

May 6, 2011 Proposed Law *djc*

Town of Middlefield  
Local Law No. \_\_\_\_ of the year 2011

Dated: \_\_\_\_\_

**A LOCAL LAW REPEALING THE TOWN OF MIDDLEFIELD ZONING ORDINANCE AND ADOPTING THE TOWN OF MIDDLEFIELD ZONING LAW**

**BE IT ENACTED** by the Town Board of the Town of Middlefield as follows:

**Section 1. Title of Local Law.**

This Local Law shall be known and may be cited as “The Town of Middlefield Zoning Law”.

**Section 2. Authorization.**

This Local Law is adopted pursuant to Article 16 of the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, and Articles 2 and 3 of the Municipal Home Rule Law, Chapter 36-a of the Consolidated Laws, to protect and promote public health, safety, comfort, convenience, economy, aesthetics and general welfare. It is the intent of the Town Board to supersede the provisions of § 268 of the Town Law, relating to enforcement and remedies, to increase the penalties for violation of this law.

**Section 3. Repeal.**

The Town of Middlefield Zoning Ordinance adopted September 20, 1975, effective October 30, 1975, as revised [on May 13, 1980, April 28, 1984, September 10, 1986, September 12, 1991, November 14, 1991, September 14, 1999, and November 12, 2002 (Local Law #2 of 2002)] is hereby repealed in its entirety.

**Section 4.** The Town Of Middlefield Zoning Law is hereby adopted to read as follows:

**THE TOWN OF MIDDLEFIELD  
ZONING LAW, OTSEGO COUNTY, STATE OF NEW YORK**

**ARTICLE I - ENACTMENT, TITLE AND PURPOSE**

- A. Title: This Local Law shall be known and may be cited as “The Town of Middlefield Zoning Law”.
- B. Enactment: This Local Law is adopted pursuant to Article 16 of the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, and Articles 2 and 3 of the Municipal Home Rule Law, Chapter 36-a of the Consolidated Laws.

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- C. Purpose in View: This Local Law is enacted to protect and promote public health, safety, comfort, convenience, economy, aesthetics and general welfare of the Town of Middlefield and its citizens and for the following additional purposes: the protection and enhancement of Middlefield's physical and visual environment; to lessen congestion in the streets; to secure safety from fire, flood, and other dangers; to promote health and general welfare; to prevent overcrowding of land; to avoid undue concentration of population; to protect the environment, to protect surface and ground water resources, to sustain the viability of farmland, and to facilitate adequate provision of transportation, water, sewerage, schools, parks and other public requirements. This Local Law is made with reasonable consideration of the character of the various districts, and their unique suitability for particular uses, with a view to conserving the value of land and buildings and encouraging the most appropriate use of land throughout the Town of Middlefield.
- D. Application of Regulations: Except as hereinafter provided, no building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified and to comply with "The Rules and Regulations for the Protection from Contamination of the Public Water Supply of the Village of Cooperstown, County of Otsego", and also in compliance with New York State Department of Environmental Conservation Law, Section 8-0113 State Environmental Quality Review Act.

### ARTICLE II - DEFINITIONS

- A. Meaning of Words: Except where specifically defined by this article, all words used in this Local Law shall carry their customary meanings. Words used in the present tense include the future, and plural includes the singular; the word "person" includes a corporation as well as an individual; the word "lot" includes the word "plots" or "parcels"; the term "shall" is always mandatory; and the word "used" or "occupied" as applied to any land or building shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied".
- B. Definitions:
1. Accessory Use: A use customarily incidental and subordinate to the principal use of a building and located on the same lot with such principal use of a building.
  2. Building: Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattel.
  3. Center Line of Road: A line midway between and parallel to two property lines along any public highway right-of-way. Whenever such property lines cannot be determined, such line shall be considered as being midway between and parallel to the paved or improved surface of the road.
  4. Dock: A structure for accessing water, extending from the shoreline onto a body of water, no greater in width than 10 feet as situated above the land, uncovered, and extending onto the shore (over dry land) the shortest possible distance for safe usage or 15 feet, whichever is less.
  5. Driveway: A private access way originating at the edge of a road and continuing to access two or fewer lots.
  6. Dwelling: A building designed or used primarily as the living quarters of one or two families.

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7. Gas, Oil, or Solution Drilling or Mining: The process of exploration and drilling through wells or subsurface excavations for oil or gas, and extraction, production, transportation, purchase, processing, and storage of oil or gas, including, but not limited to the following:
  - i. A new well and the surrounding well site, built and operated to produce oil or gas, including auxiliary equipment required for production (separators, dehydrators, pumping units, tank batteries, tanks, metering stations, and other related equipment;
  - ii. Any equipment involved in the re-working of an existing well;
  - iii. A water or fluid injection station(s) including associated facilities;
  - iv. A storage or construction staging yard associated with an oil or gas facility;
  - v. Gas pipes, water lines, or other gathering systems and components including but not limited to drip station, vent station, chemical injection station, valve boxes.
8. Heavy Industry: a use characteristically employing some of, but not limited to the following: smokestacks, tanks, distillation or reaction columns, chemical processing or storage equipment, scrubbing towers, waste-treatment or storage lagoons, reserve pits, derricks or rigs, whether temporary or permanent. Heavy industry has the potential for large-scale environmental pollution when equipment malfunction or human error occurs. Examples of heavy industry include, but are not limited to: chemical manufacturing, drilling of oil and gas wells, oil refineries, natural gas processing plants and compressor stations, petroleum and coal processing, coal mining, steel manufacturing. Generic examples of uses not included in the definition of "heavy industry" are such uses as: milk processing plants, dairy farms, garment factories, woodworking and cabinet shops, auto repair shops, wineries and breweries, warehouses, equipment repair and maintenance structures, office and communications buildings, helipads, parking lots, and parking garages and water wells serving otherwise allowed uses of the property. Agriculture and surface gravel and sand mining facilities shall not be considered heavy industry.
9. Home Occupation: An occupation or profession which:
  - a. Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, and
  - b. Is carried on by a member of the family residing in the dwelling unit, and
  - c. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and
  - d. Conforms to the following additional conditions:
    - 1) the occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto;
    - 2) not more than one (1) person outside the family shall be employed in the Home Occupation;
    - 3) there shall be no exterior display, no exterior sign (except as permitted in this Local Law), no exterior storage of materials and no other exterior indication of the Home Occupation or variation from the residential character of the principal building;
    - 4) no offensive, noxious, or injurious noise, vibration, smoke, dust, odors, heat or glare shall be produced;
    - 5) no articles produced elsewhere may be sold except those incorporated in products being manufactured on the premises or those which are incidental to the services offered.

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In particular, a Home Occupation includes, but is not limited to the following:

- Art Studio
- Barber Shops and Beauty Parlors
- Dressmaking
- Professional office of a physician, dentist, lawyer, engineer, architect, accountant, or real estate dealer within a dwelling occupied by the same
- Renting of not more than two (2) rooms for occupancy by not more than two (2) persons per room, which home occupation can only be conducted in a principal building.

However, a Home Occupation shall not be interpreted to include the following:

- Kennels
- Restaurants
- Funeral Homes and Mortuaries

10. Junk Yards: A lot, land or structure thereof used for the collection, sale or storage of wastepaper, rags, scrap metal or discarded material, or for the collection, dismantling, storage or salvation of machinery or vehicles, or for the sale of the parts thereof, not to include more than two (2) unlicensed vehicles. Refer to Article VI, Section B.
11. Lake shore: The boundary formed by the water's edge. For purposes of Otsego Lake, water's edge is 1,194.5 feet above sea level.
12. Lot: A parcel of land separately depicted as a unit for taxing purposes on the Town Real Property Assessment Map in the Otsego County Real Property Tax Office. A non-conforming lot, contiguous to one or more lot held in common ownership with the non-conforming lot, shall be disregarded and considered as a portion of the one or more contiguous lots in common ownership. Each lot created by a subdivision, as approved by the Town Board and depicted on a filed map, shall be considered a separate lot, regardless of its depiction on the Town Real Property Assessment Map, and regardless of common ownership with a contiguous parcel.
13. Mobile Home: A self-contained movable living unit, fourteen (14) feet or less in width, capable of transportation on its own wheels on a public highway, and complying with the State Building Code for mobile homes. The removal of wheels or anchoring of a mobile home to a permanent foundation shall not remove it from this definition. Prefabricated or modular homes over fourteen (14) feet in width are not considered to be mobile homes.
14. Planned Development District (PDD): A residential business, commercial, manufacturing, recreational and park area or combinations thereof created in a manner which will permit flexible and imaginative design concepts. Such a planning tool shall be held in single ownership to ensure that the entire district is developed in accordance with a single approved plan.
15. Principal Building: A dwelling; or a building of principal commercial use (i.e., a commercial use not defined as a home occupation).
16. Road: A vehicular access way either currently designated as a Town, County or State Road, or any private platted access way, built to town requirements.
17. Structure: Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground.

