

Town Board Proposed Zoning Law Review  
Change List by Section based upon Town Attorney and Environmental Planner pre-meeting (Oct. 2010 TB AA meeting) review.

## **Definitions**

Deleted extra Active Recreation definition.

## **Adult Uses**

In response to a desire to reduce the amount of references to adult related definitions, M. Perkins and D. Kwasnowski propose the following changes to these definitions and are reflected in the digital working draft.

- Delete separate definitions for Adult Mini-Motion Picture Theater, Adult Motion Picture Theater, Adult Physical Contact Establishment.
- Move "Specified sexual activities" to their own place in the Definitions section.
- Condense definitions to Adult Uses, Adult Entertainment Business and Adult Bookstore.

## **Agricultural Use and Agricultural Related Enterprise**

There doesn't seem to be a problem with the way the town has and continues to interpret these types of uses, and there does not appear to be any discernible impact from the decisions that have been made over the years. For example, RPM Ecosystems, although a rather large operation, did not undergo any formal review by the town except with regard to building permits. Certainly the town assisted RPM with getting started to the best it could, but did not ever formally review the project because it was deemed to be an agricultural enterprise, with the exception of a plan to sell topsoil from the site where the town would have required a Special Use Permit.

I did contact the NYS Department of Agriculture and Markets who referred me to state statute (25AA Section 301 below) for their definition. Apparently they just like to go to court to settle the issues one by one. I have included our exchange via email:

Dan,

The best starting point would be to look at the definitions in section 301 of the Agricultural and Markets Law (article 25AA). Some activities require a site-specific determination. The raising of hops would be considered crop production. If the brewery uses hops that are predominately grown on site, it would be considered part of a farmoperation.

In the case of greenhouses, an important factor is whether or not the public is allowed into the greenhouse. If they

are, it is often considered retail and may be required to meet certain standards. Another factor is whether it is a temporary greenhouse or has a permanent foundation. Temporary greenhouses are considered farm equipment. I have attached a copy of the Department's guidelines on greenhouses for your information.

Often, a determination has to be made on a case-by-case basis. As more landowners get involved in ag-tourism, it becomes more difficult to determine which activities are agriculture and which are not. If you are amending your code, we would be happy to review the draft and provide comments to help reduce the risk of a conflict with the Agriculture and Markets Law.

I know this probably isn't the clear cut answer you were looking for, but I hope it helps. If you have any questions, let me know.

Matt

-----Original Message-----

From: Dan Kwasnowski [<mailto:dank@dryden.ny.us>]  
Sent: Friday, October 01, 2010 2:20 PM  
To: Matthew Brower  
Subject: Agricultural Practice Definition

Matthew,

I have been looking at the information on your website regarding zoning etc. I am looking for the department's current definition of an agricultural practice.

The town is currently updating(overhauling) the zoning code and we have a serviceable definition. However, I wanted to compare it to yours to make sure we aren't missing anything.

For example, we recently had an inquiry about a hop farm and brewery. It was a struggle to define it as an agricultural activity and therefore exempt it from site plan review because it is not a winery. Another example is the difference between a retail greenhouse, and a agriculturally related greenhouse, if there even is one.

Any help is appreciated.

### Ag and Markets Law 25AA Section 301:

11. "Farm operation" means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, a "timber operation" as defined in subdivision fourteen of this section and "compost, mulch or other biomass crops" as defined in subdivision sixteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

Obviously the town's current definition is much more useful for administering local law. I suggest leaving it as it is.

### **Commercial Riding Facility**

Mahlon and I also discussed the issue with a Commercial Riding Facility. It is something that was suggested and the consultant and I tried to work it in. The problem is that, besides that keeping of horses is a popular activity across the entire town, there aren't any fully dedicated commercial riding facilities. There certainly are horse farms that have riding facilities, but they are primarily a horse farm that occasionally has shows. In my experience, I have not seen where dedicated riding facilities pose that much of an impact, and it is likely not worth the town's time to try and regulate this activity. I suggest scrapping it entirely. However, I know that one of the concerns is allowing this in all areas of the town. However this does not necessarily point to a problem with horse facilities, but rather the potential need for separation of the Rural Residential district into two districts, Rural Residential and Neighborhood Residential which would, I think, alleviate many concerns like this. It would also allow a little more flexibility in the less dense residential areas without diluting the Rural Agricultural district.

