

TOWN OF PULTENEY

Local Law Numbered 2 of the year 2008

A Local Law Amending Local Law No. 3 of 2007 entitled “Town of Pulteney Zoning Regulations”

Be it enacted by the Town Board of the Town of Pulteney, as follows:

**TOWN OF PULTENEY, NEW YORK**

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## **ARTICLE I: TITLE AND PURPOSE**

### **100: SHORT TITLE**

This local law shall be known and cited as the "Town of Pulteney Land Use and Zoning Regulations" and is adopted pursuant to the New York Municipal Home Rule Law to carry out the provisions of Article 16 of the Town Law. It shall apply to all land within the Town of Pulteney to the low water mark of Keuka Lake, or further lakeward as other laws may apply.

### **110: PURPOSE**

These Regulations are made in accordance with the Town of Pulteney Comprehensive Plan and designed to lessen congestion in the streets, secure safety from fire, flood, panic, and other dangers; to promote the health and general welfare; to prevent overcrowding of land, facilitate provision of transportation, water, sewage, parks and other public facilities; to encourage the most appropriate use of land; and otherwise carry out the purposes set forth in Article 16 of the Town Law.

## **ARTICLE II: DEFINITIONS**

### **200: INTERPRETATION**

For the purpose of these Regulations, certain terms or words used herein shall be interpreted as follows:

The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

Words used in the present tense include the future tense.

Singular words include their plural forms.

The word "shall" is mandatory.

The words "used" or "occupied" include the words "intended", "designed", or "arranged to be" used or occupied.

The words "lot" includes the words "plot" or "parcel".

### **210: DEFINITIONS**

**ACCESSORY USE OR STRUCTURE:** A use or structure of a nature customarily incidental and subordinate to the principal use or structure, including by way of illustration and not limitation free-standing walls, fences, signs, TV-dish, stairways and portable docks.

**AGRICULTURE:** The use of land for agricultural purposes including tilling of the soil, dairying, pasture, agriculture, aquaculture, arboriculture, horticulture, floriculture, viticulture, forestry, animal and poultry husbandry and the necessary accessory uses for packing or storing of products, provided that the operation of any such accessory uses shall be secondary to that of normal agricultural activities, and provided further that such uses shall not include the commercial feeding of garbage and offal to swine or other animals.

**ALTERATION, STRUCTURAL:** Any change in the supporting members of a building such as bearing walls, columns, beams, or girders.

**AUTOMOBILE JUNK YARD:** Any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or second-hand motor vehicles, no longer intended or in condition for legal use on the public highways in New York State are located (General Municipal Law, Section 136 shall apply). (See also "**JUNK YARD**")

**BATH HOUSE:** An accessory building used by persons to change from street clothes to swimming or boating attire, with no space or services offered for financial compensation and not to be used as a dwelling unit.

**BED AND BREAKFAST:** A dwelling with not more than six (6) rooms for transient guests in which lodging and breakfast are offered for compensation.

**BOARDING HOUSE:** A dwelling in which is offered lodging and meals for not more than twelve (12) non-transient guests for compensation.

**BOAT HOUSE/ BOAT HOIST:** An accessory building used exclusively to house a boat or boats and related equipment and not to be used as a dwelling unit.

**BOAT SLIPS AND MOORING BUOYS:** Any structure or buoy, which is used for the purpose of parking a boat at or in the water, to include boatlifts. Structures will be allowed based upon perpendicular lines to the shoreline.

**BOAT STORAGE:** A commercial enterprise for the storage of boats.

**BUILDING:** A structure having a roof supported by columns or walls used, or intended to be used, for the shelter or enclosure of person, animal or property.

**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 rooftop.

**BUSINESS, CONVENIENCE:** Small commercial establishments catering primarily to nearby residential areas providing convenience goods and services, including but not limited to grocery stores of less than five thousand (5,000) square feet in floor area, drug stores, beauty salons, barber shops, carry-out dry cleaning and laundry pickup stations.

**CAMPGROUND:** A parcel of land used or intended to be used, rented or leased for occupancy by campers or for occupancy by or of trailers, tents, or movable or temporary dwellings, rooms or sleeping quarters of any kind.

**CERTIFICATE OF COMPLIANCE WITH THESE LAND USE AND ZONING REGULATIONS:** A certificate issued by the Zoning Officer stating that a structure or the use thereof is in compliance with these Regulations.

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

**CLUSTER DEVELOPMENT:** A residential development with each lot containing less than the minimum lot area required for the district within which such development occurs, but

maintaining the density limitations imposed by said minimum lot area through the provision of open space as part of the subdivision plan.

**CONSTRUCTION:** New Construction - to build or cause to be built any structure that is not defined as reconstruction; Reconstruction - to build or cause to be built a structure in the exact place and of the exact dimensions as a previously existing structure that has been destroyed by flood, fire or some other event beyond the owner's control.

**DECK:** An outdoor extension of living space. See Section 501.

**DOCK:** See Boat Slips and Moorings.

**DRIVE-IN ESTABLISHMENT:** An establishment which is designed to provide, either wholly or partly, service to customers while in their automobiles parked upon the premises.

**DWELLING:** Any building or portion thereof designed for use exclusively as a residence or sleeping place of one (1) or more persons.

**SINGLE-FAMILY:** A dwelling occupied by one family only, including Manufactured Home and Modular Home as herein defined.

**MULTI-FAMILY:** A residential building containing more than one dwelling unit.

**MANUFACTURED:** A single-family dwelling unit built on a chassis having a body width of ten feet (10') or more and a length of forty feet (40') or more, containing complete bathroom and kitchen facilities, used for long-term occupancy when connected to utilities. A factory built residential dwelling unit designed to be occupied as a single family dwelling, complete and ready for minor and incidental unpacking and assembly operations and placement on a permanent foundation and connections to utilities. Manufactured housing must be built after July 15, 1976 and shall meet the National Manufactured Home Construction Safety Standards as set forth by the U.S. Department of Housing and Urban Development (HUD). This definition specifically does not include so called "modular homes" where the chassis upon which the unit or part of a unit transported is not a part of the structure of the unit itself. This definition specifically does include both the so-called "single wide" and "double wide" units which have been issued the said HUD seal. A travel trailer shall not be considered as a manufactured dwelling.

**MODULAR HOME:** An assembly of materials or products comprising all or part of a total structure constructed according to New York State Standards as set forth in Part 1211 of the **NYS Uniform Fire Prevention and Building Code** and which is

self-sufficient except for utility services and other necessary preparations for its placement, and when constructed and installed, constitutes a dwelling unit.

**DWELLING UNIT:** Two or more rooms connected and constituting a separate, independent housekeeping establishment, containing independent cooking and sleeping facilities, for owner occupancy, rental, or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure.

**EAF, FULL:** A "Full Environmental Assessment Form" as specified in 6 NYCRR Part 617, Section 617.21, Appendix A. It is part of an Application or Appeal for development likely to have a significant effect on the environment.

**EAF, SHORT:** A "Short Environmental Assessment Form" as specified in 6 NYCRR Part 617, Section 617.21, and Appendix C. It is part of an Application or Appeal for development not likely to have a significant effect on the environment.

**ESSENTIAL SERVICES:** Erection, construction, alteration, operation or maintenance by municipal agencies or public utility of telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities.

**EXCAVATION OPERATIONS:** Applies only to over five hundred (500) cubic yards. See Section 511.

**FAMILY:** One or more persons occupying a single dwelling or dwelling unit as a family.

**FENCES:** An accessory use/yard accessory, not to exceed 8' in height with best side out. Fences along highway must abide by safety regulations of appropriate authority (state, town or county).

**GAME PRESERVE:** A place reserved for game hunting with appropriate safeguards.

**GARAGE (PARKING):** See "PARKING GARAGE".

**GARAGE (PRIVATE):** An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted therein, nor space therein for more than one car is leased to a non-resident of the premises.

**HOME OCCUPATION:** An accessory use of a service character conducted for monetary gain entirely within a dwelling unit or accessory structure by a member of the family residing in the dwelling unit, clearly incidental and secondary to the residential use of the dwelling unit in conformity with Section 508 of these Regulations. Does not apply to **HOME OFFICE**. **"NO PERMIT NEEDED"** for **HOME OFFICE**.

**JUNK YARD:** A lot, land or structure, or part thereof, used for the collection, storage, disassembly, packing, sorting, salvage, buying, selling or exchange of waste paper, rags, scrap or discarded material or machinery or parts of any sort, including house wrecking yards, used lumber yards, structural steel materials, but not including used furniture or clothing shops, pawn shops, antique shops or automobile junk yards as defined in the General Municipal Law, Section 136. (See also "AUTOMOBILE JUNK YARD")

**KENNEL: District No. 1, 2, & 4:** Any lot or premises on which four (4) or more dogs more than four (4) months of age are housed, groomed, bred, boarded, trained or sold. **District No. 3:** Any lot or premises on which seven (7) dogs more than four (4) months of age are housed, groomed, bred, boarded, trained or sold.

**LAND USE PERMIT:** A document issued by the Zoning Officer authorizing the use of lots, structures, uses of land and structures, and the characteristics of the uses in conformity with these Regulations.

**LANDFILL, SANITARY:** A designated area where solid waste may be placed for disposal under the direction and supervision of a designated person, which area is located and operated in compliance with the requirements of the State.

**LIGHT MANUFACTURING:** Any manufacturing or assembly activity requiring no highly specialized or heavy equipment, generating no manufacturing by-products and limiting all light, noise, vibration and odors to the immediate area of the activity.

**LIVESTOCK SALES:** A market for the sale of domestic animals such as cattle, horse, sheep, and hogs at wholesale.

**LOADING SPACE, OFF-STREET:** Space logically and conveniently located for bulk pickups and deliveries scaled to delivery vehicles expected to be used and accessible to such vehicles when required off-street parking spaces are filled.