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18. Telecommunications Facility: Said term is defined for purposes of this Law by the definition of said term contained in the Telecommunications Facilities Act of the Town of Middlefield, as enacted November 12, 2002, as Local Law #1 of the year 2002, as the same may be amended from time to time.
19. Temporary Uses: Any use that will attract more than five (5) vehicles at a given location at the same time, such as vegetable stands, flower stands, etc.
20. Trailer: A movable living unit intended for temporary travel or vacation uses with or without kitchen or sanitary facilities. Self-propelled recreational motor homes are included in the definition of trailers.
21. Yard, Front: An open, unoccupied space on the same lot with the building, between the front line of the building and the street or highway center line, extending the full width of the lot.
22. Yard, Rear: An open, unoccupied space, except for accessory buildings, on the same lot with the building, between the rear line of the building and the rear lot line and extending the full width of the lot.
23. Yard, Side: An open, unoccupied space on the same lot with the building, situated between the building and side lot line and extending from the front yard to the rear yard.

### ARTICLE III - DISTRICTS

- A. Establishment of Districts and Map: For the purpose described in Article 1, Section C of this Local Law, the Town of Middlefield is hereby divided into the following districts:
  1. R-80 Residence-Agriculture District
  2. R-HD Residential Hamlet District
  3. PDD Planned Development District
  4. FPD Flood Protection District
- B. Boundaries of Zoning Districts: The boundaries of the zoning districts are shown on the official Town Zoning Map, which is made a part of the Local Law and is available for inspection at the Town of Middlefield Office Building. The zoning map may, from time to time, be amended in the same manner as any amendment of this Local Law.
- C. Interpretation of District Boundaries: Where uncertainty exists with respect to the boundaries of any of the aforementioned districts as shown on the official Town Zoning Map, the following rules of interpretation shall be used:
  1. Where district boundaries are indicated as approximately following the center lines of roads or highways, railroads, public utility easement, water courses, town boundaries, property lines or lot lines, said boundaries shall be construed to be coincident with such lines or projections thereof.
  2. Where district boundaries are indicated as being approximately parallel to any of the features described in Article 111, Section C, paragraph 1, said boundaries shall be construed as being parallel thereto and at such distances as are indicated on the official Town Zoning Map or shall be determined by the use of the scale.

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3. Wherever any feature described In Article 111, Section C, paragraph 1 is depicted on the official Town Zoning Map but such depiction varies from the actual location observed in the field and indicated by a physical feature, monument or mark, such physical feature, monument or mark shall be considered as being the reference point in determining a district boundary.

### ARTICLE IV - DISTRICT REGULATIONS

A. Residential/Agricultural District (R-80): The following regulations shall apply in all R-80 districts:

1. Permitted uses:
  - a. One-family dwellings.
  - b. Two-family dwellings.
  - c. Mobile homes.
  - d. Farms and agricultural uses, including temporary stands for the sale of agriculture products, provided safe, adequate parking is available.
  - e. Public and quasi-public uses, places of worship, schools, parks and playgrounds, government facilities and public utility facilities.
  - f. Forest management areas.
  - g. Accessory uses to any permitted use.
  - h. Home occupations.
2. Uses and temporary uses permitted upon issuance of a special permit:
  - a. Places of outdoor public assembly or amusement.
  - b. Apartment dwellings for the exclusive occupancy of persons employed by a permitted agricultural use on the same lot, or on adjoining lots in the same ownership, as the land in active agricultural use. The number of such apartment dwelling units permitted shall not exceed one (1) for every two (2) acres of land in active agricultural use, not to exceed a total of three (3).
  - c. Use of a trailer shall be subject to all state regulations pertaining thereto, and use of more than one (1) trailer per lot of land shall require a special permit. Commercial use of trailers shall not be permitted.
  - d. Telecommunication Facilities, as defined in the Town of Middlefield's Telecommunications Act.
3. Lot Area, Yard and Height Regulations
  - a. Minimum lot area: Three (3) acres, with the following exception: Where all other requirements of this Local Law are satisfied, one (1) lot of less than three (3) acres but not less than one (1) acre may be subdivided from any pre-existing parcel of ten (10) or more contiguous acres.
  - b. Minimum continuous frontage on a public highway: 200 feet.
  - c. Minimum depth of lot: 200 feet.
  - d. Minimum front yard setback: 50 feet; providing that it is compatible with the existing pattern of development.
  - e. Minimum side yard width: 25 feet.
  - f. Minimum rear yard depth: 50 feet.
  - g. Maximum building height: 35 feet.

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### 4. Special regulations

- a. A building permit shall be required for any new construction. See Article VII, Section B.
- b. Any new residential construction will require an appropriate sewer system approved by the Codes and Zoning Enforcement Officer. A percolation test may be required.
- c. No dry well, tile field or other method of sub-surface disposal shall be located within ten (10) feet of any lot boundary line.

### B. Residential Hamlet District (R-HD): The following regulations shall apply to all R-HD Districts:

#### 1. Permitted uses:

- a. One-family dwellings.
- b. Two-family dwellings.
- c. Accessory uses.
- d. Retail sale of merchandise wholly within a building.
- e. Barber shops, beauty parlors, shoe repair shops.
- f. Business and professional offices.
- g. Banks, insurance, real estate, savings and loan offices.
- h. Public offices, public services and public utility facilities.
- i. Public or private schools.
- j. Mixed occupancy structures containing dwelling units and commercial uses.
- k. Churches and places of worship.
- l. Home occupations

#### 2. Uses permitted upon issuance of a special permit:

- a. Small appliance repair shops.
- b. Retail sale involving outdoor storage or display of items to be sold.
- c. Retail sale of gasoline for automotive use.
- d. Automobile, truck and farm machinery sales and service facilities.
- e. Funeral homes.
- f. Mobil homes.
- g. Telecommunication Facilities, as defined in the Town of Middlefield's Telecommunications Act.

#### 3. Lot area, yard and height regulations:

- a. Minimum lot area: 12,500 square feet.
- b. Minimum frontage on a public street: 100 feet.
- c. Minimum front yard setback: 35 feet.
- d. Minimum side yard width: 20 feet.
- e. Minimum rear yard depth: 30 feet.
- f. Maximum building height: 35 feet.

#### 4. Special regulations:

- a. A Building Permit shall be required for any new construction. See Article VII, Section B.
- b. Any new residential construction will require an appropriate sewer system approved by the Codes and Zoning Enforcement Officer. A percolation test may be required.

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- c. No dry well, tile field or other method of sub-surface disposal shall be located within ten (10) feet of any lot boundary line.

5. Subdivision regulations: Any division of land into two (2) or more parcels is covered in a separate publication titled "Town of Middlefield Subdivision Regulations".

### C. Planned Development District: The following regulations shall apply to all PDD Districts

1. Purpose: The regulations hereinafter set forth in this section are intended to provide a means for the development of residential, business, commercial, manufacturing, recreational and park areas or combinations thereof in a manner which will permit flexible and imaginative design concepts to be utilized and by means of adequate supervision and control by the Planning Board and the Town Board, to insure that the spirit and intent of the zoning Local Law will be preserved. The intent of this section is not to prohibit the normal growth of the Town, but it does intend to establish guide- lines for development. So far as is practicable within the overall scheme of a planned development district, the requirements of R-80, RHD and FPD of this Local law should be considered as a guide in determining reasonable requirements for comparable uses within a planned development district. Nothing is intended to limit the areas within the Town in which a planned development district may be created. The Zoning Enforcement Officer shall enforce this section with that intent in mind.

#### a. Permitted uses:

- 1) Any use, or combination of uses otherwise permitted by this Local Law. Combination of uses shall be permitted only upon demonstration of compatibility in the form of screening, buffer strips, and performance standards specified by site plan review.

