Local Law 2 of 2006

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 State Street, Albany NY 12231

Village of Muttontown

Local Law 2 of 2006

A local law amending Chapter 67 ("Fees and Deposits"), sections 67-1, 67-4, 67-7; and Chapter 190 ("Zoning"), sections190-10, 190-11, 190-12, 190-16, 190-38, 190-46, 190-53, 190-59, 190-61, 190-63, 190-65, 190-70, 190-72, 190-73, 190-74, 190-75, 190-77, 190-78, and 190-79 of the Code of Muttontown to designate the Board of Trustees as the agency responsible for the issuance of special use permits

Be it enacted by the Board of Trustees of the Village of Muttontown as follows:

Chapter 67: FEES AND DEPOSITS

[HISTORY: Adopted by the Board of Trustees of the Village of Muttontown 11-10-1969 by L.L. No. 1-1969. Amendments noted where applicable.]

§ 67-1. Definitions. [Amended 2-13-1978 by L.L. No. 1-1978; 9-12-1983 by L.L. No. 4-1983; 6-12-1986 by L.L. No. 4-1986; 1-9-1995 by L.L. No. 1-1995]

As used in this chapter, the following terms shall have the meanings indicated:

ALTER — The making of an alteration.

ALTERATION — Any addition or modification in construction or arrangement of structural supports or partitions, including an extension on any side or increase in height of the structure, or any change in use or to move a structure from one location or position to another. Reasonable and ordinary repairs to remedy deterioration shall not be considered as an alteration.

APPEAL — Any appeal made to the Village's Zoning Board of Appeals pursuant to Chapter 190, Zoning, or matters pertaining to an appeal.

APPELLANT or EACH APPELLANT — An individual, corporation or partnership or group thereof submitting an appeal to the Village's Zoning Board of Appeals.

APPLICANT or EACH APPLICANT — An individual, corporation or partnership or group thereof submitting an application to the Village's Planning Board, Site and Architectural Review Board, Board of Trustees, Clerk, Building Inspector and Highway Commissioner.

APPLICATION — Any application or written request made to the Planning Board, Board of Trustees, Clerk, Building Inspector and Highway Commissioner seeking approval or relief.

BUILDING INSPECTOR — The Building Inspector of the Village.

CLERK — The Clerk of the Village.

LOT — A lot upon which a fee is based includes a recharge basin and out lots which are part of a drainage area for subdivisions.

OFFICIAL RECORD — Includes:

A. Pages and writings contained in the official minute books of the Village's Board of Trustees, Planning Board and Zoning Board of Appeals.

B. Public records, papers and writings in the custody of any Village department, official or employee.

VILLAGE — The Incorporated Village of Muttontown.

§ 67-4. Zoning Board of Appeals. [Amended 2-13-1978 by L.L. No. 1-1978; 6-12-1986 by L.L. No. 4-1986; 4-9-1990 by L.L. No. 1-1990; 2-8-1993 by L.L. No. 1-1993; 1-9-1995 by L.L. No. 1-1995]

A. Every appellant to the Village's Zoning Board of Appeals shall pay to the Village the following:
   (1) Filing fee.
      (a) Appeal and all other matters: $2,500. **[Amended 9-11-2000 by L.L. No. 3-2000]**
      (b) General appearance fee for discussion with Board: $750. **[Added 6-9-2003 by L.L. No. 2-2003]**
   (2) Deposit. In addition to the above filing fee, a hearing charge deposit of $2,500 shall be submitted.

B. The appropriate filing fee and hearing deposit must be paid to the Village before a hearing will be noticed.

C. Hearing charge.
   (1) Appeals. In addition to the above filing fee, on every appeal, for which a public hearing or meeting is held there shall be paid to the Village the actual and necessary charges which have been incurred by the Village in connection with the proceeding up to the maximum amounts indicated below: **[Amended 9-11-2000 by L.L. No. 3-2000]**
      (a) Consultants: $5,000.
      (b) Environmental review: **[Amended 6-9-2003 by L.L. No. 2-2003]**
         [i] Consultants: $25,000.
         [ii] Legal: $25,000.
   (2) All hearing charges shall be paid to the Village before the Zoning Board of Appeals shall file its decision.
   (3) All hearing charges due shall be deducted from the hearing deposit. If the hearing charges for which the appellant is responsible exceed the deposit, the balance due shall be paid to the Village before the Zoning Board of Appeals shall file its decision.

§ 67-7. Licenses and permits for certain activities and special uses. [Amended 6-10-1974 by L.L. No. 3-1974; 2-13-1978 by L.L. No. 1-1978; 10-16-1978 by L.L. No. 4-1978; 12-14-1981 by L.L. No. 4-1981; 4-9-1990 by L.L. No. 1-1990; 1-9-1995 by L.L. No. 1-1995; 4-12-1999 by L.L. No. 1-1999]

Applicants for permits or licenses to conduct the following activities in the Village shall pay to the Village a fee determined by the following schedule:

A. Tow car permit: $250 per calendar year, $75 if permit expires within six months.

B. Street openings.

(1) Permit fee.

(a) Street opening in asphalt pavement: $5 per square foot for the first 1,000 square feet and $3 per square foot thereafter or a minimum of $400, whichever is greater.

(b) Street opening in road shoulder: $60 per 100 linear feet or a minimum of $100, whichever is greater.

(2) Cash deposit: $2,000 (for 90 days).

C. Peddling licenses.

(1) Investigation fee: $20.