### **Artist Studio/Craft Workshop**

Generally this is relatively harmless the way it is written now, but I still have a hard time understanding the need to regulate this type of business. I can't tell if it was introduced to allow it in more areas, which certainly is not how the public perceived it, or some other reason. If it were not mentioned separately then wouldn't, or couldn't, it just be considered an Educational Facility?

This brings up the potential for a separate solution. The Town Board might consider, for each category of uses (Ag, Commercial, Community, Residential, Recreational) an Unlisted Use. This would, by definition, allow, by SUP, any use not listed in the table for certain zones. So for example in the Business Use category, Unlisted Uses might be allowed in the RA, H, C, CC and LIO, LIO-A districts, but not the RR. This would address a lot of comments that the law is far too prescribed, but does run the risk of

diluting the purpose of specific zones. There could be very specific guidelines for each zone spelled out in a special regulations section for Unlisted Uses. We need to discuss Mahlon's thoughts on the ZBA and administrative remedies with regard to this idea.

### **Billboards**

I have a plea from Park Outdoors to alter the town's billboard requirements. I have attached the letter, but I have been avoiding a full scale revision of the sign section, because I think it requires a more concerted effort, and the town is already taking on a lot of change. But it is something to think about.

### **Cabin or Cottage**

There is a need to discuss the necessity and specification of this type of dwelling. The law isn't clear why it is defined. I'm still unclear as to whether or not there is really a difference between what is commonly referred to as a seasonal dwelling, and if it still has to meet the same standard as a year-round dwelling. I have put the question to the "code guys."

From Kevin:

There is not "Code" designation for a cottage or cabin. The allowance that the code gives for these is if they are "owner occupied", they are not required to have heat, plumbing, or electric. They are required to have both smoke detectors and CO detectors that are battery operated.

For Zoning purposes, I see an advantage to have a separate designation.

I'm still not sure why this is even defined. This still needs to be added to the use table.

Further discussion with Kevin reveals that this type of structure has all the same zoning requirements as another single family home. For the Building Permit, it does not, as his email indicates have to meet the same standard IF it uses a renewable energy heating source.

### **Congregate Care Facility and Senior Housing**

These types of facilities are changing quickly. But, there are likely only a few types that would be allowed outside of areas with water and sewer, or at least the size would be limited.

Looking at the Use Table, Senior Housing is allowed in the RR and RA zones, and Congregate Care is only allowed in the CC and LI districts because presumably that type of facility would require water and sewer. In all of these districts a Special Use Permit is required.

A better approach would be to allow for a variety of Senior Housing in a general definition, but require Special Use Permit and SPR for any of these types of facilities.

### **Day Care Center**

Mahlon is researching better references to state law.

### **Dwelling, Multi-Family**

There needs to be discussion about the guidelines for allowing multi-family rentals in separate buildings. These may require separate special guidelines.

### **Elder Cottages**

This was discussed at length and neither the Town Attorney, nor the Environmental Planner could come up with a good reason to keep this definition and the resulting specific site plan review when the addition of Accessory Use apartments seems to be a catch all that serves the same purpose. It does seem that there may be a desire or need to keep the terminology in the law, but it could simply refer to Accessory Unit Dwelling. I have proposed that change in the digital draft.

### **Family**

Please review this definition. It seems to be okay as written.

There was a second definition and Dan still has to check why that was proposed.

### **Frontage**

We need a better definition. The TA and EP are working on one.

### **Home Occupation Level 1**

The only thing we should discuss is the allowance of a small sign, which would actually be described in the sign section and not the definition.

### **Invasive Species**

Acts as a restriction, remove restriction keep it as a definition. Put regulation where it belongs in site plan review.

### **Lot, Lot of Record**

Need to review and change definition to reflect deed on record not tax map. Also discuss eliminating need to map out frontage on all lots in the RR and RA zone (Section 602 Part 2).

### **Mining**

Allow anywhere with significant setbacks?

Or don't regulate at all?

Discuss contradiction of mapping environmental resources, and then allowing a land use that is obviously not compatible.

Also revisit special regulations and see if they are still necessary. Probably yes. The State regulates above a certain threshold, and the town has regulated below that threshold. Above that threshold (750 cu. yards one year) the town can regulate where, but not how.