#### b. Minimum bulk requirements for a PDD District: Lot area, yard and height regulations:

- 1) minimum district area - 10 acres;
- 2) minimum frontage on a public street - 100 feet;
- 3) minimum front yard setback - 75 feet;
- 4) minimum setback from lot lines other than front lot line - 40 feet;
- 5) maximum building height - 35 feet.

#### c. Special regulations:

- 1) all lands within a proposed PDD shall be held in single ownership or other form that assures development of the entire district in accordance with a single approved plan;
- 2) all lands within a proposed PDD shall be shown upon a site plan which meets the requirements of this Local Law and which:
  - a) shows how various types of uses will be screened from one another upon the site;
  - b) shows the relationship of proposed development to all adjacent development.

2. The General Planned Development District process: The planned development process consists of two separate reviews. One is the change of the zoning district. The second is the review of the specific site plans for the development. These two processes should be undertaken

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simultaneously. Any change to a Planned Development District (PDD) shall be based on a specific development proposal. Although the designation for all planned development will be PDD, each district shall reflect the type of use which was the basis for the zone change.

### 3. Procedures for the Establishment of a Planned Development District:

- a. Pre-application Conference: Before submission of a preliminary application for approval as a Planned Development District, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of the application before entering into any binding commitments of incurring substantial expenses of site plan preparation. In particular, the Town Planning Board shall consider:
  - 1) the need for the proposed land use in the proposed location;
  - 2) the existing character of the neighborhood.
  
- b. Application Procedure: Application for the establishment of any Planned Development District shall be made to the Town Board and the Town Planning Board simultaneously, to the Town Board for the zoning change and to the Planning Board for site plan review. In applying to the two boards, the applicant must show:
  - 1) a petition for the zone change;
  - 2) proof of full legal and beneficial ownership of the property, or proof of an option of contractual right to purchase the property;
  - 3) a completed Environmental Assessment Form (EAF) to comply with the provisions of the State Environmental Quality Review process (SEQR);
  - 4) a mapped preliminary development plan of the property in question. Such a plan shall conform to the site plan review requirements of the Local Law;
  - 5) demonstrate that alternative design concepts have been explored;
  - 6) a written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties and the effect on the overall Town development, including effects on adjacent municipalities which in turn effect the Town of Middlefield;
  - 7) a written description of the probable impacts on the natural systems of the Town;
  - 8) a written description of the probable fiscal impacts including summary of new costs and revenues to the Town due to the development;
  - 9) a concise description of the proposed PDD together with stamped envelopes, addressed to adjoining property owners so as to notify them of the proposed PDD.
  
- c. Review Criteria: In considering the application for the creation of a Planned Development District, the Planning Board may require changes in the preliminary plans and specify such additional requirements as are deemed reasonably necessary to protect the established or permitted uses in the vicinity and to promote and protect the orderly growth and sound development of the community. In reaching its decision on the proposed development and changes, if any, in the preliminary plans the Planning Board shall consider all the requirements under site plan review.

The Planning Board may consult with Local and County officials and its designated private consultants, in addition to representatives of Federal and State agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.

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The Planning Board shall refer the plan to the County Planning Department for advisory review, and a report in accordance with Section 239-m of the General Municipal Law, where the proposed action is within a distance of 500 feet from the boundary of any city, village or town, or from the boundary of any existing or proposed County or State park or other recreational area, or from the right-of-way of existing or proposed County or State parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines, or from the existing or proposed boundary of any County or State-owned land on which a public building or institution is situated.

- d. **Planning Board and Town Board Review:** The Planning Board shall review the site plan and make a recommendation to the Town Board for approval, disapproval, or approval with conditions or changes. The Town Board, however, will give the approval for all site plans in the Town. At the same time the Planning Board is reviewing the site plan, the Town Board shall be reviewing the application for the zone change, it shall hold a public hearing on the zone change and render its decision within forty-five (45) days after the close of the public hearing. If the Town Board decides to hold a public hearing on the site plan, it shall be done jointly with the hearing for the zone change. In this manner, a decision on the site plan and the zone change will occur at the same time.

In the event that an applicant has submitted a partial application, and has been requested to provide additional information or clarification, they shall have 180 days to provide said information or the application shall be deemed as void. Should an applicant require a longer time period for engineering studies or similar information gathering, the Planning Board may, if requested, grant an extension to the one hundred eighty (180) days.

- e. **Final Action:** Establishment of a Planned Development District is a rezoning action that will be subject to the State Environmental Quality Review process (SEQR). The Town Board shall be the lead agency on both the zoning change and the site plan as it is the entity granting approval or disapproval for both of these actions. If it is determined that an environmental impact statement will be prepared for the proposal in question, all frames and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete, and therefore, the review clock does not start until a determination of no significant action has been made or until a draft environmental impact statement is complete. When the draft environmental impact statement is completed, the time frame for review begins.

The decision of the Town Board on the zoning change and on the site plan review shall be in the form of a written resolution which shall include findings of fact and shall set forth the reasons for granting or denying tentative approval specifying with particularity in what respects the proposal contained in the application would or would not be in the public's interest including, but not limited to, findings of fact and conclusions on the following:

- 1) in what respect the plan is or is not consistent with the statement of purpose set forth in Article IV, Section C, paragraph 1;
- 2) the extent to which the proposal departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk use, and the reasons why such departures are or are not deemed to be in the public interest;
- 3) the nature and extent of the common open space in the planned development district, the reliability of the proposals for maintenance and conservation of such open space and the

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adequacy or inadequacy of the amount and function of the open space in terms of the densities of residential uses and the types thereof where residential uses are proposed;

- 4) the plat of the proposal and the manner in which such plat does or does not make adequate provision for public services, control over vehicular traffic and the amenities of light and air, and visual enjoyment;
- 5) the relationship, beneficial or adverse, of the proposed planned unit development district upon the neighborhood in which it is proposed to be established;
- 6) in the case of a plan which proposes development over a period of years, the sufficiency of the terms and conditions proposed to protect the interests of the public and the residents of the district in the integrity of the plan;
- 7) the Town Board may require as a condition to final approval, the posting of a bond to assure the completion of all requirements of the Board including the dedication, maintenance and completion of all streets, easements and open space or recreational areas, creation or extension of special districts or improvement areas, construction of storm and sanitary sewers, landscaping and such other improvements.

f. No building permit shall be granted for the construction of any building or structure other than as approved by the Town Board and no improvement shall be constructed at variance with the proposal as finally approved except upon submission and approval of the Town Board.

g. The resolution required for approval of a PDD shall be filed with the Town Clerk and shall be available during regular hours for inspection by any interested person.

h. In the event that construction has not commenced within two (2) years from the date that the zoning amendment and site plan were approved, the Planning Board may so notify the Town Board and the Town Board may, on its own motion, institute a zoning map amendment to return the Planned Development District to its former classification.

- D. Site Plan Review: This article of the Middlefield Zoning Local Law is enacted under the authority of Section 274-a of the Town Law of the State of New York to protect the health, safety, convenience and general welfare of the inhabitants of the Town. This section regulates the development of structures and sites in a manner which considers the following concerns and, where necessary, requires modification of development proposals to eliminate or minimize potential problems and nuisances.

The principal areas of concern are:

1. The balancing of landowners' rights to use their land with the corresponding rights of abutting and neighboring landowners to live without undue disturbances.
2. The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas or roads.
3. The adequacy of waste disposal methods and protection from pollution of surface or groundwater.

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4. The protection of historic and natural environmental features on the site under review and in adjacent areas.

E. Developments Requiring Site Plan Review: Those development projects requiring site plan review are listed in each section of the zoning Local Law. Unless specifically exempted from site plan review, no permit for the construction, exterior alteration, relocation, occupancy, or change in use of any building shall be issued; no existing use shall be established or expanded in floor area except in conformity with a site plan approved by the Town Board. The introduction of new materials or processes not previously associated with an existing use is also subject to site plan review.