(2) License fee: $10.

D. Auction permit fee: $250 plus a refundable security deposit of $500 to accompany each auction permit.

E. Sale permit fee: $25 per day.

F. Parade permit fee: $20.

G. Licensing fees for solid waste carters. The Village Clerk, under § 150-18 of Chapter 150, Solid Waste, shall charge and collect the following fees:

(1) Initial license: $500.

(2) Annual renewal of license: $250.

H. Burglar alarm systems. **[Added 9-11-2000 by L.L. No. 3-2000]**

(1) Business license: $100 for a two-year period.

(2) Agent license: $50 for a two-year period.

(3) Alarm user permit:

(a) New alarm installation, significant modification to existing alarm system or change of ownership: $50, valid for a one-year period.

(b) Initial permit fee for all existing alarm users who do not have an alarm user permit as of the effective date of this article: $50, valid for a one-year period

(c) Annual renewal fee: $20.

I. Heavy trucking cash deposit: $1.50 as multiple for formula. **[Added 9-11-2000 by L.L. No. 3-2000]**

J. Storage of impounded vehicles: $2 for each day or fraction thereof said vehicle is stored by the Police Department. **[Added 9-11-2000 by L.L. No. 3-2000]**

K. Driveway opening permit fee: $750. **[Added 9-11-2000 by L.L. No. 3-2000]**

L. Fence permit fee: $275. **[Added 9-11-2000 by L.L. No. 3-2000]**

M. Real estate sign fee: $100. **[Added 9-11-2000 by L.L. No. 3-2000]**

N. Tree removal: No charge. **[Added 6-9-2003 by L.L. No. 2-2003]**

O. Commercial use of residential property when authorized by the Board of Trustees: $500 per day. **[Added 6-9-2003 by L.L. No. 2-2003]**

P. Every applicant to the Village's Board of Trustees shall pay to the Village the following:

(1) Filing fee.
   (a) Application for special use permit and amendments thereto: $2,500.
   (b) General appearance fee for discussion with Board: $750.

(2) Deposit. In addition to the above filing fee for an application for a special use permit and amendments thereto, a hearing charge deposit of $2,500 shall be submitted.

The appropriate filing fee and hearing deposit must be paid to the Village before a hearing will be noticed.

Hearing charge.

(1) In addition to the above filing fee, on every application or amendment to a special use permit for which a public hearing or meeting is held there shall be paid to the Village the actual and necessary charges which have been incurred by the Village in connection with the proceeding up to the maximum amounts indicated below: **[Amended 9-11-2000 by L.L. No. 3-2000]**
   (b) Special use permit and amendments. **[Amended 6-9-2003 by L.L. No. 2-2003]**
      [1] Consultants: $100,000.
      [2] Legal fees: $75,000.
      [3] Environmental review:
         [a] Consultants: $75,000.
         [b] Legal: $75,000.

(2) All hearing charges shall be paid to the Village before the Board of Trustees shall file its decision.

(3) All hearing charges due shall be deducted from the hearing deposit. If the hearing charges for which the applicant is responsible exceed the deposit, the balance due shall be paid to the Village before the Board of Trustees shall file its decision.

Chapter 190: ZONING

[HISTORY: Adopted by the Board of Trustees of the Village of Muttontown 3-6-1932; amended in its entirety 11-16-1959. Subsequent amendments noted where applicable.]

ARTICLE IV Use Regulations

§ 190-10. Residence A-1, E-3 and E-5 Districts. [Amended 8-9-1976 by L.L. No. 1-1976; 6-8-1981 by L.L. No. 1-1981; 9-11-1989 by L.L. No. 2-1989]

In Residence A-1, E-3 and E-5 Districts no building or premises shall be used or maintained for any except the purposes enumerated below and for no other, and no building shall hereafter be erected, enlarged or altered if, as so erected or as a result of such enlargement or alterations, such building or any part thereof is arranged, designed or intended to be used for any except the purposes enumerated below. Such uses shall not include any uses customarily carried on as a business or any billboard or advertising sign except as hereinafter specifically permitted.

A. Single-family detached principal building.

B. Uses or buildings customarily incidental or accessory to the uses herein specifically permitted in said district and located on the same lot as follows:

(1) Farming, dairying and horticulture, as well as noncommercial greenhouses and the noncommercial keeping of dogs, poultry, game, birds, bees, horses and livestock, subject to the following conditions:

(a) With respect to farming, dairying and horticulture:

[1] Fertilizer or manure shall not be stored within 75 feet from any boundary line and shall be stored or treated in such a manner so that it shall not create any odor or attract or harbor rodents, flies or other insects.

[2] All buildings and structures used for farming, dairying and horticulture shall be set back at least 75 feet from each side and rear boundary line and at least 100 feet from each street line of a lot.

(b) With respect to all of the uses described in Subsection B(1) above:

[1] There shall be no display of produce, stock or merchandise.

[2] Retail sales or the erection or maintenance of signs or permanent or temporary stands or display areas shall not be permitted on the lot or premises.

[3] No trucks or other equipment and no produce supplies, goods or stores shall be kept, maintained or stored on the lot or premises for use, sale or rent off of the lot or premises so used.

(c) Dog kennels housing five or more dogs required to be licensed shall be set back at least 250 feet from every boundary line.

(d) Occupants of a dwelling in a residential district shall be permitted to keep horses or livestock for their personal use, provided that there is compliance with the following standards and conditions:

[1] No such use shall be permitted on lots having less than one acre of land.

