long as possible to provide for separate residence of all kinds, and to invite other uses, under certain controls, in order to assure the livelihood and enjoyment of those who live there.

Section 302.1 - PRINCIAL USES PERMITTED

- A. One and two-family dwellings built on a foundation, including modular dwellings.
- B. Farms and farm buildings for related agricultural activities
- C. Mobile dwellings on individual lots.

Section 302.2 - ACCESSORY USES PERMITTED

- A. Same as Section 301.2
- B. Home businesses conducted by the residents.
- C. Accessory buildings necessary to the principal use and which do not include any activity commonly conducted as a separate business.

Section 302.3 - USES REQUIRING A SPECIAL PERMIT

- A. Same as Section 301.3.
- B. Mobile dwelling parks.
- C. All retail sales, eating, service and professional establishments.
- D. Day camps, guest or vacation homes for pay, private clubs and seasonal camps.
- E. Commercial outdoor recreation such as ski runs, snowmobile parks, miniature golf courses, driving ranges, race tracks and hunting and fishing preserves.
- F. More than one residence structure on a lot for a farm (See note (g) to Table I).

Section 302.4 - USES PROHIBITED

All other uses prohibited in this district.

ARTICLE 4 – SUPPLEMENTARY REGULATIONS

Section 401 - ADDITIONAL REGULATIONS FOR ALL LOTS

This article provides for the safety of the occupants of buildings and of those who use the roads. Therefore, those who build, buy, use, repair or remodel any buildings shall observe the standards published by New York State under the Uniform Fire Prevention and Building Code, and/or similar codes that may be published later.

Section 402 - OBSTRUCTION OF VISION

On a corner lot, there shall be no obstruction of vision creating a safety hazard for anyone using the intersecting roads. The determination of an appropriate “clear zone” shall be made by the County or Town Highway Superintendent.

Section 403 - ON-PREMISES PARKING SPACE FOR VEHICLES

For every building hereafter erected, or converted to something other than its current use, the following minimum parking spaces shall be provided on the premises:

Residential uses: Two per dwelling unit.

Multiple tenant uses: One per tenant plus one extra for service and guests.

Hotel, motel, tourist home, boarding house: One per guest room plus three for service.

Public assembly, government buildings, outdoor recreation: As required in granting the special use permit.

Section 404 - MENACE OR NUISANCE CONDITIONS

In all districts, any uses that endanger the health, safety or welfare of any person is prohibited. Any existing uses judged to be a menace or nuisance may be cited to the land use officer by written complain as provided in Section 609A.

This section applies to noise, odor, dust, dirt, smoke, noxious gases, building vibrations, dangerous glare or other impairment of vision, contamination of soil and open water systems, and other physical conditions.

Section 405 - STORAGE OF FLAMMABLE LIQUIDS, CHEMICALS AND EXPLOSIVES

The design, construction, maintenance and operation of storage facilities for flammable liquids, chemicals and explosives shall comply with all applicable laws, codes and regulations. A copy of these materials can be examined in any public firehouse.

Section 406 - EXTRACTION OF TOPSOIL, SAND, GRAVEL OR STONE

All landowners shall comply with the New York State Mined Land Reclamation Law (Chapters 1043, 1044) which requires that operators who mine more than 1,000 tons of minerals from the earth within 12 successive calendar months must obtain a permit for such operations from the Department of Environmental Conservation.

Section 407 - CONSERVATION OF STEEP SLOPES

The construction of new buildings, roads and other facilities on slopes of 15% or more grade (15% = 1 ½ foot rise in 10 feet horizontal distance) shall require a special use permit. Logging on such areas shall comply with New York State Department of Environmental Conservation standards.