### 1. Procedure

- a. Prior to the submission of a formal site plan, a pre-submission conference shall be held wherein the applicant shall meet in person with the Zoning Enforcement Officer to discuss the proposed site plan so that the necessary subsequent steps may be undertaken with a clear understanding of the Town's requirements in matters relating to the development of the site.
- b. Within six (6) months following the pre-submission conference, five (5) copies of the site plan and any related information shall be submitted to the Zoning Enforcement Officer, accompanied by a fee in accordance with the schedule of fees of the Town of Middlefield, payable to the Town Clerk. If the application is not submitted within this six-month period, another pre-submission conference may be required. An Environmental Assessment Form, as required by the State Environmental Quality Review Act, shall also be submitted with the application.
- c. The Zoning Enforcement Officer shall certify on each site plan or amendment whether or not the application is complete in accordance with Section 706, Submission Requirements, and whether the plan meets the requirements of all zoning Local Law provisions other than those of this article, such as setbacks, number of parking spaces, etc. The Zoning Enforcement Officer shall act to certify the application or return it to the applicant for completion or revision within ten (10) days of submission by the applicant.
- d. Following certification of a complete application, the Zoning Enforcement Officer shall forward the application to the Planning Board no later than ten (10) days prior to its next meeting.
- e. The Planning Board shall review the site plan for the Town Board and make a recommendation to the Town Board for approval, disapproval or approval with modifications. The Planning Board may at its discretion request permission from the Town Board to conduct public hearings, and may do so with consent of the Town Board. The Town Board may, at its discretion, hold a public hearing on the application. Said hearing shall be held within forty-five (45) days of submission of a complete application to the Planning Board of said application. The Town Board shall give notice of the hearing in a newspaper of general circulation in the Town at least ten (10) days prior to the hearing. In addition, the applicant shall give notice in writing by certified mail to all property owners of the land immediately adjacent to, extending five hundred feet (500') therefrom, and directly opposite thereto, extending five hundred feet (500') from the street frontage of the land in said application. The applicant shall mail these notices at least ten (10) days in advance of the hearing and furnish the Town Board with post office receipts as proof of notification.
- f. The Town Board, as part of its review process, shall make a determination of significance of the proposed site plan according to SEQR. The Town Board may take the Planning Board's

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recommendation on this matter. The time limitations of paragraph 8. of this section shall not apply until the conclusion of the SEQR process.

g. Whenever any site plan involves real property in an area described in Section 239-m of the General Municipal Law, said special use permit shall be referred to the County Planning Board, which Board shall report its recommendations to the Town Board. Failure of the County Planning Board to report within thirty (30) days may be construed to be approval. The concurring vote of a majority plus one of the Town Board shall be necessary to override County Planning Board recommendations of approval with modifications or disapproval. In the event that the County Planning Board recommends modifications or disapproval of a referred matter and the Town Board acts to the contrary, the Town Board shall file a report on its final action with the County Planning Board within seven (7) days after final action.

h. The Town Board shall, within forty-five (45) days of the public hearing, if one is held, or within forty-five (45) days of the date of the meeting at which the site plan was submitted, either:

- i. Approve the site plan if the Board finds that the plan meets the requirements of this Local Law and any other applicable rules and regulations; or
- ii. Condition approval of the site plan upon the applicant making certain changes or modifications to the plan, said conditions to be set forth in writing by the Board; or
- iii. Disapprove the site plan, the reasons for such action to be set forth in writing by the Board.

Failure to act within the required time shall be deemed approval. Should the Town Board need an additional thirty (30) days to consider the application, then it may do so with consent of the applicant. Said agreement shall be recorded in the minutes.

- i. Review of amendments to an approved site plan shall be acted upon in the same manner as the review of an original plan.

### 2. Enforcement

a. The Planning Board may require the posting of a bond or other similar performance guarantee to ensure compliance with the plan and stated conditions of approval, The Zoning Enforcement officer may suspend any permit or license when work is not performed as required.

b. The Planning Board may adopt additional detailed design guidelines and performance standards, as it deems necessary by majority vote of the Planning Board. Such standards and guidelines shall not become effective until the Town Board holds a public hearing on them (advertised at least seven (7) days in advance of said hearing in a newspaper of general circulation in the Town) and approves them.

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### 3. Submission Requirements

a. The site plan shall include the following data, details, and supporting plans. The number of pages submitted will depend on the proposal's size and complexity. All of the requirements must be met in each plan, except in accordance with 2. of this section.

b. The Zoning Enforcement Officer may waive any of the requirements of section 706, C. and D., or part thereof, prior to the submission of a formal site plan, when such requirements are not material to the project under review. The Planning Board may overrule any waivers so granted and require compliance with these requirements before accepting a site plan submission.

c. Site Plans shall be prepared by a surveyor, registered professional engineer, architect, or landscape architect at a scale of one inch (1") equals twenty feet (20') or less, on standard 24"x36" sheets, with continuation on 8 1/2"x11" sheets as necessary for written information.

d. Items required for submission include

i. Name of the project, boundaries, location maps showing site's location in the town, date, north arrow and scale of the plan.

ii. Name and address of the owner of record, developer, and seal of the engineer, architect or landscape architect.

iii. Name and addresses of all owners of record of abutting parcels and those within five hundred feet (500') of the property line.

iv. All existing lot lines, easements, and rights-of-way. Include area in acres or square feet, abutting land uses, and the location and use of structures within five hundred feet (500') of the site.

v. The location and use of all existing and proposed buildings and structures within the development. Include all dimensions of height and floor area, and show all exterior entrances, and all anticipated future additions and alterations.

vi. The location of all present and proposed public and private ways, roads, parking area, driveways, sidewalks, ramps, curbs, fences, paths, landscaping, and walls. Location, type, and screening details for all waste disposal containers shall also be shown.

vii. The location, height, intensity and bulk type (e.g., fluorescent, sodium incandescent) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown. Demonstration that light sources are directed downward.

viii. The location of all present and proposed utility systems including:

- a) the projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hours traffic level;
- b) the projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed use of the site;
- c) the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall also be given.
- d) the impact of increase in pedestrians to the vicinity and services that they would require.

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ix. For new construction or alterations to any existing building, a table containing the following information must be included:

- a) area of building to be used for a particular use such as retail operation, office, storage, etc.;
- b) maximum number of employees;
- c) maximum seating capacity, where applicable;
- d) number of parking spaces existing and required for the intended use.

x. Elevation plans at a scale of  $1/4" = 1'$  for all exterior facades of the proposed structure(s) and/or existing façade(s), plus addition(s) showing design features and indicating the type and color of materials to be used.

xi. An Environmental Assessment Form (either a short. or long form, depending upon the nature of the proposal) shall be submitted with the site plan to insure compliance with the New York State Environmental Quality Review Act (6 NYCRR 617), to identify the potential environmental, social, and economic impacts of the project.

### 4. Standards for Review

a. The Planning Board shall review the site plan and supporting documents, taking into consideration the reasonable fulfillment of the objectives listed below. Pursuant to section 705, paragraph C., detailed design guidelines and performance standards may be adopted by the Planning Board to guide decisions with respect to these objectives, and to help ensure consistency in the review of all applications.

i. Legal. Conformance with the provisions of the Local Laws and Ordinances of the Town, the Town Law of New York State, and all applicable rules and regulations of State and Federal agencies.

ii. Traffic. Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways, properties, school districts and municipalities (e.g., Village of Cooperstown).

iii. Parking. Provisions for off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, adequate lighting, and internal traffic.

v. Public Services. Reasonable demands placed on public services and infrastructure.

vi. Pollution Control. Adequacy of methods of sewage and refuse disposal and the protection from pollution of both surface waters and groundwater. This includes minimizing soil erosion both during and after construction.

vii. Nuisances. Protection of abutting properties and town amenities from any undue disturbances caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, odors, glare, lighting, stormwater runoff, etc.

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viii. Existing Vegetation. Minimizing the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees.

ix. Amenities. The applicant's efforts to integrate the proposed development into existing landscape through design features, such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.

x. Town Character. The building setbacks, area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding landscape and the natural landscape. Among required elements for review would be those listed under Article IV Section C. 3. B. of this Local Law.

F. Flood Protection District (FPD): The following regulations shall apply in all FPD districts in addition to the regulations of the underlying zoning districts:

1. All buildings and structures shall be designed and anchored to prevent flotation, collapse or lateral movement; shall use construction materials and utility equipment that are resistant to flood damage; and shall use construction methods and practices that will minimize flood damage.
2. All public utility systems and facilities serving any building or structure shall be located, elevated or constructed to minimize or eliminate flood damage and adequate on-site drainage shall be provided to reduce exposure to flood hazard.
3. No floor level, including a basement floor in a residential structure, shall be constructed below the water surface elevation level of a 100-year flood.
4. In a non-residential structure, no floor level, including a basement floor, shall be constructed below the water surface elevation level of a 100-year flood, except that floor area, together with attendant utility and sanitary facilities may be constructed below this level if flood-proofed as specified herein.
5. Within a floodway designated by the Federal Insurance Administrator, no use, including landfill or structure, shall be permitted within any flood plain having special flood hazard, unless or until the person owning or developing such use or structure shall demonstrate that the proposed use or structure, when combined with all other existing uses approved by the Town Planning Board under this section, will not increase the water surface elevation of a 100-year flood more than one foot at any one point.
6. Flood proofing measures as required in this section may include the following where appropriate:
  - a. Anchorage to resist flotation and lateral movement.
  - b. Reinforcement of walls to resist water pressures.
  - c. Installation of watertight doors, bulkheads and shutters.
  - d. Use of paints, membranes or mortars to reduce seepage of water through walls.
  - e. Addition of mass or weight to resist flotation.
  - f. Installation of pumps to lower water levels in structures.
  - g. Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters.
  - h. Pumping facilities to relieve hydrostatic water pressure on external walls and basement floors.
  - i. Elimination of gravity flow drains.