[2] The number of horses and livestock and the number of stalls and structural facilities reasonably necessary for the shelter of the same permitted on each lot shall not exceed the following: two horses or livestock (in any aggregate combination) for the first acre of lot area plus one additional horse or livestock for each additional acre of lot area, subject to the provisions of Subsection B(1)(d)[8] below.

[3] Any such horses or livestock shall be owned in fact as well as in name solely by the resident occupants of the lot, who shall, upon written request of the Building Inspector, produce a sworn affidavit and other reasonable evidence of said ownership.

[4] The boarding or keeping of horses or livestock owned by persons other than those who are the resident occupants of any lot is strictly prohibited except as permitted in § 190-31B relating to the continuation of a legal preexisting stable for the commercial boarding of horses. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

[5] All grain-type feed shall be kept in rodent-proof metal containers.

[6] Manure shall not be stored within 75 feet from any boundary line and shall be stored and treated in such a manner so that it shall not create any odor or attract or harbor any rodents, flies or other insects.

[7] The location of stables, barns and sheds used to shelter horses and livestock shall be subject to the setback requirements for accessory buildings as set forth in § 190-7, except that any private riding ring, private paddock, corral or other roofless enclosure for horses and livestock and any unenclosed area

for their unattended maintenance shall be located not less than 20 feet from any side or rear boundary line and 75 feet from any front boundary line.

[8] No person shall keep more than five horses or livestock on any one lot irrespective of its area in any residence district unless a special permit for the same is authorized and approved by the Board of Trustees in a manner and in accordance with the standards stipulated in § 190-38 of this chapter. Editor's Note: Original Sec. 5.0(b)1E, which immediately followed this subsection and dealt with the keeping of dangerous animals, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I). See now Ch. 15, Animals.

(2) The carrying on of a home occupation by a person residing in the dwelling unit in which such home occupation is carried on, provided that there is no display of goods or advertising visible from any street and provided, further, that such use shall not be deemed to include the right to engage in wholesale or retail trade or to conduct a business on or from such dwelling unit, as such terms are ordinarily understood.

(3) Real estate activities of any owner or of his duly authorized agent in connection with his property within the Village.

(4) The office or studio of a physician, surgeon, architect, dentist, teacher, painter or sculptor, musician, lawyer or engineer residing in the dwelling unit in which such office or studio is located, provided that:

(a) There is no display of advertising on the premises in connection with such use, except for a professional nameplate not over one square foot in area, provided that said nameplate shall comply with the provisions of Article VI of this chapter;

(b) Such studio or office does not occupy more space than the equivalent of 1/3 of the area of one floor of such dwelling;

(c) Such use is merely incidental to the use of such dwelling unit primarily for residential purposes;

(d) Any such musician's studio is equipped and used in such a manner that sounds therefrom are not unduly annoying to other persons on nearby premises or public places;

(e) No use shall be made of more than one building in connection with such professional use; and

(f) Such professional use shall not be deemed to include the right to engage in wholesale or retail trade, as such term is ordinarily understood.

C. Pumping, storage, sale and distribution of water, including water towers, upon and subject to such conditions as may be imposed by the Board of Trustees after written application thereto and the issuance of a permit.

D. Playgrounds and parks (other than municipal parks) and accessory buildings only when authorized as a special use permit by the Board of Trustees, subject to the condition that they be a part of or incidental to a permitted educational institution or that they serve the needs of the inhabitants of the immediate neighborhood (Village) and are not operated for profit and provided, further, that at least 50% in number of the governing board of such organization shall be comprised of resident property owners of the Village, and provided, further, that such special use permit may be granted only subject to the conditions and provisions of § 190-11 of this chapter.

E. Churches for public worship, religious retreat houses providing accommodation for religious instruction and other strictly religious uses only when authorized as a special use permit by the Board of Trustees, all in accordance with the discipline, rules and usages of the religious corporations which will own, support and maintain such churches, religious retreat houses

and other religious uses and of the ecclesiastical governing bodies, if any, to which such corporations are subject, provided that the membership of such churches shall be at least partially composed of inhabitants of the Village or of municipalities contiguous to the Village. Such uses may, as approved by the Board of Trustees, include accessory uses on the same lot and customarily incidental and subordinate to uses of churches, retreat houses and other religious uses, including primary or secondary parochial day schools maintained by churches on the sane lot. Such uses shall be subject to the following requirements and standards:

(1) An application for a building permit shall be made to the Building Inspector. An area map, showing the location of the property with respect to surrounding property, streets and other important features, and a plan for the proposed development shall be submitted with the application for a building permit. The plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, topography, special features and any other pertinent information, including such information about neighboring properties as may be necessary to determine that the requirements herein are met.

(2) The application shall be in writing, shall be made and verified by the fee owner and shall provide the following: the name and address of the owner; the land and tax map description and the area of the lot in question; a description of existing structures and uses; distance from public water supply; statement of proposed use; period of time the proposed use is to be continued; and a site plan showing the location and uses of existing and proposed buildings, structures, facilities and open spaces on the lot or premises, including, without limitation, parking areas, sports and recreational areas, driveways, walks, means of water supply, buildings and structures on adjoining premises within 200 feet of the subject lot or premises, streets and highways and the width thereof abutting the subject lot or premises.

(3) With the application there shall be submitted plans and specifications for all buildings and structures proposed to be built, altered or used which shall comply with all laws, ordinances and regulations that are applicable to the intended use.