**LOT:** For the purposes of these Regulations, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area and to provide such yards and other open spaces as are herein required. Such lot shall have frontage to be minimum lot width in Section 420 herein on an approved public highway or serviceable private road and may consist of:

- a) A single lot of record;
- b) A portion of a lot of record;

- c) A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record;
- d) A parcel of land described by metes and bounds, provided that in no case of division or combination shall any residential lot or parcel be created which does not meet the requirements of these Regulations.

**LOT OF RECORD:** A lot, which is part of a subdivision recorded in the Office of the Steuben County Clerk or a lot or parcel described by metes, and bounds, the description of which has been so recorded.

**LOT WIDTH (DISTRICT 1 ONLY):** The minimum lot width for a dwelling unit will be measured at the mean high water line on the lake side of the lot or at the minimum dwelling setback line on the lake side of the lot, whichever is more restrictive.

**LOT WIDTH (DISTRICTS 2 & 3 and 4):** The width of that portion of the lot nearest the highway or serviceable private road or the width of the lot of the minimum setback line as measured from the highway right-of-way, whichever is more restrictive.

**LOW WATER MARK OF KEUKA LAKE:** The level of Keuka Lake which cannot be further lowered by use of lake level control gates, also known as the gate sill, located in Penn Yan, New York operated by the Keuka Lake Outlet Gate Manager and established at 709.10 feet above sea level.

**MANUFACTURED HOME:** See under "DWELLING".

**MANUFACTURED HOME PARK:** A plot of ground upon which two or more manufactured homes occupied for dwelling or sleeping purposes are located for which rental is charged for such accommodations.

**MARINA:** Any commercial establishment for the sale, repair, service, storage, rental, launching, fueling and other treatment of boats and marine accessories.

**MEAN HIGH WATER LINE:** The Keuka Lake level determined by the Army Corps of Engineers as the desirable summer level to avoid subsequent drought condition and shall be 715.15 feet above sea level, all as recognized in the "Oswego River Basin Management Plan Analysis-Final Feasibility Report" dated January, 1984.

**MEAN LOW WATER LINE:** The Keuka Lake level determined as the desirable winter level to avoid subsequent flooding conditions and shall be 712.00 feet above sea level, all as recognized in the "Oswego River Basin Management Plan Analysis-Final Feasibility Report" dated January 1, 1984.

**MODULAR HOME:** See under "DWELLING".

**MOTEL:** A building or group of buildings, whether detached or in connected units, used as individual sleeping or living quarters with direct outside access and related management office, with or without restaurant/cocktail bar facilities, designed primarily for travelers and provided with accessory off-street parking facilities. The term "MOTEL" includes buildings designed as tourist courts, motor lodges, auto courts, and other similar appellations but shall not be construed to include parking areas for **HOUSE TRAILERS** or **MANUFACTURED HOMES** or to include **DWELLING UNITS**, except for that of the owner or manager.

**MULTIPLE-FAMILY DWELLING:** See under "DWELLING".

**MUNICIPAL PARKS:** Parks and playgrounds established and operated by the Town.

**NON-CONFORMING LOT:** A parcel of land existing at time of enactment of these regulations which does not meet the minimum area, set-back or frontage requirements on an approved public highway in the district which it is located.

**NON-CONFORMING USE:** A building, structure or use of land existing at the time of enactment of these Regulations which does not conform to the regulations of the district in which it is located.

**NURSING HOME:** Premises occupied by sick, infirm or convalescent persons who are attended by nurses caring for their physical or mental requirements.

**PARKING GARAGE OR LOT (PUBLIC):** A structure or lot in which automobiles may be parked in consideration of the payment of a fee and in which no repair or other service is offered.

**PERMANENT RESIDENCE:** A fixed, stable living space with normal utilities.

**PRIVATE RECREATIONAL USE:** The use of land by its owner primarily for recreational pursuits involving recreational interest in the natural environment such as nature study, hiking, hunting, bird watching, camping and/or management of flora and fauna primarily for recreational purposes.

**PRODUCE MARKET:** A market for the sale of farm products at retail.

**PRODUCE STAND:** A wholly or partly enclosed shed for the sale of products produced on the land on which said shed is located, which stand shall be located so as to permit customers to drive completely off the highway while dealing.

**PROFESSIONAL OFFICE:** Offices and related spaces used for such professional services as are provided by medical practitioners, attorneys, architects, engineers and similar professionals.

**RECREATIONAL DEVELOPMENTS (MAJOR):** Any of the following: travel trailer parks, campgrounds; hunting, riding and fishing clubs; trails; country clubs, golf courses; ski lodges; game preserves, gun clubs; race tracks; sport arenas; trails for all-terrain vehicles; motor-cross trails, ski trails; and related activities and facilities.

**RECREATIONAL DEVELOPMENTS (MINOR):** Outdoor facilities and activities requiring less than fifty (50) acres that are designed for public use, including but not limited to golf driving ranges, miniature golf courses, tennis courts, volleyball courts and related facilities and activities.

**RECREATIONAL EQUIPMENT:** Shall include recreational vehicles/trailers, all-terrain vehicles and snowmobiles.

**RECREATIONAL VEHICLE/TRAILER:** A vehicular portable structure built on a chassis, designed to be used as a temporary dwelling for recreational and travel purposes, having a body width not exceeding eight feet (8') and a body length not exceeding forty feet (40'), including travel trailers, campers, pickup coaches and motorized homes.

**RESTAURANTS:** Any establishment, however designated, at which food is sold for consumption to patrons seated within an enclosed building or on the premises. However, a snack bar or refreshment stand at a public or community swimming pool, playground or park operated by the owner thereof or an approved vendor operating the recreational facilities for the convenience of the patrons of the facility shall not be deemed to be a restaurant. (See also "DRIVE-IN ESTABLISHMENTS")

**SERVICEABLE PRIVATE ROAD:** A road which owners bind themselves to maintain at their own expense and be so located as to provide safe, convenient access for servicing fire protection and off highway parking.

**SERVICE STATION:** Building and premises where gasoline, oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail and general automobile repair services are offered.

**SET-BACK (Also referred to as YARD):** Open area on all sides of a lot required to be unoccupied and unobstructed by any building or portion of a structure.

**SET BACK, FRONT:** A space extending between side lot lines across the front or road side of a lot adjoining a public or private roadway measured from the roadway right-of-way to the principal structure.

**SET BACK, SIDE:** A yard extending from the rear line of the required front yard to the rear lot line, or in the absence of and clearly defined rear lot line, to the point on the lot farthest from the intersection of the lot line involved with the highway. In the case of through lots, side yards shall extend from the rear lines of front yards required. In the case of corner lots, yards remaining after front yards have been established shall be considered side yards. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

**SET BACK, REAR:** A space extending between side lot lines across the rear or lakeside of a lot. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards. Depth of required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

**SEWAGE:** Any liquid waste containing animal or vegetable matter in suspension or solution or the water-carried wastes resulting from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers or any other source of water-carried waste of human origin or containing putrescible material.

**SIGNS AND BILLBOARDS:** Any letter, pictorial representation, symbol, advertising flag, emblem, illuminated or animated device displayed in any manner whatsoever, which directs attention of persons off the premises on which the sign is displayed to any object, subject, place, person, activity, product, service, institution, organization or business.

**SPECIAL PERMIT USES:** Those particular uses which are specifically permitted in a given district only when specific criteria enumerated herein are applied in such a manner so as to carry out the intent of these Regulations.

**STREET LINE:** The right-of-way line of a street.

**STRUCTURE:** Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground, including by way of illustration and not limitation: buildings, manufactured homes, carports and attached walls. **NOTE:** A concrete or cement pad that is placed on the ground is not a structure but is considered a structure if supported on piling or a foundation raising it above the ground level.

**STRUCTURE, AGRICULTURAL:** Customary non-residential farm structures including barns, silos, storage sheds, corn cribs, grain bins, milk houses, animal pens and similar structures when used in connection with agricultural activities.

**TAVERN:** Any establishment licensed by the State of New York to sell, at retail, alcoholic beverages in single serving quantities for consumption on the premises.

**TOWN BOARD:** The governing body of the Town of Pulteney.

**TOWN COMPREHENSIVE PLAN:** The Plan described by these Land Use Regulations.

**TOWN HOUSE:** A building consisting of two or more single-family dwelling units, in which adjacent dwelling units are separated by a common fireproof wall.

**TRAVEL TRAILER:** See "RECREATIONAL EQUIPMENT".

**USE DISTRICT:** A geographic subdivision of the Town of Pulteney as delineated on the Official Land Use District Map, for which the requirements of these Regulations governing the uses, densities, setbacks, and other specifications, are uniform therein.

**VARIANCE: (AREA)** A departure from the strict letter of these Regulations as applied to a particular piece of property, pertaining to dimensional requirements only. **(USE)** - Not a permitted, accessory or special permit use.

**VETERINARIAN ANIMAL HOSPITAL:** A structure where animals are medically treated, including escape-proof pens which may be located outside of the structure, provided that no nuisance is created thereby.

**WINERY:** A winery licensed to produce not over 50,000 gallons annually, devoted primarily to production of wine from grapes grown on the premises.

**ZONING OFFICER:** The official designated to administer and enforce these Regulations.

**ARTICLE III: ESTABLISHMENT OF DISTRICTS:**  
**PROVISIONS FOR OFFICIAL LAND USE AND ZONING REGULATION**

**300: ESTABLISHMENT OF DISTRICTS**

For the purpose of promoting the public health, safety and welfare, and otherwise carry out the objectives of these Regulations, the Town of Pulteney is hereby divided into the following land use districts:

**DISTRICT 1:** That portion of the Town of Pulteney east of the centerline of State Rte. 54 A.

**DISTRICT 2:** That portion of the Town of Pulteney between the centerline of State Rte. 54 A and a line drawn in a generally north-south direction five hundred (500') west of the centerline of State Rte. 54A.