Section 408 - NON-CONFORMING USES AND LOTS

- A. Lawful use of any building or land existing at the time of enactment or amendment of this local law may be continued, although such uses do not conform with this local law, except as hereinafter provided.
- B. When a non-conforming use has been discontinued for a period of one year, such use shall not thereafter be re-established, and any future use shall be in conformity with this local law.
- C. Non non-conforming use shall be changed to other than a conforming use for the district in which it is situated.
- D. A non-conforming use may be rebuilt or restored to its original dimensions following damage by natural causes (including fire, wind and motor vehicles) within one (1) year.
- E. Expansion or enlargement of a non-conforming single family use shall be subject to issuance of a special permit. Enlargement of any other non-conforming use shall not be permitted except in conformance with these regulations.
- F. Any lot which was duly approved or legally existed in separate ownership from any adjoining land prior to this local law and which has an area less than required by this local law may be used for any permitted purpose if:
 - a. The owner, on the effective date of this local law or at the time of application for any permit or approval from the Town, has no adjoining land which would permit the owned to make the lot conforming, and
 - i. if all other zoning and planning requirements are satisfied, or;
 - ii. if the owner obtains a variance pursuant to the provisions of Article 6 for any setback, frontage, lot coverage or other requirement of this local law (other than lot size) which can not be met. Such a variance may only be granted if the applicant demonstrates that all requirement of New York law relating to residential lots (such as percolation,

sewage disposal, and water supply) can be satisfied, or if;

- G. No confirming lot shall be created where no nonconforming lot existed prior to the passage of this local law. No lot shall be so reduced in area that the total area, yard setbacks, lot width, frontage, coverage, or other requirements of this local law shall be less than herein prescribed for each land use district without a variance. The provisions of this Section shall not apply when part of a lot is taken for a public purpose.

ARTICLE 5 – EXISTING SUPPLEMENTAL REGULATIONS

Ordinance, local laws and other forms of regulations which deal with specific land use in the Town of Fenner exist or may be enacted by the Town Board. These regulations shall be enforced in concert with this land use local law. Regulations which exist at the time this local law is enacted are listed as follows:

Section 501 – FLOOD HAZARD LAW

Section 502 – FRESHWATER WETLANDS PROTECTION LAW

Section 503 – SANITARY DISPOSAL REQUIREMENTS

Section 504 – AUTOMOBILE JUNK YARD LOCAL LAW

Section 505 – PROHIBITION OF DUMP, REFUSE, DISPOSAL SITE LANDFILL

Section 506 – SUBDIVISION REGULATIONS

Section 6 – ADMINISTRATION AND ENFORCEMENT

Section 601 - ENFORCEMENT

This local law shall be enforced by the code enforcement officer.

Section 602 - FEES

A fee as determined from time to time by resolution of the Town Board, shall be charged for all permits issued and for processing all applications for appeals, for interpretation of decisions, for variances and for special permits, except as provided in Section 604.

Section 603 - BUILDING PERMIT PROCEDURE

- A. No building shall be erected, extended, or put in place until the code enforcement officer has issued a building permit certifying that it meets all pertinent requirements.
- B. Application for a building permit, including instructions on procedure and Statement of fees, shall be obtained from the Town Clerk before Construction begins.
- C. The building permit shall be issued or denied, by the code enforcement officer, within 30 days of receipt of the completed application and proper fee.
- D. If construction authorized by a building permit has not been started and completed within eighteen months from the date of issuance, the permit shall be cancelled. Upon application to the code enforcement officer and the payment of a fee equal to one-half of the applicable fee at the time of original issuance, a building permit may be renewed for a single additional period of six months.
- E. The location of a new access (driveway) onto town, county and state roadways must be approved by the appropriated highway department with jurisdiction over the subject roadway.

Section 603.1 - CERTIFICATE OF COMPLIANCE PROCEDURE

- A. A certificate of compliance shall be applied for coincident with the application for a building permit.
- B. No land shall be occupied or used and no building, structure or system hereafter erected, altered or extended, shall be used or changed in use, until a certificate of compliance shall have been issued by the code enforcement officer stating that the building, structure, system, or land alteration and proposed use thereof comply with the provisions of this local law. Said certificate shall be issued within ten (10) days after the erection or alteration shall have been inspected and found to comply with the provisions of this local law.
- C. The Town Clerk shall maintain a record of all certificates, and copies shall be furnished upon request and the payment of applicable copying charges.

Section 604 - MINOR ALTERATIONS

Any minor alteration of an existing building not subject to Subchapter B or the New York State Uniform Fire Prevention and Building Code pursuant to section 1231.3 thereof, shall not require a building permit. All alterations and/or additions must conform to the requirements of this local law and of the Town sanitation ordinance.