(4) The application shall be referred by the Building Inspector to the Board of Trustees, which, after public notice and hearing, shall render a decision or order finding that all the requirements and standards of this Subsection E are met, requiring such appropriate and reasonable conditions and safeguards as are deemed necessary and permitting the Building Inspector to issue the requested building permit upon payment to the Village of the required permit fee set forth in Article IX hereof, as well as the Village's costs and expenses reasonably paid and anticipated for the hearing and for the services of the Village Engineers in reviewing, inspecting and reporting on the suitability, execution and completion of all engineering aspects of the building and site plans, with special reference to drainage, road construction, parking area construction, screen planting and fencing.

(5) Specified requirements and standards for churches and retreat houses shall be as follows:

(a) Building area. All buildings, including accessory buildings, shall not cover more than 10% of the area of the lot, which shall be not less than two acres in area.

(b) Height. The height of any principal building shall not exceed 40 feet. The height of any accessory building shall not exceed 25 feet, except that an accessory building may be 35 feet in height, provided that it shall be a distance of at least 100 feet from the main building.

(c) Yards. Each lot shall have front, side and rear yards not less than the depths and widths following:

[1] Front yard depth: 110 feet.

[2] Side yard width: each 50 feet for a one-story principal building and each 70 feet for a two- or more story building. However, when a side yard abuts a street line the width shall be 110 feet.

[3] Rear yard depth: 50 feet for a one-story principal building and 70 feet for a two-story principal building.

(d) Parking area. Adequate off-street parking on the lot shall be provided in a paved area as required by the Board of Trustees. Such parking area may extend into the side and rear yards but shall be distant no less than 30 feet from any lot line and 20 feet from any street line.

(e) Screen. Where a parking area abuts a property line, a screen of evergreens at least four feet in height and 20 feet in width or a satisfactory equivalent screening shall be installed and maintained along said lines.

(f) Marginal roadway. A marginal roadway 50 feet in width in the front yard and in any side yard abutting a street may be required by the Board of Trustees. Such a marginal roadway shall extend from the road or street line into the front and side yard and shall be separated from the street by a mall 10 feet in width. No more than two openings in the mall for access shall be made on any one street, the mall shall be curbed, the pavement in the roadway shall be 30 feet in width and a sidewalk four feet in width shall be constructed along the inner side of the marginal roadway. All work and construction hereinabove set forth shall be in accordance with Village specifications, regulations and standards.

(g) Occupancy. The total number of temporary overnight occupants permitted to occupy a religious retreat house at any one tine and the accommodations for the same shall be limited to four persons per acre of land devoted to said use, except that the maximum total number of said temporary occupants shall not exceed 50 persons. The total number of permanent occupants permitted to occupy a religious retreat house at any one time and the accommodations for the same shall be limited to two persons per acre, except that the maximum total number of permanent occupants shall not exceed 10 persons. A temporary overnight occupant is a person who is devoted to bona fide religious and spiritual contemplation and who occupies or is a resident of a religious retreat house for a continuous period not exceeding 72 hours per week.

(h) Primary or secondary parochial day schools. The lot for any such school shall have an area of at least 15 acres. No such school shall be designed, erected, altered or used for more than 150 pupils.

(6) General requirements and standards for churches and retreat houses for religious instruction shall be as follows:

(a) The location and size of the buildings and structures, the nature and intensity of the religious uses involved or conducted, the size of the site in relation thereto and the location of the site with respect to streets giving access thereto shall be such that the same will be in harmony with the appropriate and orderly development of the neighborhood and shall accord with and promote the purposes set forth in § 7-704 of the Village Law. The quantity of acreage devoted to the principal and accessory uses of churches shall be limited to their reasonable needs as determined by the standards of this subsection.

(b) The operation in connection with any such uses shall not be more objectionable to nearby properties than would be the operation of any other permitted use in the same zoning district.

(c) The entrance and exit drives shall be laid out so that there is maximum safety for

vehicular traffic and pedestrians and, to the extent that they are outside the lot, shall be constructed to conform to the specifications and standards of the Village.

(d) Buffer planting, walls and fences shall be required, where necessary, to protect adjoining residential properties. Such planting shall be specified in detail when a plan is approved.

(e) Exterior lighting shall be so installed and arranged as to reflect light away from adjoining streets and to prevent any nuisance on property in adjoining residence districts.

(f) Drainage installations and facilities shall be provided and constructed in accordance with the reasonable requirements of the Village Engineers so as to meet all the specifications and standards of the Village as well as all applicable specifications and standards of the Town of Oyster Bay, the County of Nassau and the State of New York.

(g) As a condition to permitting the issuance of a building permit, the Board of Trustees may require the posting of a bond, cash or other surety in such form as shall be approved by the Village Attorney and in an amount sufficient for one or more of the following purposes: to insure the performance and completion of entrance and exit drives outside the lot, drainage facilities, drainage installations, screen and buffer planting, walls, fences, marginal roadways and parking areas, all as herein required to recompense the Village for the services of the Village Engineers in reviewing, inspecting and reporting on the suitability, execution and completion of all engineering aspects of the building and site plans and to restore the lot to a safe and sightly condition should construction be terminated before completion.