Should ask RMS about where potential mining in the town might be.

### **Retail Business**

This definition was tweaked.

Add **Site Plan Review** to definitions. The definition from Town Law has been added.

### **Tavern**

Isn't this just a restaurant now?

### **Warehouse**

Where allowed? Only LI? See discussion below regarding the Commercial district.

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### **Parking**

Based on the definition, the TA and EP discussed the problem with parking. For years applicants have had to pursue a variance to *reduce* the amount of parking required by the law. The EP at the beginning of this process wanted to eliminate the requirement and let applicants propose their own needs, but there is a fear that applicants may request too much, which has been a problem in other communities.

Proposed changes.

Let the applicant propose parking, and use current standard as a *maximum* rather than as written which is a minimum requirement. Still require parking, but it doesn't have to be onsite, allow for neighboring parking to be used by lease or otherwise.

### **Variances**

Need to discuss definition to be consistent with case law.

### **Commercial District**

As requested the EP revisited the Commercial District and has tried to express the currently proposed purpose of that district to match the progression during the Planning Board development of the law. In doing so, the first place to review is Chapter 5 Plan Recommendations of the Comprehensive Plan, the core of land use recommendations driving the zoning update. The Commercial description is one of the smaller sections, and it essentially rejects big box development in favor of smaller local businesses similar in scale and service to what exists today. No mention of residential development that compliments the commercial in any way. But if you consider the proposed Highway Corridor Overlay in that same chapter, you can see it describes a “mixed use” zone. Both districts are described as occurring along Route 13 and 366 outside of the hamlets, but there is no reconciliation of how the two would occur at the same time. The overlay was scrapped as infeasible since not only is the corridor already largely built out except for a few exceptions, some of those exceptions have been targeted for farmland protection. But in the end, the themes of the overlay have just been combined into the Commercial District.

The approach in the law update started with breaking up commercial opportunity in the corridors to those areas that are off of Route 13 (Mineah Road, Etna Lane, Johnson Road etc.) as well as those areas along Route 38 and 366 that are similar. Route 79 has not been assessed yet, but should be. With the restrictions in the Rural Residential District what they are, it quickly became apparent that the Commercial District would have to encompass both commercial applications as well as residential in new mixed use areas. This also allows the market to play its role in fulfilling current demand, so where a landowner or developer sees an opportunity for residential it is allowed, or commercial, or both. This allows at least services, if not jobs to be located conveniently to housing. It also takes the first important step to preserving the transportation corridors for transportation which is avoiding impacts, while still allowing plenty of local commercial opportunity.

If you look at the following table, you can see that the Commercial District and Light Industrial/Office are somewhat similar. I have highlighted the differences in the Business, and Community Group categories.

<b>USES</b>	<b>RR</b> Rural Residential	<b>CC</b> Commercial	<b>LIO, LIO-A</b> Light Industrial/ Office
<b>AGRICULTURAL GROUP</b>			
Agricultural Use	P	P	P
Farm Stand	P	P	P
<b>BUSINESS GROUP – All uses allowed are subject to Site Plan Review</b>			
Adult Use (see §1302)	X	X	Special Use Permit Only permitted in LIO-A
Agriculture-Related Enterprise	X	P	Special Use Permit

<b>USES</b>	<b>RR</b> Rural Residential	<b>CC</b> Commercial	<b>LIO, LIO-A</b> Light Industrial/ Office
Artist Studio/ Craft Workshop	Special Use Permit	P	P
Automotive Repair Garage (see §1310)	X	Special Use Permit	Special Use Permit
Automotive Sales	X	Special Use Permit	Special Use Permit
<b>Automotive Salvage</b>	X	Special Use Permit	Special Use Permit
Automotive Towing Service (see §1306)	X	Special Use Permit	Special Use Permit
Bed-and Breakfast establishment	Special Use Permit	<b>Special Use Permit</b>	X
Boarding House	X	X	X
Campground	Special Use Permit	X	X
Car Wash	X	Special Use Permit	P
Commercial Riding Facility (see §1307)	X	Special Use Permit	X
Contractor's yard	X	Special Use Permit	Special Use Permit
Day care center	Special Use Permit	Special Use Permit	P
Drive-through facility (see §1309)	X	Special Use Permit	Special Use Permit
Gasoline station	X	Special Use Permit	Special Use Permit
General Office Building	X	P	P
Hotel / Motel	X	P	Special Use Permit
Industry, Light	X	P	P
Industry/Manufacturing (see §1303)	X	X	SP
Inn	Special Use Permit	P	X
Kennel (see §1308)	X	Special Use Permit	X
Mining (see §1304)	X	X	Special Use Permit
Nursery/Greenhouse, Retail	Special Use Permit	P	X
Professional office	X	P	P
Restaurant	X	P	Special Use Permit
Retail business	X	P	<b>Special Use Permit</b>
Retail shopping centers / plazas	X	Special Use Permit	X
Retreat or Conference Center	X	Special Use Permit	X
Service business	X	P	P
Self-storage	X	Special Use Permit	Special Use Permit
Theater	X	P	P
Warehouse	X	<b>SUP</b>	P