**DISTRICT 3:** That portion of the Town of Pulteney not included in District 1, 2 or 4.

**DISTRICT 4:** That portion of the Town of Pulteney commonly known as the Hamlets of Pulteney and South Pulteney whose boundaries are defined as follows:

Hamlet of Pulteney: From the intersection of Wagener Gulley and County Rte. 78 south to intersection of County Rte. 74 (Boyd Hill) and County Rte. 78. From this intersection one-half mile west on Brown Rd., one-quarter mile east on County Rte.74 (Boyd Hill) and continues south on County Rte. 74 to intersection of County Rte. 74 and Roff Hill. From this intersection one-quarter mile east on Roff Hill and continues south on County Rte. 74 to Mill St., thence west on Mill St. to Brown Rd., thence south on County Rte. 74 to Stone Rd. Also south on Cross St. from the intersection of Cross St. and Roff Hill to the intersection of Cross St. and the second creek running west to east, south of Roff Hill. This district will cover a distance of three hundred feet (300') on either side of the centerline of the above defined roads, except that all the land beyond three hundred feet (300') bounded by Brown Road, Mill Street and County Route 74 be included.

Hamlet of South Pulteney: Starting at a point eight hundred and twenty-eight feet (828') south of the intersection of County Route 76 and Gallagher Road continuing north along County Route 76 to five hundred feet (500') beyond the intersection with Judson Road and from said intersection, five hundred feet (500') north on Judson Road. These distances being one thousand six hundred and sixteen feet (1, 616') north from the intersection of County Route 76 and Gallagher Road. This district will cover a distance of three hundred feet (300') on either side of the centerline of the above defined roads.

### **310: LAND USE AND ZONING REGULATION MAPS**

Said districts are shown and bounded on the Official Land Use and Zoning Regulation Maps, which maps together with all explanatory matter thereon is hereby adopted and attached hereto. Said maps shall become official on the effective date of these Regulations and shall be duly certified by the Town Clerk.

### **320: INTERPRETATION OF LAND USE AND ZONING REGULATION MAPS**

Where uncertainty exists with respect to the boundaries of any land use district as shown on the Official Land Use and Zoning Regulation Maps, the following rules shall apply:

- A. Where boundaries are indicated as approximately following the centerlines of streets or highways, such centerlines shall be construed to be such boundaries.
- B. Where boundaries are so indicated that they approximately follow platted lot lines, such lot lines shall be construed to be said boundaries.
- C. Where the boundaries follow a stream, lake or other body of water, said boundary line shall be that follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline.  
Boundaries indicated as approximately following the centerlines of streams, lakes or other bodies of water, shall be construed to follow such centerlines.
- D. Where physical or cultural features existing on the ground are at variance with those shown on the Official Land Use and Zoning Regulation Maps, or in other circumstances not covered herein, the Board of Appeals shall interpret the boundaries.

## **ARTICLE IV: DISTRICT REGULATIONS**

### **400: APPLICATION OF REGULATIONS**

The requirements set by these Regulations within each land use district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land; except that in District 3, non-residential, agricultural buildings and structures are exempt from these Regulations, and no Land Use Permit or Certificate of Compliance shall be required, therefore, unless such building or structures are designed for housing animals located within fifty feet (50') of a highway right-of-way; within two hundred feet (200') of a lot line; or within three hundred feet (300') of an existing dwelling on an adjoining lot. **HOWEVER**, all other agriculture buildings and structures must be registered with Town Clerk (size and location).

- A. Except as provided above, no structure shall hereafter be erected and no existing structure shall be moved, structurally altered, added to or enlarged, nor shall any land be used for any purposes other than those included among the uses listed as permitted uses in each district. No activities that exacerbate an existing non-conforming use will be permitted. No open space contiguous to any building shall be encroached upon or reduced in any matter, except in conformity with the regulations for the district in which such building or space is located. In the event of any such unlawful encroachment or reduction, such building shall be deemed to be in violation of these Regulations.
- B. No building or other structure shall hereinafter be erected or altered to have narrower or smaller rear yards, front yards, side yards, or other open spaces than required herein or in any other manner contrary to the provisions of these Regulations.
- C. The foregoing restrictions shall not apply to reconstruction of an identical building or other structure destroyed by act of God or other force majeure.
- D. Any lawful use existing prior to the enactment of these Regulations which does not conform to the requirements herein may continue as a non-conforming use as provided herein. Any use of land, which is a non-conforming use and discontinued for a period of more than two hundred and seventy-five (275) days shall not thereafter be permitted as a non-conforming use but may be allowed upon application for a variance.
- E. Owners of non-conforming parcels with dwellings in place prior to enactment of this law shall be exempt from the minimum area requirements of these regulations for the district in which the parcel is located, provided that: (1) Such parcels do not adjoin any other parcel (s) held by the same owner where aggregate area is equal to or greater

than the minimum lot area required for that district. (2) There is compliance with all other requirements of these regulations for that district.

- F. Any erosion occurring due to man-made alterations to the landscape shall be confined to the work site so as to prevent siltation of Keuka Lake.

#### **410: DISTRICT REGULATIONS**

- A. **DISTRICT # 1:** Intent - The purposes for creating the district are to encourage the preservation of natural resources, scenic and recreational values, and wildlife resources; to provide for recreational use of natural resources; and to otherwise carry out the objectives of these Regulations.

1. In this District, no structure shall be erected or altered, and no structure or land shall be used, except for one or more of the following specified uses:

a. Permitted Principal Uses

Single-family dwellings, but not including manufactured homes.

b. Accessory Uses

Bath houses

Boathouses/boat hoist, slips and docks

Private vehicle garages customarily accessory to a permitted principal use

Swimming pools, tennis courts

Uses customarily accessory to a permitted principal use

c. Special Permit Uses

Adult daycare

Bed and breakfasts

Home occupations

Marinas

Municipal Parks

Restaurants

d. Special Requirement

i. All structures other than boat houses/boat hoist and docks shall be set back twenty-five feet (25') from the mean high water line of Keuka Lake and shall have a site elevation of not less than seven-hundred twenty-one feet (721') above sea level.

ii. New structures or additions to existing structures will not be permitted on lots that are non-conforming.

e. Keuka Lake Access

- i. Purpose: Recreational and related use of the shore of Keuka Lake in District #1 shall be limited in order to prevent access use harmful to scenic values, near-shore water quality, fish habitat, and established community character. Such limitation shall be in addition to the density provisions of **Section 420**.
- ii. No easement, right of way, right of access or right of use of property adjacent to Keuka Lake shall be granted to more than one person nor be allowed to serve more than a single dwelling except for the purpose of drawing water. Each lakeside lot shall be limited to one easement, right-of-way, right of access or right of use. Such easement or right shall be personal to the grantee and shall not run with either the grantee or grantor's land.
- iii. Such easement shall be granted in writing and acknowledged by the grantor. As required for a deed to be recorded, such instrument shall be recorded in the Office of the Steuben County Clerk, and a copy certified by the Steuben County Clerk shall be delivered to the Zoning Officer by certified or registered mail.
- iv. Any boathouse/boat hoist erected on a dock beyond the mean high waterline (shoreline) must remain open sided.
- v. No dock, mooring, stairway, boat slip or structure for access to Keuka Lake (non natural access) shall be constructed or erected on or intended to serve any lot measuring less than fifty feet (50') at the low water mark of Keuka Lake.

B. **DISTRICT # 2**

1. INTENT: To permit establishment of low-density residential areas with adequate individual water and sewer facilities; to avoid congestion and otherwise carry out the objectives of these Regulations. In this District, no structure shall be erected or altered, and no structure or land shall be used, except for one or more of the following specified uses:

- a. Permitted Principal Uses  
 Customary agricultural uses and structures  
 Day nurseries, kindergartens  
 Produce stands  
 Single family dwelling, but not including manufactured homes.
  
- b. Accessory Uses  
 Private vehicle garages - garages servicing dwellings in District # 1 do not require 40,000 sq. ft. but must meet setbacks  
 Swimming pools  
 Tennis courts  
 Uses customarily accessory to a permitted principal use
  
- c. Special Permit Uses  
 Adult daycare  
 Bed and breakfasts  
 Boarding houses  
 Boat storage  
 Business, convenience  
 Churches, parish houses and similar places of worship  
 Essential Services  
 Home occupation  
 Membership clubs  
 Multi-family dwelling  
 Restaurants  
 Town houses

C. **DISTRICT # 3**

- 1. INTENT: To preserve agricultural land, encourage continued agricultural uses, preserve open space and natural resources, reduce land use conflicts and otherwise carry out the objectives of these Regulations and the Town Comprehensive Plan. In this District, no structure shall be erected or altered, and no structure or land shall be used, except for one or more of the following specified uses:
  - a. Permitted Principal Uses  
 Customary agricultural uses and structures  
 Day nurseries, kindergartens  
 Historical museums, markers and monuments  
 Municipal parks, playgrounds and libraries

Poultry and livestock housing  
Produce stands  
Single-family dwelling

b. Accessory Uses

Customary residential storage structures  
Private vehicle garages  
Similar uses customarily accessory to a permitted principal use  
Swimming pools  
Tennis Courts

c. Special Permit Uses

Adult daycare  
Airports  
Bed and breakfast  
Boarding houses  
Boat storage  
Business, convenience  
Cemeteries  
Churches, parish houses and similar places of worship  
Essential services  
Excavation operations, junkyards and automobile junk yards  
Game preserves  
Home occupations  
Kennels  
Light manufacturing  
Manufactured home parks  
Membership clubs  
Motels  
Multi-family dwellings  
Municipal parks  
Nursing homes, rest homes  
Private schools  
Produce market  
Professional offices  
Recreational developments (Major or Minor)  
Restaurants, taverns  
Sawmills, except when part of a farming operation  
Service stations  
Veterinarian hospitals  
Wineries