Section 605.1 - BOARD OF APPEALS

The Town Board hereby affirms the existence of the Board of Appeals of the Town of Fenner, consisting of five members, and having all the authority conferred upon a board of appeals by Article 16 of the Town Law of the State of New York.

Section 605.2 - POWERS AND DUTIES OF THE BOARD OF APPEALS

The Board of Appeals shall have the following powers and duties:

- A. Upon appeals from a decision, or upon request of another board or officer of the Town of Fenner, to decide questions involving interpretation of any provisions of this local law.
- B To grant area and use variances upon application, in accordance with standards established by Article 16 of the Town Law of the State of New York.
- D. Decisions of the Board of Appeals shall be made within 90 days from the time that the application has been filed with the Board; decisions shall be by resolution, shall contain a full statement of findings of fact in the minutes of the Board. In a case of restoration because of destructions beyond the owner's control, the Board of Appeals should meet with one week.

Section 605.3 - APPLICATION TO THE BOARD OF APPEALS

An appeal of a decision made by the code enforcement officer, or a request for an interpretation of any part of this local law, or a request for a variance, shall be made to the Board of Appeals within 60 days after the filing in the Town Clerk's office of the administrative determination being appeals. The Town Clerk will furnish an application form and instructions, along with a statement of the standards and procedure to be followed by the Board of Appeals, including a public hearing, as required by law. When the application form is filled in and returned to the Town Clerk, along with the prescribed fee, a copy will be provided to the code enforcement officer, and a copy will be submitted to the Planning Board for an advisory recommendation, and then forwarded to the Board of Appeals within one week thereafter.

Section 605.4 - VARIANCE

A variance is a legal permit for a modification of some part of the Land Use law to meet an individual hardship. "Hardship" does not refer to a personal hardship of the property owner/user. Rather, "hardship" refers to the inability of the property to be used for a permitted use or to the inability to meet the lot area and/or dimensional requirements.

If a use or construction authorized by a variance has not been started and continued within one year, the Board of Appeals may revoke the variance and require a new application.

When a variance is granted, the Board of Appeals may prescribe conditions to be observed in order to protect the health, safety, or welfare of the public, to preserve the general character of the neighborhood, and to minimize possible detrimental effects on nearby property.

Section 605.5 - GRANTING OF VARIANCES

- A. The Board of Appeals shall act in strict accordance with the procedure specified by state law and by this law. All applications made shall be in writing on forms prescribed by the Board. Every application shall refer to the specific provision of the law involved, the details of the variance being applied for, and the grounds on which it is claimed that the variance should be granted.
- B. Each application shall include a site plan of the proposed use or construction to enable the Board of Appeals to evaluate development constraints inherent in the property and the proposed use's or construction's compatibility with the existing uses in its vicinity and with the purpose of this law. Upon the granting of any variance, the submitted site plan, with any modifications required by the Board, shall become a part of the record on which future compliance with the terms of the variance shall be based.
- C. Written notice setting forth the general nature of the variance application and the date of the public hearing shall be forwarded by first class mail by the Town Clerk to owners of real property within the Town of Fenner at those addresses as appear on the Town tax roll in use at the time of mailing for owners of property located adjacent to and/or within 500 feet of the property parcel(s) which is the subject of the proposed variance.

Section 605.6 - STANDARDS FOR GRANTING VARIANCES

No variance for modification of the strict application of any provision of this law shall be granted by the board unless it finds that:

- A. For Use Variances: No use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable regulations and restrictions contained in those Land Use Regulations have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under those Regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided the lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.
- B. The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- C. For Area Variance: In making its determination, on each application for an area variance, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- D. The Board of Appeal, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the

same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

- E. Imposition of conditions. The Board of Appeals shall, in the granting of Both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the Land Use Regulations, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

Section 606 - PLANNING BOARD

The Town Board hereby affirms the existence of the Town of Fenner Planning Board consisting of seven (7) members and having all the authority conferred pursuant to Article 16 of the Town law. Specifically, the Planning Board shall have the following powers and duties:

1. To issue or deny Special Permits required by this law.
2. To undertake planning activities allowed by Town Law or as requested by the Town Board.
3. Subdivision Review and Approval.
4. Site Plan Review and Approval.