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- j. Construction to resist rupture or collapse caused by water pressure or floating debris.
  - k. Elevation of structures to or above the necessary flood protection elevation.
- G. Otsego Lake/Susquehanna River Shore line Protection Area: No building or structure (excepting docks or erosion controls, which shall require review and approval by the Planning Board) shall be erected within 100 feet of the shoreline of Otsego Lake or the Susquehanna River. No existing building or structure within 100 feet of the shoreline of Otsego Lake or the Susquehanna River shall be modified in such a way as to increase the size of the footprint defined by its exterior foundation walls. A building or structure within 100 feet of Otsego Lake or the Susquehanna River may be destroyed and reconstructed so long as it does not exceed its original footprint and so long as its reconstruction does not increase the existing nonconformity with this Local Law in any regard. No building or structure within five hundred (500) feet of the shoreline shall be erected or existing building altered unless and until a site plan showing such proposed development is approved by the Town Planning Board and a building permit therefor issued. No new construction within one hundred (100) feet of Otsego Lake or the Susquehanna River shall be greater than 25 feet in height. There shall be no point discharges into Otsego Lake or the Susquehanna River nor into any waterway flowing into Otsego Lake or the Susquehanna River. Also, not more than thirty percent (30%) of the trees six (6) inches or more in diameter at breast height within 500 feet of the shoreline may be cut over any 10-year period. No cutting of any vegetation may take place within twenty (20) feet of the shoreline except that up to thirty percent (30%) of the shore front may be cleared of vegetation on any individual lot. These standards do not prevent removal of dead, dying, diseased, or rotten trees or vegetation, or other vegetation presenting safety or health hazards.

### ARTICLE V - GENERAL REGULATIONS APPLYING TO ALL DISTRICTS

- A. Prohibited Uses: Heavy industry and all oil, gas or solution mining and drilling are prohibited uses. Uses not specifically permitted under Article IV of this Local Law are prohibited, except that the Planning Board may find that a use is sufficiently similar to a permitted use as to be included within the definition of that use.
- B. Principal Buildings per Lot: There shall only be one (1) principal building per lot, except that where a sufficiently large parcel exists, up to three principal buildings may be established, provided each structure has in identifiable land area which satisfies the lot area and yard requirements of the district regulations applying to the district in which they are located.
- C. Exceptions to Lot Area, Height, and Yard Regulations:
  - 1. Substandard Lots: Any lot recorded prior to October 30, 1975, whose area, or frontage on a public street is less than that specified in this Local Law, may be considered as complying with such requirement and no variance shall be required provided that:
    - a. Such lot does not adjoin another undersized lot in common ownership.
    - b. Such lot has a minimum area sufficient to provide for proper operation of a well and septic tank system if such are required, and
    - c. Minimum required side yard widths, or rear yard depths required for such lots shall be reduced to not less than one half those required in the district.
  - 2. Height Exceptions: The height regulations within the district regulations shall not apply to the following types of structures:

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- a. Church spires, domes, belfries, towers or cupolas not used for human habitation.
  - b. Chimneys, sky lights, bulkheads and fire walls, stair- wells, mechanical and elevator penthouses.
  - c. Water tanks, grain storage, barn silos.
  - d. Ornamental or decorative roof structures, other than signs.
  - e. Antenna towers, siren towers, utility poles or towers.
3. Required Front Yard Setback: Whenever a lot lies within a developed area where structures are located closer to a public highway than permitted under the applicable district regulations, the required front yard setback may be considered as being the average front yard setback of such structure, subject to the following conditions:
- a. There must be a minimum of four (4) existing structures located along the same side of the highway and within 300 feet of the lot being considered for exemption from part of the front yard setback requirements.
  - b. It shall be demonstrated that a reduction of the required front yard setback will not adversely affect access to adjacent properties, increase hazards to public safety, or be incompatible with the existing pattern of development.
  - c. It shall be demonstrated that compliance with the required front yard setback will cause an unreasonable restriction upon the development of said lot.
4. All sewer and water facilities shall meet standards set by the New York State Health Department and/or Department of Environmental Conservation as required by State law.
- D. Yards on Corner Lots: On a corner lot, any lot line or yard abutting a street shall be considered a front yard, and the minimum front yard setback required by the district regulation shall be provided. The owner of such corner lot shall decide which of the remaining yards shall be the rear and side yards.
- E. Parking and Loading Areas:
1. For all uses and structures, off-street parking shall be required in accordance with the following standards:
    - a. Residential uses - two (2) parking spaces for every dwelling unit.
    - b. Tourist homes, hotels, motels, hospitals, and nursing homes - one (1) parking space for every guest room or patient bed.
    - c. Retail Sales - one (1) parking space for every two hundred (200) square feet of floor area.
    - d. Wholesale trade, manufacturing, warehouse or storage facility - one (1) parking space for every one thousand (1,000) square feet of floor area.
    - e. Theaters, restaurants, eating and drinking places, churches and places of worship, and places of public assembly - one (1) parking space for every four (4) seats, or, in the absences of fixed seating, one (1) space for every sixty (60) square feet of floor area exclusive of kitchens, stage, dance floor, waiting areas, or storage areas.
    - f. Offices, businesses and professional offices - one (1) parking space for each three hundred (300) square feet of floor area.
    - g. Unspecified uses - one (1) parking space for every two hundred (200) square feet of building area, or one (1) parking space for every one thousand (1,000) square feet of site area, whichever is greater, or as specified by the Planning Board during site plan review based upon the greatest number of employees and customers using the structure at any single time.

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2. Required Loading: Off-street loading spaces shall be provided for all non-residential uses at a rate of one space for every receiving door or loading dock intended for use to load or unload cargo to or from a truck.
3. Required Paving: Parking and loading spaces, driveways and aisles serving or located in a parking area containing eight (8) or fewer spaces shall be paved with at least a suitable base of compacted gravel. All other parking or loading space, driveway or aisle shall be paved to at least the standards of a Local street. Whenever a driveway, aisle or loading space is intended for use by heavy trucks or equipment, such facilities shall be constructed to a standard sufficient to withstand damage from such use.
4. Size: All required parking spaces shall be at least ten (10) feet in width and twenty (20) feet in depth. All required loading space shall be at least ten (10) feet in width and fifty-five (55) feet in depth.
5. Location: The location of any entrance or exit of a driveway, aisle, parking or loading area, where it enters a public right-of-way, shall be subject to approval by the Town, County or State Highway Superintendent, and a permit for same shall be obtained from him prior to construction.
6. Roads: All new roads shall be built to Town standards, including Donovan standards and ASSHTO standards as guidelines for elements of road design. Guidelines for road grades shall accept no grade of greater than 13%, and no grades of 10% or greater over a distance of more than one hundred (100) feet, due to prevailing harsh winter conditions of the region. Otherwise, guidelines for road grade shall be derived from ASSHTO standards for Local Urban Streets. All new private roads created for subdivisions shall have landowners agreements providing for joint ownership and maintenance by owners of subdivision lots.

### F. Temporary Uses:

1. Temporary uses may be allowed in any district upon issuance of a permit therefor by the Town Board. Under no circumstances shall any of the activities and/or uses prohibited by this Local Law be construed to be "temporary uses" as such is defined in Article II of the Town of Middlefield Zoning Law. Said permit shall specify the location and type of use, signs to advertise such use, the hours of operation, and the dates between which such temporary use shall be permitted. Such temporary use permits shall not be issued to allow a use for over thirty (30) days or seasonal use, and shall only be issued under the following conditions:
  - a. An application for a temporary use permit is made by the owner of the property on which such use is to be located.
  - b. A sketch of the proposed layout of such temporary use including the approximate location of any buildings, structures, trailers, tents, enclosures, parking areas and signs shall be submitted for review with the permit application, and the use of the site shall be restricted to that which is shown on the application and sketch.
  - c. Adequate water and sewerage disposal facilities shall be provided to accommodate the need of the number of persons involved in the temporary use. Sufficient information on the number of persons and duration of use shall be provided to the Town Board who may request the advice and assistance of the New York State Department of Health in determining the number and type of such facilities that may be required.