D. **District #4**

1. **INTENT:** To provide a district for the Hamlets of Pulteney and South Pulteney in recognition of their unique characteristics within the Town. In this District no structure shall be erected or altered and no structure or land shall be used, except for one or more of the following specified uses.
  - a. **Permitted Uses**
    - Customary agricultural uses and structures
    - Day nurseries, kindergartens
    - Historical museums, markers, and monuments
    - Municipal parks, playgrounds and libraries
    - Produce stands
    - Single-family dwellings
  - b. **Accessory Uses**
    - Swimming pools
    - Private vehicle garages
    - Tennis courts
    - Uses customarily accessory to a permitted principal use
  - c. **Special Permit Uses**
    - Adult daycare
    - Bed and breakfasts
    - Boarding houses
    - Boat storage
    - Business, convenience
    - Churches, parish houses and similar places of worship
    - Essential services
    - Home occupations
    - Membership clubs
    - Multi-family dwellings
    - Restaurants
    - Town houses

**420: DEMENSIONAL REQUIREMENTS**

- A) The dimensional requirements in Pulteney District No. 1 shall be as follows:
  - 1) Minimum lot size: 15,000 sq. ft. (.344 acres)
  - 2) Minimum lot width: 75 feet
  - 3) Minimum setbacks: front 25 feet; side 10 feet; rear 25 feet

- 4) Maximum structure height: 35 feet; boathouse and garage 15 feet
  - 5) Structure coverage: 40%
- B) The dimensional requirements in Pulteney District No. 2 shall be as follows:
- 1) Minimum lot size: 40,000 sq. ft. (.918 acres)
  - 2) Minimum lot width: 80 feet
  - 3) Minimum setbacks: front 25 feet; side 10 feet; rear 25 feet
  - 4) Maximum structure height: 35 feet
  - 5) Structure coverage: 35%
- C) The dimensional requirements in Pulteney District No. 3 shall be as follows:
- 1) Minimum lot size: 80,000 sq. ft. (1.84 acres)
  - 2) Minimum lot width: 200 feet
  - 3) Minimum setbacks: front 50 feet; side 50 feet; rear 50 feet
  - 4) Maximum structure height: 35 feet
  - 5) Structure coverage: 20%
- D) The dimensional requirements in Pulteney District No. 4 shall be as follows:
- 1) Minimum lot size: 20,000 sq. ft. (.46 acres)
  - 2) Minimum lot width: 75 feet
  - 3) Minimum setbacks: front 25 feet; side 10 feet; rear 25 feet
  - 4) Maximum structure height: 35 feet
  - 5) Structure coverage: 35 %

## **ARTICLE V: SUPPLEMENTAL REGULATION**

The provisions of the District Regulations shall be supplemented by the following:

### **500: PROHIBITED USES**

- A. Any use of any structure or premises in such manner that the health, safety or welfare of the community may be endangered.
- B. In any district, the following standards for activities shall apply:
  - 1. No offensive or objectionable vibration, odor, noise or glare shall be noticeable at or beyond the property line excepting normal agricultural pursuits.
  - 2. No activity shall create a physical hazard by reasons of fire, explosion, radiation or other such cause to persons or property in the same or adjacent district.
  - 3. There shall be no storage of any material either indoors or outdoors in such a manner to facilitate the breeding of vermin or endangering health in any way.
  - 4. The emission of smoke, fly ash or dust which can cause damage to the health or persons, animals, plant life or to other forms of property, shall be prohibited.

### **501: ARCHITECTURAL PROJECTIONS**

Open structures such as porches, decks, patios, balconies, carports and similar architectural features shall be considered parts of the building to which they are attached or provide access to and shall not extend into required minimum front, side or rear set back areas.

### **502: PARKING AND STORAGE OF UNLICENSED AUTOMOBILES**

Where permitted by these Regulations, automobile junkyards shall be governed by General Municipal Law Section 136.

### **503: ACCESSORY STRUCTURE**

No accessory structure shall be located in any required yard, and no separate accessory building shall be located within five feet (5') of any other building, provided, however, that hedges, fences and other customary yard accessories may be permitted in any yard.

#### **504: ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT**

In any district, more than one structure housing a permitted principal use may be erected on a single lot, provided that minimum yard setbacks and other requirements of these Regulations shall be met for each structure as though it were on an individual lot. A temporary structure can be permitted while remodeling or new construction for 6 months maximum.

#### **505: HIGHWAY ACCESS**

- A. Every building hereafter erected or moved shall be located on a lot with frontage on a public street or highway or serviceable private road which builders or owners bind themselves to maintain at their own expense and be so located as to provide safe, convenient access for servicing fire protection and off-highway parking. Curb cuts and driveways will be carefully located and kept to a minimum in all cases. Parallel access roads or internal development roads will be required where appropriate to achieve this purpose.
- B. Vehicular access to and from streets and highways shall consist of well defined entrances and shall comply with applicable regulations of the New York State Department of Transportation, the Steuben County Department of Public Works or the Town of Pulteney, whichever applies and the following provisions, whichever is more restrictive.
- C. Access driveways shall not open upon any public right-of-way within fifty feet (50') of the nearest right-of-way line of any intersecting public street or highway or where the sight distance in either direction along the public thoroughfare would be less than five hundred feet (500'). When the posted speed limit is thirty-five (35) miles per hour or less, the sight distance requirement shall be reduced to two hundred fifty feet (250').
- D. Driveways opening on State highways shall be subject to New York State Department of Transportation regulations.
- E. Driveways opening on County highways shall be subject to the regulations of the Steuben County Department of Public Works.
- F. All driveways opening on Town highways shall be classified "Residential" or "Commercial" and shall conform to the following specifications (except where these may be in conflict with other State and County regulations, in which case, the more restrictive shall govern):

1. RESIDENTIAL

- a. Driveway pipe shall be a minimum of eighteen inches (18") in diameter and twenty feet (20') in length. Larger sizes may be required depending on the flow.
- b. Driveway pipe shall be placed so as to maintain the drainage gradient of the road ditch.
- c. Driveway angle of entry to the highway shall not be less than sixty (60) degrees.
- d. Driveways shall have a minimum width of twelve feet (12').
- e. Driveways shall be a minimum of five feet (5') from property lines.
- f. Driveway grades between the highway and the building line shall not exceed twelve percent (12%).
- g. Driveways shall not have less than a five foot (5') transition radius at the curb line or the equivalent in a flared entrance.
- h. Normally, there shall be one drive per residence; one additional may be granted if sufficient frontage exists.

2. COMMERCIAL: The following provisions shall not apply to access driveways serving single or multi-family dwellings, but shall apply in the case of all other uses:

- a. Separate entrance and exit driveways shall have a minimum width of twelve feet (12') and maximum width of twenty-four feet (24') measured at right angles to the driveway centerline; shall be separated by at least a ten foot (10') traffic island; and shall not intersect the public right-of-way at an acute angle of less than sixty (60) degrees. Driveway pipe shall be a minimum of eighteen inches (18") in diameter and extend two feet (2') beyond each edge of each driveway.
- b. Combined exit-entrance driveways and common driveways serving more than one establishment shall have a minimum width of twenty-four feet (24') and a maximum width of thirty feet (30') measured at right angles to the driveway centerline and shall intersect the public right-of-way at an angle of not less than sixty (60) degrees.

- c. In cases where the size of an existing lot of record at the effective date of these Regulations is such that the strict application of these Regulations would prohibit highway access to the property, a plan for access which shall provide the greatest traffic safety possible under the circumstances shall be submitted for approval by the Planning Board prior to the issuance of a building permit.

#### **506: PRIVATE SWIMMING POOLS**

No private swimming pools, excluding farm ponds, shall be allowed in any district except in compliance with the following requirements:

- A. Any private swimming pool shall be intended for use by the occupants of the property on which said pool is located.
- B. No private swimming pool shall be less than ten feet (10') from any lot line.
- C. Any in-ground pool, or the entire property on which it is located, shall be walled or fenced to prevent uncontrolled access by children and animals. Said wall or fence shall not be less than six feet (6') in height, or such greater height required by New York Law, and maintained with a self-closing and self-latching gate of height equal to the fence.
- D. Any above ground pool shall have a gate or other device to prevent uncontrolled access by children and animals. Such device shall be self-closing and self-latching.

#### **507: ESSENTIAL SERVICES**

- A. Such facilities shall not be located on a residential street unless no other site is available and shall be located so as to draw a minimum of vehicular traffic to and through such streets.
- B. The location, design and operation (including noise) of such facility shall be of such a character as not to affect adversely the surrounding residential areas.
- C. Fences, barriers, and landscaping shall be provided as may be required by the Planning Board.

## **508: HOME OCCUPATIONS**

Where home occupations are permitted by these Regulations, the following conditions shall be mandatory.

- A. No such occupation shall involve sales of goods or merchandise except as incidental to services provided.
- B. No equipment or process shall be used which creates visual or audible interferences in any radio or television receivers off the premises, or causes fluctuation of line voltage off the premises.
- C. No traffic shall be generated by such home occupation insubstantially greater volume than normal in the neighborhood, and any need for parking generated by such occupation shall be provided off-street other than in the required front yard.
- D. No such accessory use shall be considered a home occupation if there are no outward indications that said use is occurring i.e. signs, parking lots, additional lighting, increased noise and/or traffic levels, etc.

## **509: ANIMALS AND POULTRY**

In District # 1, #2 and #4, no housing of poultry or livestock, no placement of feeding equipment or structures therefore and no outdoor storage of odor or dust producing materials shall be permitted within two hundred feet (200') of a lot line or three hundred feet (300') of an existing dwelling on an adjoining lot.