Section 606.1 - SPECIAL PERMITS

A Special Permit gives some means of control of proposed new uses of land and buildings which are compatible with land uses permitted by right by the Land Use Regulations as long as the conditions applicable to special permit uses are satisfied. Specifically, it gives the Planning Board the opportunity to determine whether such proposed new development (in the particular location) will create special problems which can be corrected or effectively minimized by specially devised conditions or which call for denial of permission.

When a Special Permit is granted, the Planning Board may prescribe conditions to be observed in order to ensure adherence to the standards specified in Sections 606.2 and 606.5.

No Special Permit shall be granted with respect to any property or any use on or for which a violation currently exists. (Non-conforming uses as outlined in Section 408 are not considered violations of this local land use law.)

Unless extended by the Planning Board, if a use or construction authorized by a Special Permit has not been started within one year, the Special Permit will expire.

Section 606.2 - APPLICATIONS FOR SPECIAL USE PERMITS

A. An application to the Planning Board for a special use permit shall be submitted to the Town Clerk and shall be accompanied by three sets of preliminary site plans and other descriptive matter to show clearly the intentions of the applicant. These documents shall become a part of the record to determine if the proposed special use meets the requirements of this local law.

A public hearing shall be held by the Planning Board within sixty-two days from the date any application for a Special Permit is received.

B. At least 10 days before the date of the public hearing, the Town Clerk shall transmit to the Planning Board a copy of the application, with supporting documents, and notice of hearing. The Planning Boards shall render its decision within 62 days, of the date the public hearing is closed.

Section 606.3 - STANDARDS FOR GRANTING SPECIAL USE PERMITS

No special use permit shall be granted unless it is determine by the Planning Board That the proposed use meets all of the following criteria:

- A. The location, size and use of structure, nature and intensity of operations involved, size of site in relation to the proposed structure(s), and the location of the site with respect to roads giving access to it are such that the proposed use will be in harmony with orderly development of the district.
- B. The location, nature and height of buildings, walls and fences will not Discourage the appropriate development and use of adjacent land and Buildings, or impair their there value.
- C. The proposed use shall not conflict with any master plan, or part thereof.
- D. Operations of any special use shall not be more objectionable to nearby Properties than would be the operations of any unconditionally permitted use.
- E. A special use permit shall not be issued for a use on a property where There is an existing violation of this local law.
- F. The use shall not have an adverse effect on the agriculture of the area.
- G. The proposed use shall be in strict compliance with the requirements of Article 5, Existing Supplemental Regulations.

The Planning Board may impose additional standards on the special use to Provide adequate safeguards to protect the health, safety, or general welfare of the Public, to preserve the general character of the neighborhood in which such proposed Special use is to be placed, and to minimize possible detrimental effects of use on adjacent property.

Section 606.4 - SUBMISSION OF SITE PLAN AND SUPPORTING DATA

A site plan and supporting data for a special use permit shall be submitted to the Planning Board. The owner shall submit a site plan and supporting data as required and shall include all or a portion of the following information presented in drawn form and accompanied by a written text. The amount of information will depend on the scope of the proposal.

- A. Survey of the property, showing existing features of the property, Including contours, large trees, buildings, structures, streets, utility Easement, right-of-way, land use, land use district and ownership of surrounding property.
- C. Site plan showing proposed lots, blocks, building locations, and land use area.
- D. Traffic circulation, parking and loading spaces, and pedestrian walks.
- E. Preliminary architectural drawings for buildings to be constructed, Including floor plans, exterior elevations, and sections.
- F. Preliminary engineering plan, including road improvements, storm Drainage system, public utility extensions, water supply, and sanitary Sewer facilities.
- G. Engineering feasibility studies of any anticipated problems which might arise due to the proposed development, as required by the Planning Board.
- H. Construction sequence and time schedule for completion of each phase for buildings, parking spaces, and landscaped areas
- I. A description of the proposed uses, including hours of operations, number Of employees, expected volume of business, and type and volume of Traffic expected to be generated.
- J. A completed Environmental Assessment Form.