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2. As a condition to granting a permit for a temporary use, the Town Board may require that a bond be provided by the owner or operator of such use, sufficient to clean and restore the site to a condition at least equal in quality to that which existed before the temporary was established, should the owner or operator thereof fail to do so. Such cleaning and restoration may include removal of litter, garbage, or other solid waste; replacement or stabilization of top soil; removal of debris, equipment or other moveable property; and replacement of ground cover vegetation.

### G. Signs:

1. In all districts, the following types of signs are specifically prohibited:
  - a. Signs so located as to restrict vision and impair safety of employees, customers, pedestrians or motorists.
  - b. Lighting devices or internally lit signs so placed or directed as to cause the illumination therefrom to produce a glare or reflection onto a public street or sidewalk, that constitutes a hazard or nuisance.
  - c. Signs illuminated by or containing flashing, intermittent, rotating or moving lights or devices.
  - d. Signs or sign structures exceeding eighteen (18) feet in height.
  - e. Signs exceeding a total area of thirty-two (32) square feet.
  - f. Commercial signs cannot be erected on residential property that advertise business(es) not conducted on that property, unless sign area is three (3) square feet or less, and combined height of sign and pole is six (6) feet or less.
2. All signs shall be erected or supported to withstand a wind of seventy (70) miles per hour. Signs or lights which constitute a hazard to public safety by reason of their location or physical condition may be removed by order of the Town Supervisor if the hazard persists. The person to whom the permit for such sign or light was issued shall be notified prior to such removal.

## ARTICLE VI - GENERAL REGULATIONS APPLYING TO SPECIFIC USES

- A. Storage of Flammable Liquids: Whenever any flammable liquid is stored in above ground tanks or other containers with a total capacity of greater than five hundred fifty (550) gallons, such tanks or containers shall be located within earthen dikes having a capacity not less than twice the capacity of the tanks or containers surrounded. The edge of such dikes shall be located at least one hundred (100) feet from any property line.
- B. Junk Yards: All junk yards, wrecking yards or places for collection of waste materials or inoperable equipment shall conform to the following requirements:
  1. The development of junk yards as of September 12, 1991, is prohibited.
  2. All established, licensed yards used for such collection or storage shall be enclosed by a screen fence, designed to obstruct view from outside, which is at least eight (8) feet in height entirely surrounding the yard.
  3. Materials stored and collected shall not be stacked or piled to a height greater than the closest screen fence.

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4. Materials shall not be collected or stored on a hillside of greater than ten percent (10%) slope, on a flood plain or adjacent to any stream bed.
5. Each year it will be necessary to apply for and obtain a license to operate a junkyard.

### C. Mobile Homes and Mobile Home Parks:

1. All mobile homes shall be provided with an adequate water supply and method of sewage disposal, as determined by the standards of the New York State of Health and Environmental Conservation, and the Town subdivision regulations.
2. All mobile homes shall be anchored and located on foundations as follows:
  - a. Mobile homes containing less than five hundred (500) square feet of floor area shall be anchored by means of at least four (4) frame ties and at least two (2) over-the-top ties, each tie to be securely anchored to the ground sufficient to withstand a 4,800 pound force without failure.
  - b. Mobile homes containing five hundred (500) or more square feet of floor area shall be anchored by means of at least five (5) frame ties and at least three (3) over-the-top ties, each tie to be securely anchored to the ground to withstand a 4,800 pound force without failure.
  - c. Ties shall consist of at least 1.25 inch by 0.035 inch galvanized steel strapping or 7/32 inch 7x7 or 1/4 inch 7x19 galvanized steel cable. Frame ties shall connect the steel beam supporting the structure to the anchors. Over-the-top ties shall be anchored on both sides of the unit.
  - d. Whenever a mobile home has been constructed with concealed tie-down straps or connections, such straps or connections may be used. However, they must be of the same number and strength as otherwise required by this section.
  - e. All mobile homes not located in a mobile home park must be located on their own identifiable building lot with appropriate setbacks.
3. No mobile home park shall be created or enlarged or licensed unless in conformance with this Local Law, including conformance with all requirements of the zoning district specified by this Local Law within which proposed mobile home park would be located. Such license shall be issued for a period of three years, and shall be renewable for an unlimited number of additional three-year periods. No license shall be issued until the Planning Board has approved a plan therefor showing compliance with the following regulations and no license shall be renewed unless the provisions and conditions of such approved site plan are continuously satisfied:
  - a. All mobile home sites shall be accessible from a service roadway not less than twenty (20) feet in width.
  - b. All mobile home sites shall be provided with permanent anchors sufficient to anchor a mobile home as provided under Article VI, Section C, paragraph 2, and any mobile home placed on that site shall be so anchored.
  - c. All mobile home sites shall be so located as to provide a minimum distance of at least twenty (20) feet between a mobile home located thereon and any part of any adjacent mobile home or service road way.
  - d. Off-street parking shall be provided adjacent to every mobile home for use of the residents thereof. Said parking to be provided in an amount, and subject to the restrictions and exemptions applicable to one family dwellings.
  - e. Every mobile home park shall provide a pond, tank or other suitable water storage of a capacity of at least 30,000 gallons plus 2,000 gallons for every mobile home in excess of 20. Said facility to be provided with a dry hydrant of suitable construction approved by the

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Otsego County Fire Coordinator. Such hydrant shall be located within ten feet of and be readily accessible from a service roadway. No mobile home shall be located more than 1,500 feet from a fire hydrant provided under this section.

- f. Every mobile home park shall be provided with its own sewer, water, and electrical service, and any occupied mobile home located thereon be connected to such utilities.

### D. Non-conforming Structures and Uses:

1. Subject to the following conditions, any lawfully erected building or structure existing at the time of enactment of this Local Law may be continued although such building or structure does not conform to the provisions of this Local Law.
  - a. A non-conforming building may not be enlarged, extended or altered except in conformance with this Local Law, except that repairs shall be permitted where such repairs are necessitated by fire, wind, flood or other causes, except that additions may be added in such a way that the final structure encroaches no closer to the road than the existing non-conforming use and all other setbacks and parking requirements are met.
  - b. Any building or structure under construction at the time of enactment of this Local Law may be completed.
  - c. Any permitted use may occupy a non-conforming building or portion thereof. Where the design or construction of a non-conforming building is such that it is unsuitable for any conforming use, the Board of Appeals may issue a special permit to allow the establishment or re-establishment of a non-conforming use in such structure provided such use is contained wholly within an enclosed structure and meets the performance standards of this Local Law.
2. Subject to the following condition, any lawfully established use of any land, building or structure existing at the time of enactment of this Local Law may be continued, although such use does not conform to the provision of this Local Law.
  - a. once changed to a conforming use, no building or land shall revert to non-conforming use.
3. When a use, building or structure becomes non-conforming as a result of amendment to this Local Law or of the zoning district map made a part thereof, such use shall be subject to the regulations and restrictions applicable to a non-conforming use.

### E. Camps, Theme Parks and Amusement Parks

1. No camp, day camp, sports camp, theme park or amusement park shall be permitted in the Town of Middlefield which provides for use by more than seventy (70) participants at one time. Multiple adjoining camps with any ownership or shareholders or management in common shall be considered a single park.

- F. Telecommunications Facilities Act: On the 12<sup>th</sup> day of November, 2002, the Town of Middlefield adopted a telecommunications law known as the "Town of Middlefield Telecommunications Facility Act", being Local Law No. 1 for 2002. The law provides detailed regulations for construction of Telecommunication Facilities, as defined therein. Erection of said Telecommunication Facilities requires site plan review and special use permit by the Town Board, pursuant to the rules and standards in said Telecommunication Facilities Act. The Telecommunications Facilities Act may have more stringent or different standards for approval of Telecommunication Facilities than found in

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the Zoning Law. The standards set forth in the Telecommunications Facilities Act take precedent over those in this Zoning Law.