## **510: SERVICE STATIONS, AUTOMOTIVE**

In any district where permitted, a service station shall be subject to the following requirements:

- A. Structures and areas for use by motor vehicles, except access driveways, shall not encroach upon any required yard area.
- B. No fuel pump shall be located closer than twenty feet (20') from any side lot line nor closer than twenty feet (20') from any street right-of-way.
- C. Accessory goods for sale may be displayed on the pump island and the building island only.

- D. No motor vehicle parts or partially dismantled motor vehicles shall be stored outside for a period exceeding two (2) weeks except vehicles being repaired.
- E. Where a service station abuts a residential lot, densely planted evergreens, solid fencing or a combination of both shall be required to obscure the view of the service station from such residential lot. Failure to maintain such screen in good condition shall constitute a violation of these Regulations.

### **511: COMMERCIAL EXCAVATION OPERATIONS**

Excavation operations, including the extraction of fill, sand and gravel, and processing or other operation for the preparation of sand and gravel, where permitted as a special permit use, are subject to the following provisions in addition to other requirements of these Regulations. (This Section shall not be construed to prevent the excavation or moving of earth on premises when such is solely for farming purposes).

- A. All excavations shall comply with the New York State Mined Land Reclamation Law.
- B. The Town Board may require the posting of a bond or equivalent security sufficient to cover the costs of rehabilitation of the area.

### **512: WATER SUPPLY AND SEWAGE DISPOSAL**

- A. Water supply facilities shall be provided in accordance with the standards set forth in the publication "**Rural Water Supply**" as published by the New York State Department of Health, or revisions thereof.
- B. Any new structure containing bathroom facilities shall be equipped with a system or facility for the separate disposal of water-borne sewage or trade wastes in accordance with standards for such facilities as set forth in New York State Department of Health Rules and Regulations Part 75 and Appendix 75-A, or any subsequent revisions thereto, or any duly adopted Town regulations, whichever are more strict.
- C. Where said standards are not applicable due to inadequate percolation rates, topography problems, rock formation or other circumstances, a sewage treatment system shall be designed according to standards set forth by the New York State Department of Health. Said systems shall be approved by the New York State Department of Health and by a registered professional engineer or other qualified professional person authorized and licensed by the State of New York to design such systems.

## **513: SIGNS AND BILLBOARDS**

- A. Signs and billboards may be erected and maintained only in compliance with the following provisions and are allowed in all districts.
- B. The surface area of any sign is the entire area within a single continuous perimeter enclosing the extreme limits of lettering, representation, emblems, or other figures, together with any material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed. Structural members bearing no sign copy shall not be included. Only one side of a freestanding or projecting double-faced sign shall be included in calculating surface area, providing that the two display surfaces are joined at an angle no greater than 60 degrees. All sides of multi-faced signs visible from any one street shall be included in the calculation of surface area.
- C. **General Sign Regulations**
  - 1. Number of Signs: Each building may have one sign oriented to each street on which the premises have frontage, identifying the building as a whole or it's predominate use.
  - 2. Projecting Signs: No sign shall overhang the right-of-way of a public highway. No sign except on a canopy providing shelter shall overhang more than one-third (1/3) of the sidewalk.
  - 3. Illumination: Signs shall be illuminated only by a steady, stationary, shielded light source directed solely at the sign or internal to it, without causing glare for motorists, pedestrians or neighboring premises.
- D. Notwithstanding the foregoing, the following additional restrictions shall apply:
  - 1. Signs advertising the sale, lease or rental of premises upon which the sign is located shall not exceed nine (9) square feet in surface area.
  - 2. Professional offices, home occupations and rooming houses may have one identification sign not exceeding nine (9) square feet in surface area.
  - 3. Signs customarily incidental to places of worship, libraries, museums, clubs or societies shall not exceed twenty (20) square feet in surface area and shall be located on the premises of such institution.

4. Signs advertising a commercial enterprise including real estate developments or subdivisions shall not exceed twenty (20) square feet in surface area and shall advertise only the names of the owners, trade names, products sold, business or activity conducted on the premises on which the sign is located. Not more than two (2) signs shall be allowed for each such business or commercial activity on the premises of such enterprise.
- E. The foregoing restrictions shall not apply to any temporary sign, which shall be located on any lot for a period of not more than thirty (30) days.

#### **514: RESIDENTIAL CLUSTER DEVELOPMENT**

- A. **POLICY**: In accordance with Section 281, Article 16 of the Town Law, the Planning Board is authorized to permit modifications of these Regulations in the case of Residential Cluster Development in any Residential District. The purpose of such modifications shall be to allow and encourage flexibility of design and manner of development in order to promote the most appropriate use of land, to facilitate economical provision of streets and utilities and to preserve open space.
- B. **CONDITIONS**: This procedure shall be governed by the following requirements:
  1. Cluster development shall be applicable only within residential districts. For each such development, the owner shall file a written application.
  2. **Density**: Although the Planning Board may, hereunder, approve reductions from the required lot area, lot width, and yard dimensions, the total number of dwellings permitted in such a development shall in no way exceed the number which could be permitted if the land were subdivided into lots conforming to the minimum lot size.
  3. **Open Space**: In the event that this procedure results in land being available for open space or recreation uses, such lands shall either be deeded to the Town or held in corporate ownership by the owners of the lots within the development, and in such case, the deeds of all property within the development shall carry a clause giving the lot owners an interest in such open space uses only. Such lot owners shall enter into agreements providing for the continuing maintenance of such open space and recreation areas.
  4. **Site Plan Review**: A proposed site plan shall be submitted to the Planning Board. It shall show areas within which structures may be located, the height and spacing of buildings, open spaces, landscaping, parking areas, streets and

other physical features as shown or otherwise described in the written application. The Site Plan shall be subject to review and public hearing by the Planning Board.

### **515: RECREATIONAL DEVELOPMENTS (MAJOR)**

- A. Any recreational development shall contain at least fifty (50) acres and shall have sufficient highway frontage to permit proper access design without creating traffic hazards as required by **Section 505**.
- B. An applicant seeking approval from the Planning Board for a recreational development shall submit a plan which shall include a written description of the proposed development and shall include appropriate drawings to the scale of 1" = 400' signed by a licensed engineer or other licensed professional authorized by New York State to design such plan and development. Such plan shall contain the following:
  - 1. Topographic data, contours, slopes and finished grades at the same intervals; and
  - 2. Layout of all uses and structures, to scale, including proposed lighting, sewage and water systems, drainage, streets, roads, parking areas, service facilities (such as laundry and shower buildings) and all other appurtenant uses and structures.
- C. Spaces for individual occupancy shall be dimensioned and arranged so that no portion of any living unit thereon shall be within thirty feet (30') of any portion of any other unit or building.
- D. No structure or device containing sleeping quarters shall be located within seventy-five feet (75') of the centerline of any public street.
- E. Utilities shall be provided in accordance with applicable State regulations.
- F. Occupancy shall be limited to short-term housing devices such as travel trailers, tents and motor homes.
- G. All activities of such development shall be contained on the site. Intensive activity areas and structures shall be located no closer than three hundred feet (300') from any property line.

- H. Internal streets shall be privately owned and maintained. They shall be designed for safe and convenient access to all spaces and facilities. Surfacing and maintenance shall provide sound all weather driving surfaces, free from mud, excessive dust and standing water. Roads and drainage facilities shall meet applicable standards of Town of Pulteney. All traffic into and out of the development shall be through marked exits and entrances.
- I. In addition to the requirements herein, any travel trailer park developed pursuant to this Section shall be established and operated under permit as required by the New York State Sanitary Code and shall be in full compliance with all applicable provisions of said Code.

**RECREATIONAL DEVELOPMENTS (MINOR)** Are covered by Special Use Permit Only.

**516: RECREATIONAL VEHICLES**

Outside of Recreational Developments regulated by Section 515,

- A. No more than one (1) occupied recreational vehicle/trailer may be on any lot.
- B. No recreational vehicle/trailer shall be connected permanently to any water supply or sewer.
- C. All solid waste and sewage resulting from occupancy of a recreational vehicle/trailer shall be collected and disposed of in a sanitary fashion as required by applicable Town and State Regulations.
- D. A homeowner's unoccupied recreational vehicle/trailer, intended for travel purposes only, is exempt from these conditions.
  - a. Location: Side setbacks of ten (10) feet; road or street setbacks of fifteen (15) feet; lake setback of thirty (30) feet from high water line.

**517: MANUFACTURED HOMES**

- A. **GENERAL REQUIREMENTS:** All manufactured homes in the Town of Pulteney shall conform to the following:
  - 1. **Construction Standards:** Manufactured homes shall comply with standards prescribed in Part 1221 of the New York State Uniform Fire Prevention and Building Code and HUD Standards (see Definitions)

## 2. Manufactured Home Placement

- a. Stand: All singlewide and doublewide manufactured homes shall be installed on a concrete stand. This stand shall consist of 6" of concrete with reinforcement wire. This shall be over 6" of gravel base. This stand shall have the same exterior dimensions of the home being placed on it. This stand shall be 6" above the surrounding grade to insure drainage away from the stand.
- b. Clearance: i) Manufactured Home Park - in a home park, any home shall be located at least twenty-five feet (25') from any other home, from any permanent building and from any lot line. ii) Other Installations - the density provisions of **Section 420** are in effect.
- c. Skirting: Within sixty (60) days of placement on a stand, a manufactured home shall be skirted around the bottom portion with uniform durable material which shall be ventilated.