Section 606.5 -SITE PLAN APPROVAL

The Planning Board shall review the site plan and supporting data before Approval, rejection, or approval with stated conditions as given, and take into Consideration the following:

- A. Harmonious relationship between proposed uses and existing adjacent uses.
- B. Maximum safety of vehicular circulation between the site and road network.
- C. Adequacy of interior circulation, parking and loading facilities, with particular attention to vehicular and pedestrian safety.
- D. Adequacy of landscaping and setbacks in regard to achieving maximum compatibility and protection to adjacent residential districts.

Should changes or additional facilities be required by the Board, final approval of the site plan shall be conditional upon the satisfactory compliance by the owner with the changes or additions.

Any owner wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

Section 607 - CHANGES AND AMENDMENTS OF THE LAND USE LOCAL LAW

Section 607.1 - PERIODIC REVIEW

From time to time, the Town Planning Board may re-examine the provisions of this local law and the location of district boundary lines and may submit a report to the Town Board recommending such changes, or amendments, if any, which may be desirable in the interest of the safety, health, or welfare of the public.

Section 607.2 - PROCEDURE FOR AMENDMENTS

- A. Regulations, districts and boundaries established by this local law may be amended or repealed after official notice has been given and a public hearing has been held by the Town Board as require by law.
- B. Each petition requesting a change of land use regulations or district boundaries shall be typewritten, signed by the owner, and filed in triplicate with the Town Clerk accompanied by the required fee, which shall be determined from time to time by resolution of the Town Board.

- C. At least 35 days before the date of the Town Board public hearing required by law, the Town Clerk shall transmit to the Planning Board a copy of the proposed amendment or change, with supporting documents, and notice of hearing. The Planning Board shall submit its recommendation to the Town Board prior to the date of the public hearing. Failure of the Planning Board to submit a recommendation to the Town Board shall not prohibit the Town Board from acting on any proposed amendment, nor impair the validity of any such approval.
- D. The Planning Board may require a site plan of the proposed development for which a change of district is sought to assist them in their understanding of the proposed amendment.
- E. The Town Board shall hold a public hearing within 60 days of the submission date of any petition submitted pursuant to this section.

Section 608 - REFERRAL TO COUNTY PLANNING AGENCY

Requirements for referral to the Madison County Planning Agency as defined in Section 239-1 and m of Article 12-B of the General Municipal Law shall be strictly complied with.

Section 609 - VIOLATIONS

- A. Any person may file a complaint about a violation of this local law. Such complaints must be in writing, signed and filed with the code enforcement officer, the Town Clerk, or the Town Board. The code enforcement officer shall investigate promptly and take the appropriate action to satisfy that complaint.
- B. Any violation of this local law alleged by the Town will be reported to the offender by the code enforcement officer or the Town Board, with the date by which the violation must be corrected. Such a notice shall not be deemed a condition precedent to prosecution of any alleged offender pursuant to paragraph (C) of this section
- C. Any person who violates any provision of this local law shall be punished by a fine not to exceed the sum of \$250.00 or by imprisonment of not more than fifteen days or both. Each 7 days of violation shall constitute a separate offense.

Section 610 - STATE SUPREME COURT REVIEW

Anyone who is aggrieved by a determination of the Board of Appeals, or Planning Board in the implementation of this local law may apply to the State

Supreme Court for review of any such determination which shall be within 30 days after the filing of that decision in the office of the Town Clerk.

Section 611 - SEPARABILITY

If any part of this local law is found to be invalid by any court of competent jurisdiction, such judgment shall not invalidate the remainder of this local law.

Section 612 - ENFORCEMENT

The provision of this local law shall be strictly enforced by the code enforcement officer.

Section 613 - EFFECTIVE DATE

This local law shall take effect on the date it is filed in the office of the Secretary of State of the State of New York.

APPENDIX I – DEFINITIONS

Customary meaning of words. Except where specifically defined herein, all words used in this local law shall carry their customary means. Words used in the present tense include the future, and the plural includes the singular, the word “lot” includes the word “plot”, the word “building” includes the word “structure”, the word “shall” is intended to be mandatory; “occupies” or “used” shall be considered as though followed by words “or intended, arranged or designed to be used or occupied”.