F. A nonprofit educational institution either under the supervision of the New York State Department of Education or chartered by the Regents of the University of the State of New York (but not including a parochial school accessory to and on the same lot as a church as provided for in Subsection E of this section and excluding all schools run for profit, such as but not limited to trade schools, business schools, vocational schools, recreational schools, camp schools or day camps) when authorized as a special use permit by the Board of Trustees in accordance with § 190-38 hereof and upon compliance with and subject to the following standards and conditions:

(1) Lot area. The area of the lot for a nonprofit educational institution shall not at any time be less than 50 contiguous acres in fee ownership of the user.

(2) Occupancy. No nonprofit educational institution shall be designed, erected, altered or used for more than 500 pupils.

(3) Building area. All buildings, including accessory buildings, shall not cover more than 10% of the area of the lot.

(4) Height. The height of any principal building shall not exceed 25 feet. The height of any accessory building shall not exceed 20 feet, except that an accessory building may be 25 feet in height, provided that it shall be a distance of at least 100 feet from the main building.

(5) Yards. Each lot shall have front, side and rear yards not less than the depths and widths following:

(a) Front yard depth: 110 feet.

(b) Side yard width: each 50 feet for a one-story principal building and each 70 feet for a two- or more story building. However, when a side yard abuts upon a street line the width shall be 110 feet.

(c) Rear yard depth: 50 feet for a one-story principal building and 70 feet for a two-story principal building.

(6) Parking area. Off-street parking on the lot shall be provided in a paved area equal in area to one times the area of the buildings. Such parking area may extend into the side and rear yards but shall be distant not less than 30 feet from any lot line and 20 feet from any street line.

(7) Screen. Where a parking area abuts a property line, a screen of evergreen shrubs four feet in height and 20 feet in width shall be installed along said lines.

(8) Marginal roadway. A marginal roadway 50 feet in width in the front yard and in any side yard abutting a street may be required by the Board of Trustees. Such a marginal roadway shall extend from the road or street line into the front and side yard and shall be separated from the street by a mall 10 feet in width. Not more than two openings in the mall for access shall be made on any one street, the mall shall be curbed, the pavement in the roadway shall be 30 feet in width and a sidewalk four feet in width shall be constructed along the inner side of the marginal roadway. All work and construction hereinabove set forth shall be in accordance with Village specifications and regulations.

(9) Plan. The plot plan required to be submitted with the application for the building permit shall, in addition, show the requirements set forth herein together with the estimated cost of the improvements required in Subsection F(6), (7) and (8).

(10) Bond for certificate of occupancy. If the improvements provided in Subsection F(6), (7) and (8) have not been completed prior to the application for a certificate of occupancy, cash or a performance bond for not more than one year may be accepted by the Village Clerk in an amount estimated by the Village Engineers necessary to complete the improvements, which bond shall be a surety company bond in such form as shall be approved by the Village Attorney. On the deposit of such cash or the acceptance and filing of such bond the Building Inspector shall be authorized to issue the certificate of occupancy.

(11) Notwithstanding any contrary provisions of this chapter, the following uses on the same lot or any other premises in the Village used in connection with such permitted uses are expressly prohibited:

(a) Dormitories and sleeping quarters, except a single-family dwelling unit for one caretaker and his family.

(b) The erection of any structure for the use of spectators.

(c) Outdoor swimming pool.

(d) Athletic contests and games with other institutions, schools or organizations.

(e) Any use for which an admission is charged or gratuity, donation or subscription is accepted.

(f) Any equipment or structures used for extracurricular activities.

G. Accessory dwellings existing prior to November 1, 1973, subject to the requirements of § 190-14 herein.

H. In the E-3 and E-5 Districts, wireless telecommunication services facilities shall be permitted as a principal or accessory use, subject to special permit approval by the Board of Trustees pursuant to the special requirements of new Article XI and Article VIII. **[Added 1-20-2000 by L.L. No. 1-2000]**

§ 190-11. Special use permits.

A. Such special use permits as are subject to the provisions of this article may be granted only when the petitioner files with the Board of Trustees the written consents, duly acknowledged, of at least 75% of the owners of all land, other than public streets, within the Village which lies outside of and within 1,500 feet of each boundary line of the lot or lots to be used for such buildings. The Zoning Board of Appeals may, by unanimous vote of all members of the Board then in office, grant permission for any such use even though consents are not so filed on behalf of at least 75% of the owners of the above-mentioned area.

B. Such special use permits as are subject to the provisions of this article may only be granted in compliance with the following conditions: **[Amended 12-14-1981 by L.L. No. 3-1981]**

(1) The Board of Trustees, in considering any application for a special use permit for the uses specified in § 190-10E and F shall require the applicant to pay all reasonable expenses of the Village in connection therewith, including, without limitation, stenographic costs, advertising expense, engineering fees and charges of expert witnesses and advisors, and may require the applicant to post a reasonable deposit with the Village in advance for the same.

(2) The Board of Trustees, in granting any special use permit for the uses specified in § 190-10E and F, may require such conditions and safeguards as are deemed appropriate, reasonable and necessary and require the payment of all building permit fees and reasonable engineering expenses in reviewing, inspecting and reporting on the suitability, execution and completion of all engineering aspects of the building and site plans, with special reference to drainage, road construction, parking area construction, screen planting, fencing and fire protection.