### **518: PROVISION FOR PERMANENT PARKING OR STORAGE SPACE**

- A. Permanent off-street automobile storage, parking or standing space shall be provided as set forth in the off-street parking schedule included in this Local Law at the time of the erection of any building or structure, at the time any building or structure is enlarged or increased in capacity by adding boat slips, mooring buoys, dwelling units, guest rooms, seats or floor area or before conversion from one zoning use or occupancy to another. Such space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.
- B. If the vehicle storage space or standing space required by this Local Law cannot be reasonably provided on the same lot on which the principal use is conducted, the Board of Appeals may permit such open space to be provided on other off-street property, provided such space lies within four hundred feet (400') of the main entrance to such principal use. Such vehicle parking space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.

### **519: PARKING AND STORAGE SPACE**

Convenient and adequate parking spaces at least ten feet (10') wide and twenty feet (20') long shall be provided and satisfactorily maintained by the owner of the premises or in convenient connection therewith.

## **520: OFF-STREET PARKING SCHEDULE**

| <b><u>USES</u></b>                                      | <b><u>REQUIRED PARKING SPACE</u></b>   |
|---|--|
| Churches or Synagogues.                                 | 1 for each 3.5 seats.  |
| Community Buildings and Social Halls                    | 1 for each 200 sq. ft. of gross. Floor area or 1 for each 3.5 seats, whichever is greater.                   |
| Motels, Hotels, Boarding and Rooming Houses             | 1 for each sleeping room or dwelling unit.   |
| Manufacturing Plants, Research or Testing Laboratories. | 1 for each employee in the maximum working shift.  |
| Restaurants, Bars and Night Clubs                       | 1 for each 50 sq. ft. of patron space  |
| Retail Stores, Store Groups, Shops, etc.                | 1 space for each 200 sq. ft. of floor space plus 1 for each employee.  |
| Wholesale Establishments or Warehouses                  | 1 for each employee in the maximum shift.  |
| Offices - General.                                      | 1 for each 200 sq. ft. of first floor area and each 300 sq. ft. of floor area on the second floor and above. |
| Doctor or Dentist Office.                               | 5 for each doctor.   |
| Home Occupation.  | Minimum of 3 spaces.   |
| Dwelling.   | Minimum of 1.5 parking spaces for each dwelling unit on the premises.  |
| Roadside Stands.  | 2 spaces.  |
| Boat slips & Mooring Buoys*                             | 1 for each slip or mooring.  |

\*Exception: parking spaces allocated for residential use may be counted toward this requirement.

## **ARTICLE VI: STATE ENVIRONMENTAL QUALITY REVIEW**

### **600: STATE ENVIRONMENTAL QUALITY REVIEW**

#### **A. POLICY**

1. In accordance with State Environmental Quality Review (SEQR) Regulations (6 NYCRR Part 617), it is hereby declared to be a policy of the Town that protection and enhancement of the environment be given appropriate weight with social and economic considerations and that those factors be considered together in reaching decisions on proposed developments under these Regulations.
2. Accordingly, applications for Special Permits, Appeals for Variances and proposals for amending these Regulations shall be reviewed as provided for in this Section to determine whether the proposed action would be likely to have a significant effect on the environment, and if so, how possible adverse effects could be mitigated or prevented.

#### **B. STANDARDS**

1. The following actions under these Regulations are deemed likely to have a significant effect on the environment:
  - a. Amending these Regulations to change the allowable uses within any land use district, affecting an area of twenty-five (25) acres or larger;
  - b. Approving a Special Permit or Variance, or amending these Regulations at the request of an applicant, to allow construction of fifty (50) or more dwelling units or non-residential development that would include site preparation covering an area of ten (10) acres, or parking space for more than one thousand (1,000) motor vehicles or a facility with gross floor area exceeding one hundred thousand (100,000) square feet;
  - c. Approving a Special Permit, Variance, or amending these Regulations at the request of an applicant to allow expansion of an existing non-residential development that would entail site preparation exceeding five (5) acres, or parking space for more than five hundred (500) motor vehicles or a facility with gross floor area exceeding fifty thousand (50,000) square feet; and,

- d. Approving a Special Permit, Variance or amending these Regulations at the request of an applicant to allow non-agricultural development within an agricultural district created in accordance with Article 25-AA of N.Y.S. Agriculture and Markets Law, comprising construction of more than twelve (12) dwelling units or site preparation covering an area of two and one-half (2.5) acres or larger, or parking space for more than two hundred fifty (250) motor vehicles or a facility having a gross floor area of over twenty-five thousand (25,000) square feet.
2. The following actions are deemed unlikely to have a significant effect on the environment:
    - a. Approving a use Variance, other than for a development noted above in paragraph (1) above;
    - b. Approving a Special Permit for a development other than for a development noted in paragraph (1) above;
    - c. Amending these Regulations for a purpose other than those noted in paragraph (a) above.
  3. The following actions under these Regulations are not subject to environmental quality review and no environmental assessment is required:
    - a. Issuing a Land Use Permit;
    - b. Issuing a Certificate of Compliance;
    - c. Approving a Variance from the required minimum setback distance or depth of required yards;
    - d. Deciding an Appeal for Administrative Review, or a request for clarification of a district boundary.

C. **SPECIAL PERMITS AND VARIANCES**

1. Environmental Assessment Forms:
  - a. An Application for a Special Permit or Appeal for a Variance shall not be complete until the appropriate Environmental Assessment Form (EAF) has been submitted.

- b. When the intended development is likely to have a significant effect on the environment as listed above, in paragraph B-1 above, a Full EAF shall be submitted.
- c. When the intended development is not likely to have a significant effect on the environment as listed above, paragraph B-2, a Short EAF shall be submitted.

2. Determination of Significance:

- a. Promptly after receiving the Application or Appeal, the appropriate board, Board of Appeals or Planning Board shall determine whether the proposed development might have a significant effect on the environment. The appropriate board shall use the criteria set forth in Section 617.11 of 6 NYCRR Part 617, and complete Parts II and III of the EAF.
- b. When no significant effect is identified, a "Negative Declaration" shall be prepared, certified by the appropriate Chairperson or other designated officer, and filed with the Board's records. The Application or Appeal shall be deemed to have been submitted on the date of the Board's "Negative Declaration". Review of the matter shall thereupon proceed as provided in the appropriate section of these Regulations. No final determination or decision respecting the Application or Appeal shall be reached by the Board before the date of its "Negative Declaration".
- c. Review Procedure: An Application or Appeal subject to SEQR Review (sub-paragraph B-1 above, shall be deemed to have been submitted on the date of the Board of Appeals or the Planning Board, "Notice of Completion of Draft EIS". From that point forward, the matter shall be reviewed under these Regulations concurrently with its review under SEQR. No final determination or decision respecting the Application or Appeal shall be reached by the appropriate board before the date of its "Findings Statement" issued at the conclusion of SEQR review.

D. AMENDMENTS

1. Environmental Assessment Forms:

- a. Before submitting its recommendation to the Town Board regarding any proposed amendment of these Regulations, the Planning Board shall

have prepared the appropriate Environmental Assessment Form (EAF) with all parts completed in draft form. The EAF shall be submitted with the Planning Board's recommendation, which shall include its judgment on the significance of the proposal's likely environmental effects.

- b. When the proposed amendment is likely to have a significant effect on the environment as listed above in paragraph B-1, a Full EAF shall be prepared and submitted.
- c. When the proposed Amendment is not likely to have a significant effect on the environment as listed above in paragraph B-2, a Short EAF shall be prepared and submitted.

2. Determination of Significance:

- a. Promptly after receiving the Planning Board's recommendation on a proposed amendment, the Town Board shall review the EAF. The Town Board shall determine whether the proposed amendment might have a significant effect on the environment, using the criteria set forth in Section 617.11 of 6 NYCRR Part 617. It may accept or modify the assessment and conclusions proposed by the Planning Board.
- b. When no significant effect is identified, the Town Board shall prepare a "Negative Declaration" which shall be certified and filed by the Town Clerk. The Town Board then shall proceed with its consideration of the proposal in accordance with Amendment Section.
- c. When a possibly significant effect on the environment is found by the Town Board, no decision on the amendment shall be taken until review has been completed in accordance with provisions of 6 NYCRR Part 617.

3. Review Procedure: Following the date of the Town Board's "Notice of Completion of Draft EIS", the matter shall be considered pursuant to the Amendment Section concurrently with its review under SEQR. The Town Board shall not reach a final decision regarding the amendment before the date of its "Findings Statement" issued at the conclusion of SEQR review.

## ARTICLE VII: ADMINISTRATION AND ENFORCEMENT

### 700: ENFORCEMENT

- A. **Zoning Officer:** The duty of administering and enforcing these Regulations is hereby conferred upon the Zoning Officer, who shall have such powers as are conferred upon him by these Regulations and as may reasonably be implied. He shall be appointed by the Town Board and shall receive such compensation, as said Board shall determine.
- B. **Issuance of Appearance Tickets by Zoning Officer:** In accordance with Section 150 of the Criminal Law and Section 10 of the Municipal Home Rule Law of the State of New York, the Pulteney Town Board authorizes the duly designated Zoning Officer to issue appearance tickets when a violation persists after a Notice of Discontinuance has been issued or when said Notice is refused by a violator. Upon issuance of an appearance ticket, the Zoning Officer shall notify the chief elected official and appropriate justice. The Zoning Officer shall simultaneously file Information with the justice to complete the appearance ticket procedure.
- C. **Duties of Zoning Officer:** For the purpose of these Regulations, the Zoning Officer shall have the following duties:
1. to issue land use permits and certificates of compliance in accordance with the provisions of these Regulations;
  2. upon finding that any provision of these Regulations is being violated, to notify in writing the person responsible for such violation and the action necessary to correct said violations;
  3. to order discontinuance of illegal uses of land, buildings or structures;
  4. to order removal of illegal buildings or structures or of illegal additions or structural alterations;
  5. to order discontinuance of any illegal work being done;
  6. to take any other action authorized by these Regulations to assure compliance with or prevent violations of these Regulations;

7. to submit a written monthly report to the Town Board and a copy to the Planning Board describing and enumerating actions taken and permits issued under these Regulations.