DEFINITIONS

ANIMAL HOSPITAL: Any structure under veterinary supervision for the treatment of sick or injured animals.

BUILDING: Any structure other than a boundary wall or fence which covers or encloses space. Silos of all kinds and livestock slurry storage tanks are considered to be building.

BUILDING, ACCESSORY: A supplemental building, the use of which is incidental to a main or principal building or incidental to the principal use and located on the same lot therewith. The accessory building shall not exceed 750 square feet, shall not be for human habitation, shall not be for school buses, mobile homes, trailers, shipping containers or tanks. All accessory buildings must conform to front and side yard requirements or the district in which they are located.

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

BUILDING FARM: Any building used for the housing of agricultural equipment, produce, livestock, or poultry, or for the incidental or customary processing of farm products, and provided that such building is located on, operated in conjunction with, and necessary to the operation of the farm.

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

BUILDING LINE: The line of that face of the building nearest the front line of the lot. This face includes sun parlors, covered porches whether enclosed or unenclosed (but does not include steps), and any overhang. In the case of a cantilevered building, the building line shall coincide with the most projected surface.

BUILDING, PRINCIPAL OR MAIN: A building in which is conducted the principal use of the lot on which it is located.

CAMP, SEASONAL: Land on which is located one cabin, camping trailer, shelter of other accommodation suitable for seasonal or temporary living purposes, exclusive of mobile dwellings, primarily for the use of the owned.

CAMP, DAY: Any land including any building thereon used for any assembly of persons for what is commonly known as “day camp” purposes, whether or not conducted for profit and whether or not occupied by adults or by children either as individuals, families or groups.

CAMPING GROUND: A parcel of land used or intended to be used, let or rented for occupancy by persons utilizing trailers, campers or other such forms of recreational dwelling.

CERTIFICATE OF COMPLIANCE: A certificate issued by the proper officer of the town upon completion of construction, alteration, or change in occupancy of use of building. Said certificate shall acknowledge compliance with all the requirements of this local law and such adjustments thereto granted by the Board of Appeals.

CLUB, MEMBERSHIP: An organization catering exclusively to members and their guests, including premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain providing they are not operating any vending machines or merchandising or commercial activities except as required generally for the membership and purposes of such club.

CLUSTER DEVELOPMENT: A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, but maintaining the density limitation imposed by said minimum lot area through the provision of open space as a part of the subdivision plan.

CODE ENFORCEMENT OFFICER: The Town of Fenner Code Enforcement Officer, or such other person as may be designated or appointed by the Town Board of the Town of Fenner to administer and/or enforce the provisions of this local law.

COMMERCIAL OR BUSINESS: Of or pertaining to purchase, sale or transaction involving the disposition of any article, substance, commodity or service; the maintenance or conduct of offices, professions or recreational or amusement enterprises conducted for profit; and also the renting or rooms, business offices and sales display rooms and premises.

COVERAGE: That percentage of the plot or lot area covered by the building area.

DOMESTIC ANIMALS OR PETS: Animals which normally live in the same dwelling unit as their owner and are not kept for commercial use.

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

DWELLING, PERMANENT: A building designed or used as the permanent living quarters for one or more families. The term “dwelling” shall not be deemed to include automobile court, rooming house, tourist home, motel, hotel, or temporary camps.

DWELLING, SEASONAL: A building such as a cabin, shelter or other accommodation suitable only for seasonal living quarters, exclusive of a mobile dwelling.

DWELLING, ONE-FAMILY: A detached building containing one dwelling unit only and distended for the use of a single family.

DWELLING, TWO-FAMILY: A detached building containing two dwelling units.

DWELLING, MULTI-FAMILY: A building or portion thereof containing three or more dwelling units and used for occupancy by three or more families living independently or each other.

FAMILY: One or more persons who live together in one dwelling unit and maintain a common household. May consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. May also include domestic servants and occasional guests.

FARM: Any parcel containing five or more acres of land which is normally used for gain in the raising of agricultural products including crops, livestock, poultry, dairy products, orchards, nurseries and three plantations, maple sugar, and stabled animals. It includes a single principal residence and necessary farm buildings and structures within the prescribed limits and the storage of equipment used.