USES	RR Rural Residential	CC Commercial	LIO, LIO-A Light Industrial/ Office
<b>RESIDENTIAL GROUP</b>			
Bed-and-Breakfast home	Special Use Permit	Special Use Permit	X
Congregate Care Facility	X	Special Use Permit	X
Day care homes, Family	P	P	X
Day care, Family Group	P	P	X
Dwelling, accessory unit (see §1311)	P	P	X
Dwelling, multi-family	X	Special Use Permit	X
Dwelling, single-family	P	P	X
Dwelling, two-family	P	P	X
Dwelling, upper-floor apartments	X	Special Use Permit	X
Elder Cottages see §1305	See §1305	See §1305	X
Home Occupation: Level 1	P	P	X
Home Occupation: Level 2	P - State and County Roads, Special Use Permit on Town Roads	P - State and County Roads Special Use Permit on Town Roads	X
Manufactured Home	X	P	X
Manufactured Home Park (see Town Manufactured Home Park ordinance)	Special Use Permit	Special Use Permit	X
Senior Housing	Special Use Permit	Special Use Permit	X
Workshop/Garage - Non-Commercial	P	P	P
<b>COMMUNITY GROUP – All are subject to Site Plan Review</b>			
Cemetery	P	P	P
Educational use	Special Use Permit	Special Use Permit	X
Library	X	Special Use Permit	X
Lodge or club	X	P	X
Municipal use	P	P	P
Public Safety	Special Use Permit	Special Use Permit	Special Use Permit
Public Utility	Special Use Permit	Special Use Permit	Special Use Permit
Religious institution	Special Use Permit	Special Use Permit	Special Use Permit
<b>RECREATIONAL GROUP</b>			
Recreation, Active	Special Use Permit	Special Use Permit	Special Use Permit
Recreation, Passive	P	P	P

<b>USES</b>	<b>RR</b> Rural Residential	<b>CC</b> Commercial	<b>LIO, LIO-A</b> Light Industrial/ Office
Recreation Facility, Amusement	X	Special Use Permit	Special Use Permit
Recreational Facility, Athletic	X	Special Use Permit	Special Use Permit
Recreational Facility, Motorized	X	X	X
<b>ACCESSORY USES GROUP</b>			
Any accessory building or use determined by the Planning Board to be customarily incidental to a permitted use, including detached garages and sheds.	PA	PA	PA
Accessory recreational uses, such as swimming pools and sports courts, provided that they are in compliance with the setback requirements for the principal use.	PA	PA	PA
Off-Street Parking Facilities	PA	PA	PA

As can be seen, there is not a lot of difference between the two districts, except for lack of residential in the Light Industrial/Office.

The TB might consider eliminating “office” from the title of Light Industrial, but allow it as a use by SUP in that district, maybe allowing some of the other uses in the Commercial/Mixed Use by SUP, or not. I also think that the TB should consider renaming the Commercial District to Mixed Use Commercial or just Mixed Use District with the following vision:

“The Mixed Use Commercial District allows a mix of retail and service enterprises, office buildings that could house corporate administrative operations and research and development enterprises such as computer software and equipment design businesses as well as residential development. The district allows for mixed use development that can both exploit the opportunities for economic development and encourage the development of decent affordable housing that compliments and coexists with commercial uses and possibly provides critical mass for commercial businesses.”