## **710: PERMITS REQUIRED**

- A. **Land Use Permit:** No building or structure shall be erected, moved, added to or enlarged nor shall any use of buildings or land be established or changed without a land use permit therefore issued by the Zoning Officer in compliance with these Regulations, unless the Zoning Officer receives a written order from the Board of Appeals deciding an appeal on a variance.
  1. **Expiration of Permits:** If the work for which a land use permit is issued has not begun within ninety (90) days from the date of issuance, said permit shall expire. If the work for which a land use permit has been issued has not been substantially completed within two (2) years of the date of the permit, said permit shall expire.
- B. **Certificate of Compliance:** A Certification of Compliance is required for any of the following:
  1. Occupancy and use of buildings hereafter erected, altered, moved or extended.
  2. Change in the use of an existing building; or
  3. Occupancy and use of vacant land, except for any use consisting primarily of tilling the soil or similar customary agricultural use.

## **712: FEES**

- A. The Town Board shall establish a schedule of fees to be applied and collected in the administration and endorsement of this local law. Said fees shall be established and may be amended, from time to time, by resolution of the Town Board.
- B. The Schedule of Fees shall be filed in the office of the Town Clerk and shall be made available to any applicant upon request.
- C. No action shall be taken on any application or appeal until the established applicable fee has been paid in full.

- D. If the nature of an application or appeal requires the Town to retain necessary professional services, the estimated fees for said professional services shall be deposited by the applicant, with the Town, prior to any action on said application or appeal.

### **715: APPLICATION PROCEDURE**

Applications for Land Use Permits and Certificates of Compliance shall be submitted to the Zoning Officer on forms provided by him. Such Permits and Certificates shall be issued only in conformance with all the provisions of these Regulations.

### **716: APPLICATION CONTENT**

- A. Each application shall set forth the purpose for which the structure is intended and shall be accompanied by a plot plan, scale drawings and/or sketches and descriptions of the lot, building dimensions of required yards and such other information as may lawfully be required by the Zoning Officer, including the number of families, number of dwelling units and conditions existing on the lot.
- B. The Zoning Officer shall make or cause to have made an inspection of each building, structure or lot for which a Certificate of Compliance has been applied before issuing such Certificate.
- C. The original copy of such plans and/or illustrative and explanatory material shall be filed at the Town Hall.

### **717: RESPONSIBILITY**

Application for an appropriate permit (Land Use Permit, Certificate of Compliance, Special Permit) required by these Regulations shall be a responsibility equally of the concerned property owner, developer, and contractor. As a practical matter of convenience and by mutual agreement, one may act for all interested parties. No construction shall be undertaken nor any other alteration of land or land use occurs for which a permit is required by these Regulations, until such required permit has been duly issued. Any party acting contrary shall be in violation of these Regulations. When the Zoning Officer finds a violation of these Regulations, the owner of record of the premises shall be considered to be accountable therefore and shall be subject to appropriate enforcement action or proceedings.

## **718: PLANNING BOARD**

### **A. Special Permits - Site Plan Review**

1. The Planning Board may grant special permits for uses specifically allowed by special permit in the four (4) districts herein. Special permit approval shall be granted only upon written application therefore in accordance with the following requirements.
2. Before any permit shall be issued for a special use, a site plan for said use shall have been reviewed and approved by the Planning Board. In conducting such review the Planning Board shall require that all provisions of these Regulations are complied with and that satisfactory provision has been made for:
  - a. Proper ingress and egress to the proposed use structures for automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
  - b. Adequate off-street parking and loading where required, considering the effects on the adjoining and neighborhood properties
  - c. Adequate refuse handling, service areas and driveways;
  - d. Location and compatibility of utility structures;
  - e. Adequate screening and buffers;
  - f. Signs, including size, location, lighting, glare, traffic, safety, compatibility and harmony with neighboring properties in the district;
  - g. Adequate yards and open space;
  - h. General compatibility with adjoining property in accordance with general or specific objectives of the Town of Pulteney and these Regulations;
  - i. Harmony of proposed structures, activities and uses with the intended character of the area with due regard for potential

problems of noise, vibration, odor, traffic congestion, air pollution, drainage, aesthetics and other environmental effects;

- j. Potential damage or loss of natural, scenic, or historic features of importance;
  - k. Control of vehicular traffic resulting from the proposed use roads or streets serving the area.
  - l. Requirement of SEQR must be met. **See Article VI (600).**
3. The Planning Board's decision shall be rendered within sixty-two (62) days after the public hearing on the application from an applicant and shall be immediately filed with the Town Clerk.
  4. Special Use Permits: The Planning Board at a public hearing shall act upon applications for such special permits as the Planning Board is specifically authorized to approve by the terms of these Regulations; shall decide such questions as are involved in determining whether such permits should be granted; shall authorize issuance of such permits with such conditions and safeguards as are appropriate under the requirements herein; and shall deny such applications which would result in a use not in harmony with the purpose and intent of these Regulations. The Planning Board can also impose conditions to the issuance of a Special Permit.
  5. If the Steuben County Planning Board has the authority to approve a site plan and disapproves the site plan or recommends modification thereof, the Town Planning Board shall not act contrary to such disapproval or recommendation except by affirmative vote of a majority plus one of the members thereof and after the adoption of a resolution fully setting forth the reasons for such action.
  6. A special permit shall be deemed to authorize only the specified use and shall expire if the special use shall not begin within thirty (30) days of its issuance or shall cease for more than nine (9) months for any reason from date of issue.
  7. Court Review: Any person aggrieved by a decision of the Planning Board may apply to the Supreme Court for review by a proceeding under Article Seventy-Eight of the Civil Practice Law and Rules. Such proceedings shall be instituted within thirty (30) days after the filing of a

decision by such Board in the Office of the Town Clerk. The Court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The Court at special term shall itself dispose of the matter on the merits, determining all questions, which may be presented for determination.

8. If an area variance is required, application may be made to the Zoning Board of Appeals without the necessity of a decision or determination of the Zoning Officer.

### **719: EXISTING VIOLATIONS: SPECIAL USE PERMITS**

No special use permit shall be issued for property where there is an existing violation of these Regulations.

### **720: BOARD OF APPEALS**

- A. **Creation, Appointment and Organization:** A Board of Appeals is hereby created. Said Board shall consist of five (5) members appointed by the Town Board which shall also designate a Chairperson. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals. Of the members of the Board first appointed, one shall be for the term of one (1) year, one shall be for the term of two (2) years, one shall be for the term of three (3) years, one shall be for the term of four (4) years, and one shall be for the term of five (5) years. Their successors shall be appointed for the term of five (5) years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur other than by expiration of a term, it shall be filled by the Town Board by appointment for the unexpired term. The Town Board, at its discretion, may change the Board of Appeals to three (3) members. The Town Board shall have the power to remove, after public hearing, any member of the Zoning Board of Appeals for cause and may provide by local law for removal, after public hearing, of any Zoning Board of Appeals member for non-compliance with minimum requirements relating to meeting attendance and training as established by the Town Board by local law.
- B. **Powers and Duties:** The Board of Appeals shall have all the powers and duties prescribed by the Town Law of the State of New York and by these Regulations, which are more particularly specified as follows:
  1. **Administrative Review:** To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the

Zoning Officer in the enforcement of these Regulations. The Board shall hear and decide appeals where it is alleged that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of these Regulations. Appeals must be made within sixty (60) days of denial and be subject to SEQR requirements.

2. Interpretation: Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of these Regulations, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
  3. Variance: May authorize upon appeals in specific cases, such variance from the terms of these Regulations as will not be contrary to the public interest, as provided for in **Section 745** herein.
  4. The Board of Appeals has the power to interpret zoning regulations.
- C. **Staff:** The Board of Appeals may employ such staff assistance as may be necessary and prescribe their duties, provided that at no time shall expenses be incurred beyond the amount of the appropriations made by the Town Board for such use and then available for the purpose.
- D. **Procedure, By-Laws, Forms**
1. The Board of Appeals shall have the power to make and adopt such written rules of procedure, by-laws and forms as they may deem necessary for the proper execution of their duties and to secure the intent of these Regulations.
  2. Such rules, by-laws and forms shall not be in conflict with, nor have the effect of waiving, any provision of these Regulations or any other regulations of the Town of Pulteney.
- E. **Referrals Required:** At least ten (10) days prior to the date of any hearing by the Board of Appeals, notice shall be given to the Steuben County Planning Board for any action affecting property within five hundred feet (500') of the boundary of any town or from the right-of-way of any County or State highway.
- F. **Meetings:** All meetings of the Board of Appeals shall be open to the public and shall be held at the call of the Chairperson and at such other times as the Board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. The concurring vote of a

majority of all members of the Board shall be necessary to decide any matter on which the Board is required to rule.

- G. **Records:** The Board of Appeals shall keep minutes of its proceedings showing the vote of each member on every question. If a member is absent or fails to vote, the minutes shall indicate such fact.
- H. **Board of Appeals Office:** The office of the Town Clerk shall be the Office of the Board of Appeals, and every rule, regulation, amendment, decision or determination of the Board shall be filed in said Office within five (5) days as required by Section 267 of the Town Law of the State of New York, a copy to be mailed to applicant.
- I. **Stay of Proceedings:** An appeal stays all proceedings in the furtherance of the action appealed from, unless the Zoning Officer certifies that by reason of facts a stay 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 Board of Appeals or by a court of record on an application, on notice to the Zoning Officer and on due cause shown.