GARAGE, PRIVATE: An accessory building used in conjunction with a principal building which provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.

GARAGE, PUBLIC: Any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, servicing or equipping of automobiles or other motor vehicles.

HOME BUSINESS: Any use of a business or professional nature carried on in a dwelling unit or in an accessory structure by a member of the family living in the dwelling unit and not more than two other non-family employees, which use is secondary to the residential purpose of the dwelling, occupies less than 25% of the floor area of the house, and produces no offensive noises, vibrations, smoke, dust, odors, heat or glare.

HOSPITAL: Unless otherwise specified, the term “hospital” shall be deemed to include without limitation sanitarium, sanatorium, preventorium, clinic, rest home, convalescent home, nursing home, and any other place for the diagnosis, treatment or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

HOTEL, MOTEL, TOURIST HOME: A building or buildings in which overnight accommodations are provided for transient guests for compensation.

INDUSTRY OR INDUSTRIAL: Means and includes storage, manufacture, preparation, processing or repair of any article, substance, or commodity and the conduct of the industrial trade but shall not mean such preparation, processing or repair as are customarily applied to articles, substances, or commodities in retail businesses or trade for on-the-premises transactions.

INSTITUTION: A building occupied by a non-profit establishment for public use.

JUNKYARD: Land used for collecting, storage and sale of waste paper, rags, scrap metal or discarded material, or for the collection, dismantling, storage and salvaging of two or more motor vehicles either unlicensed or not in operating condition. Motor vehicles registered on a seasonal basis are exempt from this definition.

KENNEL: Any premises on which four or more dogs over four months of age are kept for commercial care.

LANDSCAPED AREA: Any non-built-upon area of grass, agricultural fields, pasture, woodlot, forest, standing or flowing water maintained in healthy condition.

LANDSCAPE SCREENING: Plantings of a permanent nature which will have a height in excess of 5 feet and which have sufficiently dense foliage to screen the view.

LOT: A parcel of land occupied or capable of being occupied by one building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by this local law. No area shall be counted as accessory to more than one main building or

use, and no area necessary for compliance with the open space requirements for one mail building or use shall be included or counted in calculation of the open space accessory to any other main building or use.

LOT AREA: An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public road right-of-way shall not be included in calculating lot area.

LOT DEPTH: The mean distance between the front and rear lot lines, measured in the general direction of the side lines of the lot.

LOT LINES: The property lines bounding the lot.

LOT THROUGH: An interior lot having frontage on two parallel or approximately parallel roads.

LOT, WIDTH OF: The mean width measured at right angles to its depth.

MOBILE DWELLING: A structure, constructed pursuant to standards of the U.S. Housing and Urban Development Administration published in Chapter 24 of Title ____ of the Code of Federal Regulations, which is transportable in one or more sections, which in traveling mode, is eight body feet or more in width or 40 body feet or more in length, or , when erected on site, 320 or more square feet, and which is built on a permanent transport chassis and designed to be used a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical system contained therein.

MODULAR DWELLING: A dwelling unit built in accordance with the requirements of the New York State Uniform Fire Prevention and Building Code, Subchapter B, constructed off-site, consisting of more than one (1) segment and designed to be mounted on, and permanently anchored to a permanent perimeter foundation located below the fronts line, thereby becoming a fixed part of the real estate.

MOBILE DWELLING PARK (TRAILER PARK): Any area of land or a building designated as a parking space for two or more mobile dwellings which are used for living purposes in space leased or rented commercially, whether currently occupied or currently open for public occupancy.

NON-CONFORMING BUILDING: A building which in its design or location upon a lot does not conform to the regulation of this local law for the district in which it is located.

NON-CONFORMING LOT: A lot of record existing at the date of the passage of this local law which does not conform to the dimensional regulations of the district in which it is situated.

NON-CONFORMING USE: Any use of any building, structure, or land existing at the time to enactment of this local law which does not conform to the use regulations of the district in which it is situated.

PARKING SPACE OR PARKING SPACE UNT: An off-street space available for the parking of one motor vehicle and having an area of not less than 200 square feet, exclusive of passageways or driveways and having direct access to the road, highway or alley.