### ARTICLE VII - ADMINISTRATION AND ENFORCEMENT

#### A. Administrative and Enforcement Officer:

1. This Local Law shall be enforced by the Zoning Enforcement Officer who shall be appointed by the Town Board. The Town Board shall fix the salary or compensation of such officer and provide for the payment thereof.
2. The Town Clerk is hereby given the following duties and authority:
  - a. To accept all applications required by this Local Law and to transmit such applications to the chairpersons of the Planning Board or Zoning Board of Appeals.
  - b. Where specifically authorized by this Local Law, to issue permits.
  - c. To serve as Deputy Zoning Enforcement Officer and to have the same duties and authority as that official in his absence.
  - d. To provide, upon request, copies of the Town Zoning Local Law and Map and any forms, rules and regulations used in administering this Local Law.
3. The Zoning Enforcement Officer is hereby given the following duties and authority:
  - a. To enter upon, examine or inspect any land, building or structure for the purposes of administering or enforcing this Local Law.
  - b. To receive complaints of violations of this Local Law or to make complaints based upon his own examination, inspection or knowledge.
  - c. To act upon any and all complaints and to serve a written notice of violation upon the owner or occupant of the premises where there appears to exist a violation of any provision of this Local Law.
  - d. To perform any other administrative or enforcement duties specified in this Local Law, including, but not limited to, the issuance of permits, licenses or certificates, accepting or reviewing of applications, plans or plats and carrying out any lawful order of the Town Board or Zoning Board of Appeals.

#### B. Permits, Certificates and Licenses:

1. Building permits: A building permit shall be required for any activity that involves:
  - a. The creation of a new dwelling unit, or
  - b. The enlargement by one hundred (100) or more square feet of the usable floor area of an existing dwelling, or
  - c. The enlargement by two hundred (200) or more square feet of the usable floor area of an outbuilding, or
  - d. The creation of a new building or structure having a floor area greater than one hundred fifty (150) square feet.

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2. Building Permit Applications: Every building permit application shall include the following:

- a. The location, size, dimensions and zoning district of the lot or lots on which the work is to be performed.
- b. A sketch or drawing showing the location of the proposed building or structure, including dimensions to all property lines, and to the nearest building within one hundred (100) feet of the proposed building or structure.
- c. A statement or drawing describing the proposed structure including its height, floor area, use and any information necessary to determine off-street parking and loading area requirements.
- d. A statement or drawing showing all proposed parking and loading areas, driveways, anchors or tiedowns, or required landscaped buffer areas.
- e. Any other statements or drawings necessary to determine that the proposed work will comply with the various provisions of this Local Law.

3. Certificate of Occupancy: No building or structure shall be occupied except after a certificate of occupancy has been issued therefor by the appropriate Agency or Zoning Enforcement Officer subject to the following conditions:

- a. The use conforms to all applicable provisions of this Local Law, and
- b. The building or structure to be occupied conforms to that proposed on any approved building permit application or site plan, together with any recorded conditions made in the approval of such permit or plan and any applicable provisions of Article X of this Local Law; or
- c. The use, or building or structure to be occupied by the use, does not conform to all the applicable provisions of this Local Law but is a bona fide non-conforming use as defined and regulated under Article VI, Section D of this Local Law.

4. No mobile home park shall be erected, established or occupied except after issuance of a mobile home park license by the Zoning Enforcement Officer.

5. The Zoning Enforcement Officer shall issue, issue subject to conditions, or refuse to issue any requested permit, certificate, or license within ten (10) days of his receipt of the application therefor, except where such application involves review by the Town Board, Board of Appeals or Planning Board under the provisions of this Local Law. Where such review is required, the Zoning Enforcement Officer shall notify the applicant of such fact and of any necessary applications, statements, plans, or other documentation required for such review, within ten (10) days of receipt of the original applications. The Zoning Enforcement Officer shall notify the applicant of meetings at which his application will be acted upon by any Reviewing Board, and said officer shall take such action as may be directed by such Board within ten (10) days of such direction.

### C. Penalties for Violation:

1. Violation of this Local Law is an offense punishable by a fine not exceeding five thousand dollars (\$5000) or imprisonment for a period not to exceed six (6) months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Local Law 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.

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2. Where any building or structure is erected, constructed, converted, altered, used or maintained, or land is used in violation of this Local Law, the Codes or Zoning Enforcement Officer, in addition to other remedies, may institute any appropriate action or proceedings to prevent erection, construction, conversion, alteration, use, maintenance or occupancy; and upon the failure or refusal of the Codes or Zoning Enforcement Officer to institute any such appropriate action or proceeding for a period of ten (10) days after a written request by a resident taxpayer of the Town so to proceed, any three taxpayers of the Town residing in the district where such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as the Codes or Zoning Enforcement Officer is authorized to do. Such action may require reversal of the action that was in violation of this Local Law.
  3. A complaint of violation of this Local Law may be made by any resident, property owner or Town official, including the Codes or Zoning Enforcement Officer.
  4. Upon receipt of a complaint of violation, the Codes or Zoning Enforcement Officer shall investigate to determine the presence of a violation, and upon finding of violation shall serve notice upon the owner or occupant thereof. Said notice shall include the items listed under Article VII, Section C, paragraph 3 together with any observation made by the Zoning Enforcement Officer on the basis of his investigation. Such notice shall also specify what action is required by the owner or occupant of the property, and the date by which such action shall be taken. The term violation, as used in Article VII, Section C, paragraph 1, shall exist only after the date of required action, specified in the notice to the owner or occupant, passes without such specified action having taken place.
  5. Notices required by this section shall be issued by the Codes or Zoning Enforcement Officer either by personal service to the owner or occupant, or by certified mail to the address of same shown on the tax rolls of the Town or contained in the statement of complaint.
- D. Fees: The application for any permit, certificate, license or any review by the Town Planning Board or Zoning Board of Appeals shall be accompanied by a fee, an amount specified from time to time by resolution of the Town Board. All permits will be issued for a period of one (1) year, renewable for two (2) successive years at no cost.

### **ARTICLE VIII - BOARD OF APPEALS**

#### **A. Establishment, Membership and Meetings:**

1. A Town Board of Appeals is hereby created, said Board of Appeals to consist of five (5) members appointed for terms of five (5) years, except that the members of the board when first appointed shall serve for terms as specified under Section 267 (1) of the Town Law. The Chairman and members of the Board of Appeals shall be appointed by resolution of the Town Board, which shall also have the power to remove any member for cause after a public hearing.
2. All meetings of the Town Board of Appeals shall be open to the public and said Board shall keep minutes of its proceedings, showing the vote of each member upon every question. Every rule, regulation, amendment of, repeal thereof, and every order, requirement, decision or determination of the Board shall immediately be filed in the Office of the Town Clerk and shall be a public record.

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### B. Powers and Duties:

1. Appeals: The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Enforcement Officer. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirements, decision or determination of the Zoning Enforcement Officer. Such appeal may be taken by any person aggrieved, or by any officer or board of the Town, by filing with the Zoning Enforcement Officer and the Board of Appeals a notice of appeal, specifying the grounds thereof. The Zoning Enforcement Officer shall forthwith transmit to the Board all papers constituting the record of the action being appealed. An appeal stays all proceedings in furtherance of the action being appealed unless the Zoning Enforcement Officer certifies to the Board that, by reason of facts stated in such certificate, a stay would 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 or by a court of record. The Board may reverse or affirm wholly or partially, or may modify the order, requirement, decision or determination being appealed and make such order, requirement, decision or determination as, in its opinion, ought to be made.
2. Variances: The Board may vary the requirements of these regulations upon finding the following:
  - a. That strict application of these regulations would impose an unreasonable hardship upon the applicant. Such hardship shall not be the result of any action by the applicant, and failure to realize financial gain from the use or sale of property shall not be considered an unreasonable hardship in the absence of other hardship.
  - b. That the requested variance is consistent with the intent of the comprehensive plan and will not result in creation of a hardship upon neighboring property owners. Variance of the use regulations of the zoning district regulations is hereby declared not to be consistent with said plan.
  - c. That the requested variance will not adversely affect public safety or welfare.
  - d. That the requested variance is for the relief of unique circumstances, and that the hardship being relieved is not shared by all properties alike in the immediate vicinity of the property and the zoning district.
  - e. That the variance requested is the minimum necessary to grant relief. In granting a variance, the Board in its resolution shall specify its findings, and the fact that all of the conditions specified in Article VIII, Section B, paragraph 2 are satisfied. When a variance is sought to the yard, setback or lot area requirements of the district regulations, a finding that strict application of these regulations would result in practical difficulty in the use of the land, may be substituted for the finding of hardship.
3. Special Permits: The Board of Appeals shall have the authority to issue special permits, as provided in the district regulations of this Local Law, upon finding the following:
  - a. That the proposed use is authorized under the zoning district regulations as a permitted use subject to issuance of a special permit therefor.
  - b. That the proposed use will not have an adverse impact upon the area in which it is to be located.
  - c. That the proposed use complies with all applicable provisions of this Local Law, or will so comply prior to the issuance of a certificate of occupancy.
  - d. That the proposed use is consistent with the comprehensive plan of the Town.