(3) The Board of Trustees, in granting any special use permit for the uses specified in § 190-10E and F, may require, as a condition to permitting the issuance of any building permit or otherwise as a condition of its authorization pursuant to § 190-38 hereof, the posting of a bond, cash or other surety in such form as shall be approved by the Village Attorney and in an amount sufficient to insure compliance with this chapter and other laws, authorizations or regulations of the Village, including one or more of the following purposes:

(a) To ensure the conformity of all construction and improvements on the property with any plans submitted to or approved by the Board of Trustees or any Village officials;

(b) To recompense the Village for the services of any professional help, including that of the Village Engineers, retained or used in considering the proposed use of any plans or proposals in respect thereto and in reviewing, inspecting and reporting on the execution and completion of all construction and engineering aspects of all buildings and improvements on the property or premises; and

(c) To restore the lot to a safe and sightly condition should any construction or improvement thereon either fail to meet the requirements of this chapter or the conditions of the authorization by the Board of Trustees or be terminated or discontinued before completion.

C. Such special use permits for tax-exempt institutions as are subject to the provisions of this article may be granted only with respect to the quantity of acreage which is required exclusively for carrying out thereupon the purposes of such special use. In determining the acreage requirement the following factors shall be taken into consideration:

(1) The size and location of such building or buildings thereon.

(2) The proposed number of occupants of such building or buildings thereon.

(3) The use for which such building or buildings thereon are intended.

§ 190-12. Residence A-2 and A-3 Districts.

In Residence A-2 and Residence A-3 Districts no building or premises shall be used or maintained for any except the following purposes, and no building shall hereafter be erected, enlarged or altered if, as so erected or as a result of such enlargement or alterations, such building or any part thereof is arranged, designed or intended to be used for any except the following purposes:

A. In the Residence A-2 and A-3 Districts, any use permitted in the Residence A-1 District, except farming, dairying, poultry and the breeding of dogs, game and birds.

B. In the Residence A-3 District, an off-street parking lot or area, for private passenger vehicles only, as an accessory use to permitted uses in a contiguous Economic Development District, when authorized as a special use permit by the Board of Trustees in accordance with § 190-38 hereof and in compliance with ownership and subject to the following standards and restrictions:

   (1) The premises devoted to this special use must be contiguous to immediately adjacent premises in the Village's Economic Development District which are in the sane ownership and which are in fact then being used for the purposes permitted in Article V.

   (2) This special use, once permitted, may not be continued if the contiguous premises in the Economic Development District cease to be used for the purposes permitted in Article V or cease to be in the same ownership.

   (3) In order for there to be contiguity of premises in the A-3 and Economic Development Districts, the two may not be separated by a street, right-of-way or easement area nor by a strip or gore in different ownership.

   (4) The contiguity of premises in the A-3 and Economic Development Districts must exist for a distance of not less than 100 feet.

   (5) Only that portion of the premises sought to be devoted to this use, as is approved by the Board of Trustees, shall be so used.

ARTICLE V Economic Development District

§ 190-16. Permitted principal uses.

A. Permitted principal uses are as follows:

   (1) Nonresidential uses permitted in a residence district, including wireless telecommunication services facilities, shall be permitted as a principal or accessory use, subject to special permit approval by the Board of Trustees pursuant to the special requirements of Article XI and Article VIII. **[Amended 1-20-2000 by L.L. No. 1-2000]**

   (2) Other nonresidential uses conducted entirely within fully enclosed buildings and using electric power solely and the nature of which is such that:

      (a) They will not cause or result in:

         [1] Dissemination of dust, smoke, gas, fumes, odor or other atmospheric pollutant, noise, light, heat, glare, vibration or radiation or electromagnetic or other interference with radio or television reception beyond the boundaries of the zoning district in which it is located;

         [2] Physical hazard due to fire, explosion, radiation or any similar cause;

         [3] Harmful discharge of waste material; or

[4] Unusual traffic hazards or congestion due to type or amounts of vehicles required.

(b) They will be in harmony with the appropriate and orderly development of the district in which they are situated and adjacent districts.

B. The Board of Trustees shall determine that each proposed use meets the standards enumerated in Subsection A(2) above. The Board may require such evidence as it deems necessary to determine whether or not the proposed use will reasonably conform to the performance standards set forth above, and, in connection therewith, the Board may obtain expert advise at the expense of the applicant and upon payment in advance of consideration of the application. Where appropriate, the Board of Trustees may require the installation, maintenance and operation by the applicant, at the applicant's expense, of continuous recording instruments to measure the flow of traffic or to demonstrate the operation or effect of operation of any machines or devices used to control or lessen noise, glare, air pollution, water pollution, fire hazards or safety hazards.

C. The following uses shall be considered as types meeting the standards enumerated in Subsection A(2) above but shall be subject to review by the Board of Trustees to assure compliance with the standards:

(1) Offices for executive, administrative or professional purposes.

(2) Laboratories for scientific research.

(3) Telephone exchanges and similar public utility service facilities housed entirely within a building.

(4) Assembly, fabrication and finishing of articles of small size and high value, such as precision instruments, cameras, watches, electronic instruments and the like.

ARTICLE VIII Zoning Board of Appeals

§ 190-38. Original jurisdiction. [Amended 8-9-1976 by L.L. No. 1-1976; 5-9-1977 by L.L. No. 2-1977]

A. The Board of Trustees, in a specific case authorized by this chapter, after public notice and hearing and subject to appropriate safeguards to be prescribed by such Board, may grant special use permits; provided, however, that the Board of Trustees shall be bound by and shall not vary the specific standards and requirements enumerated herein for the particular special use permit requested.