PLAT: A map, plan or layout of a city, town, section or subdivision indicating the locating boundaries of individual properties.

“PUBLIC WATER” or “PUBLIC SEWER”: Wherever the phrase “public water” and/or “public sewer” is used, it shall be deemed to refer to an off-site water or sewage system which is owned and operated by a government authority or by a utility company or a sewer district adequately controlled by a government authority.

RESIDENTIAL SUBDIVISION: The creation of parcels of land from larger parcels for the purpose of building single or multi-family homes.

RESTAURANT: Any establishment, however designed, at which food is regularly sold for consumption on the premises to patrons seated within an enclosed building, or elsewhere on the premises. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground playfield or park operated by the agency or group of an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

RIGHT-OF-WAY: The line determining the road or highway public limit of ownership. Also, an easement established for passage across land.

SIGN: Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public; each display surface shall be considered to be a “sign”.

SIGN, OFF-PREMISES: Any sign unrelated to a business or profession conducted, or to a commodity or service sold or offered upon the premises where such is located.

SIGN, ON-PREMISES: Any sign related to a business or profession conducted, or to a commodity or service sold or offered upon the premises where such sign is located.

SITE DEVELOPMENT PERMIT: A permit issued by the land use officer upon approval of a site plan certifying that any building that is to be erected, extended or put in place conforms to the district requirements and the schedule of this local law and to its provisions for traffic safety and parking space, and if necessary, to the town sanitation ordinance.

SITE PLAN: Maps and detailed descriptive text required for any proposed development so designated by the Board of Appeals (see Section 605.10).

SPECIAL FLOOD HAZARD AREA: That area along a waterway designed and mapped by the U.S. Department of Housing and Urban Development under the Flood Disaster Protection Act of 1973 as subject to flooding that could damage buildings, structures and accessory installations in that area.

SPECIAL USE PERMIT: A permit that allows those areas of land or buildings specifically listed in this local law and with the conditions set out in the granting of such permit.

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

STABLE, PUBLIC: A building in which any horses are kept for remuneration, hire or sale.

STRUCTURE: A building, house, tower, office, warehouse, garage, etc.

SWAMPS, WETLANDS: Areas with permanent or seasonal standing water, or those so designated by the Soil Conservation Service and other government agencies.

USE, ACCESSORY: A use customarily incidental and subordinate to the principal use of building and located on the same lot with such principal use of building.

USE, PRINCIPAL: The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained. The term “permitted use” or its equivalent shall not be deemed to include any non-conforming use.

UTILITIES, COMMUNITY: Community facilities for water supply and distribution, sewage collection and disposal, storm drainage, owned and operated by a private owner, semi-public agency or a public agency, for three or more dwellings or establishments.

UTILITIES, PUBLIC AND/OR SEMI-PUBLIC: Distribution points, transmission lines and stations, sub-stations, storage yards, garages and other central buildings and/or related uses for the operation and provision of public and semi-public power, fuel, water and communications service licenses by the Public Service Commission.

VARIANCE, AREA: A legally-permitted modification of a zoning ordinance to allow for different dimensions in the area coverage of a specific parcel of land.

VARIANCE, USE: A legally-permitted modification of a zoning ordinance to allow a different use of a specified parcel of land or a specific structure.

YARD: An unoccupied space open to the sky, on the same lot with a building or structure.

YARD, FRONT: An open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the edge of the highway right-of-way and the front line of the building projected to the sidelines of the lot. The depth of the front yard shall be measured between the nearest point of the front line on the building and road right of way. Covered porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard. The front yard must be free of any man-made building or structure. The one exception is some types of permitted roadside stands (see Section 302.2).

YARD, REAR: An open unoccupied space on the same lot with a main building, extending full width of the lot and situated between the area line of the lot and the rear line or the building projected to the side line of the lot. The depth of the rear yard shall be measured between the rear line of the lot, or the road right-of-way if there is a roadway and the nearest point of the rear line of the main building. Accessory buildings may be built on the rear yard unless the lot is a “through lot” (see definition).

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

The culverts for driveways need to have corrugate 15 gauge steel, a minimum 15” in width or what is designated by the Highway Superintendent.