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- e. That the proposed use will not cause excessive traffic, will not detract from the property value of any adjacent property, and can be adequately served by existing or proposed public facilities or utilities.
4. Application: Applications for appeals, variances or special permits shall be made to the Zoning Enforcement Officer for transmittal to the Board, and shall contain the following:
    - a. The name, address and phone number of the applicant.
    - b. The location and zoning district of the property for which a variance or special permit is sought, or in reference to which an appeal is made.
    - c. The existing use of said property including a description of any existing buildings.
    - d. Citation to the provision of this Local Law for which a variance is sought, or under which a special permit is sought or a description of the circumstances resulting in the appeal.
    - e. Justification of the request for variance or special permit or a description of the circumstances resulting in the appeal.
    - f. A statement of the relief sought.
    - g. An Environmental Assessment Form (short form).
  5. In the exercise of its powers and duties, the Board of Appeals, through its chairman, or in his absence, its acting chairman, may compel the attendance of witnesses and may administer oaths prior to taking the testimony of any witness.
  6. In addition to the findings required before the granting of any variance or special permit under this section, the Board of Appeals may consider any other evidence necessary to show compliance to the intent and purpose of this Local Law.
  7. The Board, in granting any appeal, variance or special permit, may attach such conditions to said approval as in its determination are necessary to achieve the intent and purpose of this Local Law.

### C. Procedures and Referral:

1. All applications for action by the Town Zoning Board of Appeals shall be made to the Zoning Enforcement Officer on such forms as he may prescribe. Such application for appeal under Article VIII, Section B, paragraph 1 above shall be made within thirty (30) days of the action being appealed.
2. The Zoning Enforcement Officer shall transmit a copy of the application, together with any accompanying documents to the Board of Appeals, who shall schedule a hearing thereon. Public notice of said hearing shall be given by publication in the official paper of a notice of such hearing at least five (5) days prior to the date thereof, and the Board shall, at least five (5) days before such hearing, mail notices thereof to the adjoining properties, and to any regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of said property. Where any variance or special permit application affects any real property lying within five hundred (500) feet from the boundary of any existing or proposed County or State park or other recreation area, or from the right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines, or from the existing or proposed boundary of any County or State-owned land on which a public building or institution is situated, the Board of Appeals shall notify the Otsego County Planning Board of said application and submit copies of the application and any supporting documents thereto. No action shall be taken upon any matter referred to the

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Otsego County Planning Board until said Board shall have made a recommendation thereon to the Board of Appeals, or thirty (30) days shall have elapsed since the date of referral.

3. The hearing of an appeal or application shall take place within sixty (60) days of the filing of the appeal or application.
4. Upon a motion initiated by any member and adopted by the unanimous vote of the members present, but not less than a majority of all the members, the Board of Appeals shall review, at a rehearing, any order, decision or determination of the Board not previously reviewed. Upon such rehearing, and provided it shall appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision or determination reviewed will not be prejudiced thereby, the Board may, upon concurring vote of all the members present, reverse, modify or annul its original order, decision or determination.
5. The Board of Appeals shall reach a decision on any application or appeal within forty-five (45) days of the final hearing thereon. Such decisions shall be promptly filed in the office of the Town Clerk and shall be a public record. Within seven (7) days of such decision, notice thereof shall be transmitted to the Otsego County Planning Board whenever such decision relates to an application referred to said County Planning Board.

### D. Judicial Review

1. Any person or persons jointly 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 proceeding shall be instituted within thirty (30) days after the filing of a decision in the office of the Town Clerk. The court may take evidence or appoint a referee to take evidence as it may direct and report the same with his findings of facts and conclusions of law if it shall appear that testimony is necessary for the proper disposition of the matter. The court, at a special term, shall itself dispose of the case on its merits, determining all questions which may be presented for determination.
2. Costs shall not be allowed against the Board of Appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.
3. All issues in any proceeding under this section shall have preference over other civil actions and proceedings.
4. If, upon the hearing at a special term of the Supreme Court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with its findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determinations of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

## ARTICLE IX - MISCELLANEOUS PROVISIONS

### A. Amendments:

1. These regulations or the boundaries shown on the Zoning district map, may be amended, supplemented, changed, modified or repealed by Local Law adopted by the Town Board. In case,

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however, of a protest against such change, signed by the owners of 20% or more, either of the area of land included in such proposed change, or of that immediately adjacent extending one hundred (100) feet there-from or of that directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not become effective except by vote of at least three-fourths of the members of the Town Board.

2. No amendment, supplement, change or modification of these regulations or the boundaries shown on the Zoning District Map shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.
3. At least ten (10) days notice of such public hearing shall be published in a paper of general circulation within the Town and a written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under the public housing law, as such area is shown on the official Zoning Map of the Town, or within five hundred (500) feet of the boundaries of any city, village, town, County, State park or parkways, shall be given, in the case of a housing project to the housing authority erecting or owning the project and to the government providing financial aid or assistance thereto, in the case of any State park commission, in the case of a city, village or town to the clerk of such city, village or town, and in the case of a County, to the clerk of legislative board of said County, at least ten (10) days prior to the date of such public hearing. Such city, village, town or County shall have the right to appear and to be heard at such public hearing with respect to any such proposed change or amendment, but shall not have the right to review by a court.
4. Any zoning regulation or amendment thereof, which would change the district classification or of the regulations applying to real property lying within the distance of five hundred (500) feet from the boundary of any city, village or town, or from the boundary of any existing or proposed County or State park or other recreation areas, or from the right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines or from the existing or proposed boundary or any County or State-owned land on which a public building or institution is situated, shall, before the Town Board takes final action on such matters, be referred to the Otsego County Planning Board. Within seven (7) days of final action by the Town Board on any recommendations by said County Planning Board, the Town Board shall file a report of the final action it has taken with said County Planning Board. If the County Planning Board disapproves any such proposal, or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after adopting a resolution fully setting forth the reasons for such contrary action.

### B. Referrals to Town Planning Board:

1. All proposed amendments to this Local Law shall be referred to the Town Planning Board upon its consideration of the Town Comprehensive Plan. The Town Planning Board shall report its recommendations on such referral to the Town Board within thirty (30) days of such referral.
2. Any application for variance or special permit shall be referred to the Town Planning Board whenever said application relates to any site plan under review by said Board. The Town Planning Board may recommend action thereon to the Zoning Board of Appeals based upon its review of such site plan, and may make an approval of such site plan conditional upon approval by the Zoning Board of Appeals of all related variance or special permits.

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- C. Interpretation and Conflict with Other Law: In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements, adopted for the promotion of public health, morals, safety or general welfare. Whenever the requirements of this Local Law are at variance with the requirements of any other lawfully adopted rules, regulations or Local Law, the most restrictive, or that imposing the higher standards, shall govern.

**Section 5. Zoning Map.**

The Zoning Map for the Town of Middlefield, dated \_\_\_\_\_, is hereby adopted and declared to be the Zoning District Map of the Town of Middlefield, and an appurtenant part of the Town of Middlefield Zoning Law.

**Section 6. Severability.**

If any article, section, sub-section, provision, regulation, limitation, restriction, sentence, clause, phrase, or word in this local law is declared for any reason to be illegal, unconstitutional, or invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of said local law as a whole, or any other article, section, sub-section, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of said local law. The Town Board hereby declares that it would have adopted this local law and each article, section, sub-section, provision, regulation, limitation, restriction, sentence, clause, phrase, and work thereof, irrespective of the fact that any one or more of the articles, sections, sub-sections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases, or words may be declared illegal, unconstitutional, or invalid.

**Section 7. Repeal.**

All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

**Section 8. Effective Date.**

This local law shall take effect immediately upon filing in the office of the New York Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.