B. The Village’s Zoning Board of Appeals, in a specific case authorized by this chapter, after public notice and hearing and subject to appropriate safeguards to be prescribed by such Board, for the particular special use permit granted by the Board of Trustees.may vary dimensional setbacks:

(1) For buildings, structures or facilities which were in existence prior to January 1, 1932; and

(2) For the construction of additional buildings, structures or facilities, provided that the same are not located any closer to the boundary line than similar buildings, structures or facilities approved and constructed pursuant to a special use permit previously granted by the Zoning Board of Appeals.

C. On all applications for variances or special use permits under this section, the Zoning Board of Appeals and Board of Trustees, respectively, in addition to the requirements hereinabove set forth, shall give consideration to the health, safety, convenience and general welfare of the

Village and of its property owners and residents and shall act in harmony with the general purpose and intent of this chapter and of the applicable provisions of the Village Law.

D. The determinations of the Zoning Board of Appeals and Board of Trustees, respectively, on all applications under this section shall be made in accordance with the comprehensive plan and design set forth in this chapter and with the purpose and intent set forth in § 190-1 of this chapter and in § 7-704 of the Village Law.

E. The Zoning Board of Appeals shall not authorize any variance, and the Board of Trustees shall not permit any special use under the provisions of this section unless, respectively, it finds in each case that the proposed use of the property or the erection, alteration or maintenance of the proposed building or structure:

(1) Will not depreciate or tend to depreciate the value of property in the Village;

(2) Will not create a hazard to health, safety, morals or general welfare;

(3) Will not be detrimental to the neighborhood or to the residents thereof;

(4) Will not alter the essential character of the neighborhood; and

(5) Will not otherwise be detrimental to public convenience and welfare. Editor's Note: Original Sec. 9.4, General standards, which immediately followed this subsection, as amended 8-9-1976 by L.L. No. 1-1976, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I). See now §§ 190-37C and 190-38D and E.

F. On all applications for variances the Zoning Board of Appeals, and on all applications for special use permits the Board of Trustees, in addition to the requirements hereinabove set forth, respectively shall give consideration to the health, safety, convenience and general welfare of the Village and of its property owners and residents and shall act in harmony with the general purpose and intent of this chapter and of the applicable provisions of the Village Law. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE X Site and Architectural Review Board [Added 5-12-1986 by L.L. No. 3-1986]

§ 190-53. Consultation with other boards.

The Site and Architectural Review Board shall consult with and advise the Zoning Board of Appeals with respect to any request for a variance on which the Zoning Board of Appeals is required to hear. The Site and Architectural Review Board shall consult with and advise the Board of Trustees with respect to any request for a special use permit on which the Board of Trustees is required to hear. Upon request, the Site and Architectural Review Board may also consult and advise upon any other land use or development plan filed with the Board of Trustees, Planning Board, Zoning Board of Appeals or Building Inspector. The Site and Architectural Review Board may recommend approval, conditional approval subject to specified modifications or disapproval, which determination shall be advisory only.

ARTICLE XI Wireless Telecommunication Services Facilities [Added 1-20-2000 by L.L. No. 1-2000]

§ 190-59. Co-location.

The shared use of the wireless telecommunication services facility shall be strongly encouraged. The wireless telecommunication services facility and site shall be required to be of proper size, location and design to accommodate the co-location of all other licensed wireless telecommunication service providers' facilities and the communications equipment of all local

emergency services, as necessary to provide adequate coverage of the entire Village, unless otherwise approved by the Board of Trustees.

§ 190-61. Freestanding structures.

The type and design of freestanding wireless telecommunication services facilities shall be disguised to minimize its visibility and impact to the satisfaction of the Board of Trustees. Wireless telecommunication services facilities which require the use of guy wires are prohibited.

§ 190-63. Visual mitigation.

A. The applicant shall prepare a visual impact assessment of the proposed wireless telecommunication services facility based upon appropriate modeling, photography and other pertinent analytical techniques as required by the Board of Trustees, including but not limited to a map identifying the zone of visibility.

B. Landscaping and/or other screening and mitigation, including but not limited to architectural treatment, and alternative construction, structural and transmission technologies such as antennas attached to or disguised as trees or other features or camouflaging techniques, shall be required to minimize the visual impact of such facility from public thoroughfares, important viewsheds and vantage points and surrounding properties to the extent practicable all as determined by the Board of Trustees.

C. No signs other than as approved by the Board of Trustees for security or safety purposes shall be erected on any wireless telecommunication services facility.

D. All ground-based equipment and structures shall be located underground.

§ 190-65. Operational characteristics.

A. Unless otherwise superseded by the Federal Communications Commission (FCC), the design and use of the proposed wireless telecommunication services facility, including its cumulative impact with other existing and approved facilities, shall be certified to conform to the maximum NIER exposure standards promulgated by the FCC, as amended. Said certification shall include a report prepared in accordance with FCC Office of Engineering and Technology Bulletin 65, as amended.

B. The Board of Trustees shall require annual certification of conformance with the applicable emissions standards and the requirements and conditions of approval.

C. Certification shall also be required prior to any modification of the wireless telecommunication services facility, at any time the Building Inspector suspects such modification has been made or upon modification of the FCC standards.

D. The Board of Trustees shall hire a qualified professional of its choice to review and confirm such initial and annual certification report, the cost of which shall be reimbursed by the applicant.

E. Any violation of the emissions standards shall require immediate discontinuation and correction of the use responsible for the violation. Any such violation of these requirements of this chapter or the conditions of the special permit approval shall be deemed to be an offense punishable by fine and/or imprisonment in accordance with this chapter.

§ 190-70. Security provisions.