#### **740: VARIANCE**

- A. The Board of Appeals shall act in strict accordance with the procedure specified by law and by these Regulations. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board and available from the Zoning Officer.
- B. Every appeal or application shall refer to the specific provision of these Regulations involved and shall exactly set forth the interpretation that is claimed, the use for which the variance is sought or the details of the variance that is applied for, and the grounds for the appeal or application.

#### **745: BOARD OF APPEALS HEARINGS**

- A. The Board shall fix a reasonable time and date for the hearing of each appeal. Each appeal shall be decided within sixty-two (62) days of the final hearing.
- B. Public notice shall be by the publication of a notice in a newspaper of general circulation in the Town five (5) days in advance of public hearing and shall briefly describe the nature of the appeal and the time and place of the hearing. Written notice briefly describing the nature of the appeals and the time and place of the hearing shall also be sent to all property owners whose properties are contiguous to the property for

which a variance is sought by regular mail. The owners of the property for which a variance is sought, or his agent, shall be notified by mail.

- C. A public hearing shall be held. Any party may appear in person or by agent or attorney.
- D. The Board of Appeals shall make a finding that it is empowered under the section of these Regulations described in the application to grant the variance and that the granting of the variance will not adversely affect the public interest.
- E. **Rehearing:** A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reviewed may be made by any member of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as the original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.
- F. **Relief from Decisions:** Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals or any officer, department, board or bureau of the Town, may apply to the Supreme Court for review by a Proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within thirty (30) days after filing of a decision in the office of the Town Clerk.
- G. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the Regulations involved.
- H. In granting any variance, the Board may require such reasonable conditions and safeguards, as it may deem necessary to implement the purposes of these Regulations.
- I. No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds of issuing of a variance.

#### **750: PERMITTED ACTION BY BOARD OF APPEALS**

- A. **Orders, Requirements, Decisions, Interpretations, Determinations:** The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion

ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

**B. Use Variances:**

1. The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.
2. No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions 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 the Zoning Regulations for the particular district where the property is located:
  - a. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - b. the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  - c. that the requested use variance, if granted, will not alter the essential character of the neighborhood; and,
  - d. that the alleged hardship has not been self-created.
3. 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. Area Variances:**

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

2. In making its determination, the Zoning 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:
  - a. 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;
  - b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  - c. Whether the requested area variance is substantial;
  - d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and,
  - e. 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.
3. The Board of Appeals, 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.

D. **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 Zoning Ordinance or Local Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

### **755: EXPIRATION**

Any variance authorized by the Board of Appeals that is not exercised within one (1) year from the date of issuance shall expire automatically without a further hearing by the Board.

## **775: NOTICE OF VIOLATIONS**

The Zoning Officer shall serve a Notice of Violation or Order on the person responsible for the erection, construction, alteration, extension, repair, use or occupancy of any building, structure, or land in violation of the provisions of this Regulation or in violation of a permit or certificate issued under these Regulations and such Order shall direct discontinuance of the illegal action or condition and abatement of the violation.

## **785: ADMINISTRATIVE INTENT**

It is the intent of this Regulation that all questions of enforcement shall first be presented to the Zoning Officer, that such questions shall be presented to the Board of Appeals only upon appeal from the decision of the Zoning Officer and that recourse from the decision of the Board of Appeals shall be to the Courts as provided by law.

## **790: COMPLAINTS OF VIOLATIONS**

Whenever a violation of these Regulations occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof shall be filed with the Zoning Officer. Said Officer shall record properly all such complaints, immediately investigate, and act thereon as provided herein.

## **795: REMEDIES**

- A. **Criminal remedies:** As provided for in Town Law Section 268, violation of these Land Use and Zoning Regulations is hereby declared to be an offense, punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of these Regulations 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.
- B. **Civil Remedies:** In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure, or land is used, or any land is divided into lots, blocks, or sites, in violation of these Regulations, the proper local authorities of the Town, in addition to other remedies, may institute any appropriate action or proceedings to prevent by injunction or otherwise such unlawful erection, construction, reconstruction, alteration, repair, conversion,

maintenance, use or division of land, 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 premises, and upon the failure or refusal of the proper local officer, board or body of the Town to institute any such appropriate action or proceeding for a period of ten (10) days after written request by a resident taxpayer of the Town so to proceed, any three (3) taxpayers of the Town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body or the Town is authorized to do.

C. **Civil Penalty:** In addition to any other remedy permitted by law, the Town of Pulteney shall be entitled to recover a civil penalty in an amount to be fixed by the Court as reasonable and just, not exceeding Five Thousand Dollars (\$5,000.00), whenever the Town shall prevail in a civil or criminal proceeding brought to enforce the provisions of this Code.

D. **Attorneys' fees**

1. **Statement of Intent:** One of the most important benefits received by residents of the Town of Pulteney from its government is the protection of property values and way of life safeguarded by the Town's zoning and planning laws. The Town has expended substantial public funds developing, nurturing and maintaining its comprehensive land use plan. Every violation of these laws undermines the benefit of these laws to all citizens and corrupts the integrity of the plan as a whole.

The criminal enforcement process is an ineffective tool to compel compliance with these laws because it is designed for punishment, not compliance, and the penalties associated therewith are insufficient to modify behavior. The injunctive power of the Supreme Court, on the other hand, is designed to compel compliance but is very expensive to the municipal taxpayer. This Code is designed to provide authorization for the Town of Pulteney to recover its reasonable attorney's fees from a defendant who is adjudged by the Court in a civil proceeding of having violated the Town's Zoning and/or Planning Laws.

2. **Applicability:** This provision for the recovery of attorneys' fees shall be applicable to any civil proceeding whether in the nature of an action for injunction or otherwise brought by the Town of Pulteney or any of its boards, departments, agencies or divisions to enforce, compel compliance with, or enjoin a violation of the Town's zoning law, subdivision law, junk vehicle law, site plan law, or other local law in which the Town of Pulteney or its boards, departments, agencies or divisions are the prevailing party.

3. Recovery of Attorney's Fees: In any civil proceeding for an injunction or other relief in which the Town of Pulteney, its boards, departments, agencies or divisions shall prevail, it shall be entitled to recover from the defendant, defendants, or both, all of its reasonable attorney's fees, costs and disbursements.
  
4. Home Rule: By this Local Law, the Town of Pulteney intends to exercise the powers granted to it by the Municipal Home Rule Law to the maximum extent possible, and it is specifically intended that this Local Law shall supersede all other local or State laws of general application inconsistent herewith, except this Law shall not be construed so as to be inconsistent with nor to deprive any member of the judiciary of the State of New York of any power granted or reserved to such member.

## **ARTICLE VIII: AMENDMENT**

### **800: PROCEDURE**

The Town Board may from time to time, on its own motion, or on petition by one or more property owners, or on recommendation from the Town Planning Board, amend the Regulations and Districts established under these Land Use and Zoning Regulations 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 Town Board.

### **810: ADVISORY REPORT BY PLANNING BOARD**

Every proposed amendment unless initiated by the Town Planning Board, shall be referred to the Town Planning Board. The Town Planning Board shall report its recommendations thereon to the Town 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 forty-five (45) days from receipt of notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report. If the Planning Board disapproves the proposed amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by the adoption of a resolution by a vote of a majority plus one, fully setting forth the reasons for such contrary action.

### **815: PUBLIC NOTICE AND HEARING**

The Town 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 a newspaper of general circulation in the Town of Pulteney, not less than five (5) days prior to the date of public hearing.
- B. **County Referral:** By giving written notice of hearing to any required municipal agency, County Planning Board, or State agency in the manner prescribed by Section 239 of the General Municipal Law. If such County Planning Board disapproves the proposal or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a majority vote plus one of all the members and upon the adoption of a resolution fully setting forth the reasons for such contrary action.

### **820: PROTEST BY OWNERS**

If a protest against a proposed amendment is presented to the Town Board duly signed and acknowledged by the owners of twenty percent (20%) or more of the area of land included in such proposed amendment, or by the owners of twenty percent (20%) or more of the area of the land immediately adjacent extending one hundred feet (100') there from, or by the owner's land directly opposite thereto, such amendment shall not be passed except by the favorable vote of a majority plus one of the members of the Town Board.

### **825: PUBLICATION AND POSTING**

Every amendment to these Regulations, including any Map incorporated therein, adopted in accordance with the Town Law shall be entered in the minutes of the Town Board and a summary or abstract thereof exclusive of any map incorporated therein shall be published once in a newspaper in general circulation in the Town of Pulteney and a copy of the amendment together with a copy of any map incorporated therein, shall be posted on a sign board maintained by the Town Clerk pursuant to the Town Law. Affidavits of the publication and posting thereof shall be filed with the Town Clerk.

### **830: PERIODIC REVIEW**

- A. When these Regulations shall have been in effect for one (1) year and each successive five (5) years thereafter, a review committee consisting of the Board of Appeals, the Planning Board and the Zoning Officer shall review these Regulations in their entirety and submit a report to the Town Board recommending needed amendments of these Regulations.
- B. If said report calls for amendments to these Regulations, the Town Board shall immediately proceed to enact said amendments, unless action to the contrary shall be authorized by a proper resolution supported by a vote of a majority plus one of the Town Board.

## **ARTICLE IX: INTERPRETATION AND APPLICATION**

### **900: INTERPRETATION**

- A. In the interpretation and application of this Code, its provisions shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety or the general welfare.
- B. Whenever the requirements of these Regulations are at variance with the requirements of any other lawfully adopted rules, regulations, the most restrictive or that imposing the higher standards shall govern.

### **905: SEPARABILITY**

Should any section or provision of these Regulations be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulation as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

### **911: REPEALER**

This local law supersedes all other zoning and land use regulations of the Town of Pulteney and upon passage of this local law, Local Law No. 3 of 2007 is hereby repealed.