A security program shall be formulated and implemented for the site of a wireless telecommunication services facility. Such program shall include physical features such as fencing, anti-climbing devices or elevating ladders on monopoles or other approved structure and/or monitoring either by staff or electronic devices to prevent unauthorized access and vandalism as required by the Board of Trustees.

§ 190-72. Emergency plan.

An emergency action plan shall be formulated and implemented for the site of a wireless telecommunication services facility, to the satisfaction of the Board of Trustees and local emergency services to the Village of Muttontown. Such plan shall include identification of all appropriate features and considerations of each facility, appropriate training of local police, fire and ambulance service providers and appropriate provisions for notification of the public in the event of an emergency, to the satisfaction of the Board of Trustees and the local providers of emergency services to the Village of Muttontown.

§ 190-73. Lease agreement.

In the case of an application for approval of a wireless telecommunication services facility to be located on lands owned by a party other than the applicant or the Village, a copy of the lease agreement with the property owner, together with any subsequent modifications thereof, shall be provided to the Board of Trustees and a copy shall be filed with the Village Clerk.

A. The Board of Trustees, at its discretion and in cooperation with the involved parties, shall allow certain proprietary information contained in such lease which is unrelated to the requirements of this article or the conditions of the approvals for said facility to be omitted or kept confidential.

B. The Board of Trustees shall not approve the application unless it finds that the lease agreement is in conformance with and properly reflects the purposes and requirements of this article and the conditions of approval.

§ 190-74. Removal.

A. A wireless telecommunication services facility, or any portion thereof, including any portion of the antenna, shall be dismantled and removed from the property on which it is located when it has been inoperative or abandoned for a period of 180 days from the date on which it ceased or operation or no longer has a valid approval, permit or license or is otherwise no longer necessary for the provision of adequate coverage and adequate capacity in the Village of Muttontown.

B. The applicant shall provide to the Village written notification of the date the use of the facility was discontinued or abandoned or no longer has a valid approval, permit or license or is otherwise no longer necessary for the provision of adequate coverage and adequate capacity in the Village of Muttontown by one or more of the service providers. The applicant will also acknowledge in this notification the requirement to remove the facility and set forth the plans for its removal.

C. The owner and/or applicant shall provide to the satisfaction of the Village of Muttontown a written agreement suitable for filing with the Nassau County Clerk to ensure the dismantling, removal and restoration of an abandoned wireless telecommunication services facility or portion thereof. Compliance with the requirements of removal as set forth herein shall be secured by a bond or cash deposit posted by the applicant in an amount and for a duration determined to be adequate by the Board of Trustees.

D. In the event that such facility or portion thereof is not completely removed from the property within the required time, the Village shall be authorized to cause such removal and be reimbursed for all expenses incurred, including reasonable attorney's fees from said Bond.

§ 190-75. Application procedures.

No wireless telecommunication services facility shall be sited, erected, constructed and maintained or permitted or allowed to be sited, erected, constructed and maintained within the Village unless and until a written application shall have been made to the Board of Trustees for a special use permit pursuant to this article and the provisions of this chapter and thereafter approved by the Board of Trustees. The applicant shall comply with all procedural rules and regulations as set forth in the rules and regulations adopted by the Board of Trustees for the hearing of a special use permit.

§ 190-77. Hearing charges.

In addition to the required filing fees of § 190-76, the applicant shall be liable for, and shall pay, the actual and necessary charges which have been incurred by the Village in connection with the application, and an initial hearing deposit of $7,500 must accompany the filing fee.

A. Reimbursement of legal fees shall be to the maximum amounts indicated below:
   (1) Engineering, consultants, inspection, recording fees and document reproduction.
   (2) Legal fees: $50,000.
B. Each applicant shall pay the application fees and hearing charges required above prior to the hearing and meeting for which the fees are required and the charges are incurred to the extent that the latter are then determined. To the extent that hearing charges are subsequently determined to exceed the funds on hand, the applicant shall pay the same prior to the next stage (after such charges are determined) in connection with the application, or approval, including the filing of a final decision.
C. No hearing shall be held and no consideration shall be given by the Board of Trustees on any application unless all required fees and charges, to the extent that the latter are then determined, shall have been paid.

§ 190-78. Decisions.

All decisions of the Board of Trustees involving applications for wireless telecommunication services shall be in writing and filed within 62 days of the close of the public hearing and filing of required information and documentation requested.

§ 190-79. Waiver or modification of standards.

In order to further the purposes of this article, the Board of Trustees may, upon just cause shown, waive or modify any of the special permit standards and criteria contained herein. For telecommunication services facilities that are known to be presently existing within the Village on a New York State right-of-way, the Board of Trustees may waive or modify the special permit standards and criteria contained herein as it deems necessary and appropriate.

This local law is effective upon filing with the Secretary of State.

Final adoption by the Board of Trustees of the Incorporated Village of Muttontown.

I hereby certify that the local law annexed hereto, designated as Local Law 2 of 2006 of the Village of Muttontown was duly passed by the Board of Trustees on _____, 2006, in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript thereof and of the whole of such original local law, and was finally adopted by the Board of Trustees of the Incorporated Village of Muttontown.

_____
Vivien Van Wagner
Village Clerk/Treasurer

Village of Muttontown
Date:

Seal

Certification by the Village Attorney

STATE OF NEW YORK
COUNTY OF NASSAU

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

_____
Steven G. Leventhal
Village Attorney

Village of Muttontown

Date: