

THE INDUSTRIAL AND HISTORIC  
CENTER OF ESSEX COUNTY

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**TOWN OF TICONDEROGA**  
**ZONING**  
**ORDINANCE**

ADOPTED 1972  
WITH AMMENDMENTS OF:

JULY 30, 1973,  
JANUARY 13, 1983,  
SEPTEMBER 27, 1990,  
APRIL 28, 1994,  
JUNE 11, 1998,  
JULY 29, 1999,  
APRIL 12, 2001,  
JANUARY 15, 2003,  
& JUNE 17, 2003,  
FEBRUARY 9, 2006  
NOVEMBER 13, 2008  
AND MARCH 10, 2011

# TOWN OF TICONDEROGA ZONING ORDINANCE

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## ARTICLE I

### *Short Title, Purposes, and Jurisdiction*

#### **1.10 Short Title**

This ordinance is known and cited as the "Town of Ticonderoga Zoning Ordinance."

#### **1.20 General Intent**

The intent of this ordinance is to establish comprehensive controls for the development of the land in the Town of Ticonderoga based on a Development Plan for the Town enacted in order to promote and protect health, safety, comfort, convenience and the general welfare of the people.

#### **1.30 Purposes**

Such regulations shall be made in accordance with a Development Plan and designed to promote the health, safety, morals and the general welfare of the Town of Ticonderoga, and to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to provide adequate light and air, to avoid undue concentration of population, to facilitate adequate provisions for transportation, water, sewage, schools, parks, and other requirements under and pursuant to Article 16 of Chapter 62 of the Consolidated laws, and the number of stories and size of buildings, signs and other structures, the percentage of the lot that may be occupied, the size of the yards and other open spaces, the density of population, and the use of the buildings, structures and land for trade, resort, residence, or other purposes are hereby restricted and regulated as hereinafter provided.

#### **1.40 Area of Jurisdiction**

This ordinance regulates and restricts, as set forth above, the use of land throughout the entire area of the Town of Ticonderoga.

## ARTICLE II

### *Definitions*

#### **2.10 Interpretations**

Unless the context otherwise requires, the following definitions shall be used in interpretations and construction of the Ordinance. Words used in the singular number shall include the plural, and the plural the singular; the word "structure" shall include the word "building"; the word "used" shall include "arranged", "designed", "constructed", "altered", "converted", "rented", "leased", or "intended to be used"; and the word "shall" is mandatory and not optional.

#### **2.20 Definitions**

1. Agriculture: Use of land for raising cows, horses, pigs, and other livestock, growing of products on land, and horticulture of orchards. Amended April 12, 2001.
2. Alterations: As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.
3. Area, Building: The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps.
4. Area, Land: The total area within the property lines.
5. Building height: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for

flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and the ridge for gable, hip and gambrel roofs.

6. Club, Membership: An organization catering exclusively to members and their guests, or premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising or commercial activities, except as required for the membership and purposes of such club.

7. Coverage, Lot: That percentage of the plot or lot area covered by the building area.

8. Dwelling: Any structure designed or used exclusively as the living quarters for one family.

9. Dwelling, Multiple: Any structure designed or used as a residence for two or more families.

10. Family: One or more persons occupying the premises and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, club, fraternity or hotel.

11. Home Occupation: A business use conducted in a dwelling or accessory structure which is clearly secondary to the property's residential use, and which does not change the residential character thereof.

12. Industrial Park: A parcel of land developed by the construction of roads and utilities as a site for the location for two or more facilities for light industry.

13. Light industry: A manufacturing or maintenance facility where any process is used to alter the nature, size or shape of articles or raw materials or where articles are assembled and where said goods or services are consumed or used at another location. This term does not include mineral extractions, private and commercial sand and gravel extraction, sawmills, chipping mills, pallet mills and similar wood using facilities.

14. Line, Lot: Any line dividing one lot from another.

15. Line, Street: The dividing line between the street and the lot.

16. Major Public Utility Use: Any electric power transmission or distribution line and associated equipment of a rating of more than fifteen kilovolts which is one mile or more in length; any telephone interchange or trunk cable or feeder cable which is one mile or more in length; any telephone distribution facility containing 25 or more pairs of wire and designed to service a new residential subdivision; any television, cable television, radio, telephone, or other communication transmission tower; any pipe or conduit or other appurtenance used for the transmission gas, oil, or other fuel which is one mile or more in length; any electric substation, generating facility or maintenance building and any water or sewage pipes or conduits designed to service fifty or more principal buildings.

17. Off-Street Loading Space: An area not less than twelve (12) feet wide by thirty (30) feet long and fifteen (15) high.

18. Off-Street parking and loading area: Any space, lot, parcel or yard used in whole or in part for storing or parking six or more motor vehicles. For the purpose of these regulations, one parking space shall constitute an area of 200 square feet (10' \* 20')

19. Lot: A parcel of land occupied or capable of being occupied by structure(s).

20. Lot, Corner: A parcel of land at the junction of and fronting on two or more intersecting streets.

21. Lot Coverage: That percentage of a lot covered by the building area.
22. Lot, Through: An interior lot having frontage on two parallel or approximately parallel streets.
23. Medical Facility: Any facility for providing emergency, overnight, or long-term medical or nursing care. It shall not be deemed to include a doctor's professional office.
24. Mobile Home: A movable dwelling unit designed for year-round occupancy.
25. Mobile Home Park: A parcel of land which has been planned and improved for the placement of two or more mobile homes for non-transient use.
26. Open Space: An unoccupied space on the same lot with a structure.
27. Owner: Includes a lessee or occupant in control of property.
28. Parking Area: Any off-street area used for parking one or more motor vehicles.
29. Parking Space: For the purpose of this regulations, one parking space shall constitute an area of 200 square feet (10' \* 20").
30. Professional Office: A business use where professional services are rendered. May include, but shall not be limited to Lawyers, Doctors, Dentists, Consultants, Accountants. May be a Home occupation if the conditions in Section 5.70 are met.
31. Recreational Facilities, Commercial: Recreational facilities open to the public for private gain.
32. Recreational Facilities, Private: Recreational facilities supplemental to a principal use, for the utilization by proprietors and guests, and excluding any use which is open to the public for a charge.
33. Restaurant: A business use where the primary income is from the preparation, sale, and consumption of food and beverages.
34. Retail Store: A place, other than a "restaurant", where goods or products are sold, or rented primarily indoors.
35. Service Station: a use that offers motor fuels, lubricants, tires and accessories for sale and include facilities for maintenance and minor repair of motor vehicles.
36. Setback: The established line beyond which no part of a building shall extend.
37. Sign: Any device used to advertise or promote any business or commercial enterprise.
38. Street: A public or private way which affords the principal means of access to abutting properties, including any highway.
39. Street Grade: The officially established grade of the street upon which a lot fronts; or if there is no officially established grade, the existing grade of the street shall be taken as the street grade.
40. Structure: Anything constructed or erected.
41. Structure, Primary: A structure in which is conducted the primary use of the lot on which the structure is situated (Formerly Buildings, Principal).
42. (Amended 7/29/99) Structure, Accessory: A detached structure which is of secondary importance to the principal structure of the parcel, and is not used for human occupancy.
43. Tavern: A business use where the primary income is from the sale of alcoholic beverages for consumption on the premises.

44. Tourist Accommodations: A business use where individual sleeping quarters are rented for the primary use of tourists and travelers.

45. Trailer: A recreational vehicle or a temporary dwelling unit for an individual or a family group designed for highway transportation without a special or oversized permit.

46. Trailer Camp: A parcel of land which has been planned and improved for the placement of two or more trailers for transient use.

47. Use, Accessory: A use customarily incidental and subordinate to the principal use or building, and located on the same lot with such principal use or building.

48. Use, Nonconforming: Any established use of building, structure or land lawfully existing at the time of enactment of this Ordinance, and which does not conform to the regulations of the district or zone in which it is situated.

49. Uses, Auxiliary: An accessory use or accessory structure shall be an Auxiliary use. An Auxiliary use shall be permitted if the use to which it is auxiliary is a lawful use pursuant to the terms of this zoning ordinance and for which a permit has been issued if required pursuant to the terms hereof.

50. Uses, Conditional: A use listed as a Conditional use for a given zoning district shall be permitted in that district only when approved in accordance with site plan review, provided all other requirements of this zoning ordinance are met.

51. Uses, Permissible: A use shall be permitted in a given zoning district if it is listed as a Permissible use for that district, provided all other requirements of this zoning ordinance are met, including site plan review.

52. Waste, Municipal: Any liquid, solid or waste substance, or combination thereof produced by residential or commercial use or as defined by D.E.C. not including recyclable cans and bottles.

53. Waste, Industrial: Any liquid, gaseous, solid, or waste substance or a combination thereof, resulting from any process or industry, manufacturing, trade or business or from development or recovery of any natural resource.

54. Waste Site, Municipal: A parcel of land designated for the disposal of municipal waste. Such use is expressly prohibited under this law.

55. Waste Site, Industrial: A parcel of land designed for the disposal of industrial waste off site of an industrial property. Such use is expressly prohibited under this law.

56. Yard, Front: An open unoccupied space on the same lot with the principal building, between the front line of the principal building and the front line of the lot, and extending the full width of the lot. The front yard shall be such which front's street grade with the exception of lakefront properties whose front yard is one which fronts the lake. Amended April 12, 2001.

57. Yard, Rear: A space on the same lot with the principal building, between the rear line of the principal building, and the rear line of the lot, and extending the full width of the lot.

57. Yard, Side: An open unoccupied space on the same lot with the principal building, situated between the side line of the principal building and the adjacent side line of the lot, and extending from the rear line of the front yard to the front line of the rear yard.

### **ARTICLE III**

#### *Establishment and Designation of Districts*

### **3.10 Establishment of District**

For the purposes of promoting the public health, safety, morals and general welfare of the Town of Ticonderoga, the following zoning districts are established:

HP-LC:	Historic, park, state lands, land conservation, town lands		
RR:	Rural Residential,	MR:	Medium Residential
HR:	High Residential,	SB:	Service Business
CC:	Central Commercial,	LI:	Light Industrial
I:	Industrial		

### **3.20 Zoning Maps**

Two maps titled " Zoning Map, Town of Ticonderoga, April 1998" and "Zoning Map Former Village, April 1998" to be declared the zoning maps for the Town of Ticonderoga.

Local Law No. 4, of the Year 2008

The zoning map of the Town of Ticonderoga as provided for in Section 3.20 of the Town of Ticonderoga Zoning Ordinance is amended to add those certain properties located Northeast of Race Track Road between Race Track Road and the intersection of New York State Routes 74 and 22 to the Central Business District. In accordance with Schedule 1 of the Town of Ticonderoga Zoning Ordinance, in addition to the uses permitted in the Rural Residential and Central Commercial Districts as the properties located in the above referenced area are currently zoned, the properties contained therein may also hereafter be used for any of the permitted uses in the Central Commercial and Service Business District. This amendment shall not be construed to permit Medium Residential Uses on that portion of the properties zoned Service Business on the date hereof in accordance with the Zoning Map currently in effect.

### **3.30 Interpretation of Boundaries**

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

3.31 Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be the said boundaries.

3.32 In unsubdivided land where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by the use of the scale appearing thereon.

3.33 Where interpretation of boundaries exists, the Board of Appeals shall be responsible for making final determinations.

### **3.40 Changes and clarifications of Zones for outside the Former Village**

1. Changes and clarifications of zones for outside the Former village:

Service Business Zone: West side of Wicker Street, 500' deep shall remain Service Business as far as the Niagara Mohawk power line, including the property just purchased by Glens Falls National Bank, to the power lines. Then, it will run power line to power line to the bypass..

Service Business Zone: Route 9N Monument South to Alexandria Avenue both sides of the road, center line back 500 feet to and including tax map # 150.2-6-1.000 (Robert Porter) and tax map #150.2-5-11.000 (Neil Murray).

Service Business: Properties along Wicker Street, both sides off road, south from Old Chilson Road to former Village line.

No Changes: Burgoyne Triangle, Chilson, Streetroad, Route 9N South from Alexandria

- Avenue to Town of Ticonderoga/Hague line
2. Maps titled ZONING MAP FORMER VILLAGE APRIL 1998 to be declared the zoning map for the area within the Town formerly known as “The Village of Ticonderoga”.
  3. SCHEDULE I TOWN OF TICONDEROGA ZONING SCHEDULE OF USE CONTROLS APRIL 1998 to accompany said maps and be the Use Control Schedule for the Town.
  4. All other zoning maps, previously adopted, will remain; with their respective minimum lot dimensions, yard dimensions, and maximum lot coverage requirements.

**ARTICLE IV**  
*District Regulations*

**4.10 Schedules of Regulation**

The restrictions and controls intended to regulate development in each district are set forth in the attached schedules which are supplemented by other sections of this ordinance. Unless other wise indicated, the regulations shall be deemed to be minimum requirements in every instance of their application.

**4.20 Application of Regulations**

In interpreting and applying this Ordinance, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public health, safety, morals, comfort, convenience, and general welfare. This ordinance shall not be deemed to affect in any manner whatsoever any covenants or other agreements between parties, provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or land, or upon the erection, construction, establishment, moving, alterations or enlargement of buildings than are imposed by other ordinances, rules, regulations, licenses, certificates, or other authorizations, or by easement, covenants, or agreements, the provisions of this Ordinance shall prevail.

Except as hereinafter provided, the following general regulations shall apply to every building and use covered by this ordinance:

- 4.21 No building, structure or sign shall be erected, moved, altered, rebuilt, or enlarged, nor shall any land, water or structure be used, designed or arranged to be used, for any purpose except in conformity with this Ordinance, and with the schedules constituting the Article, for the district on which such structure or land or water is located.
- 4.22 Every building, structure or sign hereafter erected shall be located on a lot as herein defined and, except as herein provided, there shall be not more than one main building and its accessory buildings on one lot, except for non-residential buildings in districts where such uses and structures are permitted.
- 4.23 No yard or other open space necessary for any building under these regulations shall be included as any part of the yard or open space for any other building; no yard or any other open space on one lot shall be considered as a yard or open space for a building on any other lot.
- 4.24 A mobile home is to be considered a main building whether occupied or unoccupied. A mobile home shall not be converted into a storage building. Amended April 12, 2001.

**4.30 Purpose of Industrial Zone**

Purpose: The purpose of the Industrial Zone, in the Town of Ticonderoga, is to

allow for economic growth in an area of the town that is readily accessible to vehicular traffic and public utilities.

Location: The zone is located in that section of the town North of Route 74, West of the Niagara-Mohawk power Corporation line, West of Route 9N and 22, and South of the Johnson Farm Road. Tax map identification of parcels in industrial zone:

150.02-1-2.100	(Only that portion of the parcel that lies on the Northerly side of Route 74)
150.02-1-5.000	(Only that portion of the parcel that lies on the Northerly side of Route 74)
139.04-1-54.000, 139.03-1-28.000	139.04-1-56.000 (Only that portion of the parcel that lies on Tax Map #139.04)
139.04-1-1.100,	139.04-1-2.000

4.31 No person shall conduct a yard sale, barn sale, garage sale, tag sale, hawk, peddle, or hold a similar event on a residential premise, regardless of how the event is described, except in accordance with the provisions of this section. Such event shall occur not more than three times per calendar year on a residential premise nor shall such event exceed three consecutive calendar days per occurrence. All such events shall be restricted to the hours of 8am to 8pm. Any signage associated with the event shall be installed not more than one week before the start of the event and removed immediately upon its close. Any use, which is longer than the days specified above, shall be considered a commercial use and shall require a variance. Any use as described above in a commercial district, which is longer than the days specified above, shall require a site plan review and approval before being undertaken. *Amended April 12, 2001.*

4.40 Notwithstanding any other provision of this Ordinance, "farm operations" as defined in article 25-AA of the New York State Agriculture and Markets Law, shall be a permitted principal use in all areas located within an agricultural district adopted by the County of Essex and certified by the Commissioner of Agriculture pursuant to said Article 25-AA, regardless of what zoning district such areas are located within. This provision shall supersede any conflicting provision of this Ordinance. *Amended June 17, 2003.*

## ARTICLE V

### *Supplementary Regulations*

#### **5.10 Lot Regulations**

The provisions of this ordinance shall be subject to such exceptions, additions, or modifications as herein provided by the following supplementary regulations:

5.11 Subdivision of a lot: Where a lot is formed hereafter from the part of a lot already occupied by building, such separation shall be effected in such manner as not to impair conformity with any of the requirements of this Ordinance with respect to the existing building, and all yards and other required spaces in connection therewith, and no permit shall be issued for the erection of a building on the new lot this created, unless it complies with all the provisions of this ordinance.

5.12 Repealed July 29, 1999 by Local Law # 3 of 1999.

5.13 Access to Lots: A lot to be used for building purposes shall have direct frontage on a street.

#### **5.20 Lakefront protection**

5.21 Application of Regulation: For the purpose of protecting the lakefronts and in order to maintain safe, healthful conditions and to prevent and control water pollution and to control building sites, placement of structures and preserve shore cover and natural beauty, these regulations shall apply to all lakefront properties. The use of land and water, the size, type and location of structures on lots, the installation of waste disposal facilities, the filling, grading, lagooning and dredging of any land, the cutting of shoreland vegetation, the subdivision of lots, shall be in full compliance with the regulations of this section of the Ordinance, other provisions of this Ordinance and any other applicable ordinances and regulations.

5.22 Lot Width: The minimum lot width at the water's edge shall be fifty (50) feet.

5.23 On-Lot sewage disposal systems: Individual on-lot systems shall not be permitted within one hundred feet from the normal high water mark of the lakefront. Plans and specifications for individual on-lot systems on all lakefront properties must be approved by the New York State Department of Health.

5.24 Setback from the Water: All buildings and structures except piers, marinas, boat houses, and similar uses which require lesser setbacks, as determined by the Zoning Board of Appeals, shall be setback at least fifty (50) feet from the normal high water mark of the lakefront.

Zoning Interpretation August 21, 1998: The Zoning Board of Appeals shall use the Adirondack Park Agency and Lake George Park Commission guidelines when making decisions on setbacks and similar use questions.

5.25 Filling, Grading, Lagooning, and Dredging: Filling, grading, lagooning, and dredging shall not cause substantial detriment to the appearance of the lakefront.

### **5.30 Yards**

5.31 Terraces: A paved terrace may be included as a part of the yard in determination of yard size, provided, however, that such a terrace is unroofed and without walls or parapets. Such terrace, however, may have a guard railing not over three feet in height and shall not project into any yard to a point closer than five feet from any lot line.

5.32 Porches: No porch or deck may project into any required yard. An enclosed porch shall be considered a part of the building in determining the size of the yard or amount of lot coverage. Amended April 12, 2001.

5.33 Yards for Corner Lots: On a corner lot, each side which abuts a street shall be deemed a front yard and the required yard along each street shall be the required front yard. The owner shall decide (when applying for a building permit) which of the remaining yards shall be the required side yard and the required rear yard.

5.34 Yards for Double Frontage Lots: For any through lot, fronting on parallel or abutting streets, both frontages will comply with the front yard requirements of the district in which it is located.

5.35: Bay Windows, including their cornices and eaves, may project into any required yard not more than three feet, provided, however, that the sum of such projections on any one wall do not exceed one-fourth the length of any such wall.

5.36 Fire Escapes: Open fire escapes may extend into any required yard not more than six feet, provided, however, that such fire escape shall not be closer than four feet at any point to any lot line.

5.37 Walls and Fences: The yard requirements of this Ordinance shall not be deemed to prohibit any necessary retaining wall, nor to prohibit any suitable fence or wall,

provided that in the residential district, no fence or wall shall exceed four feet in height in any front or side yard, or six feet in height in any rear yard, measured above the finished grade. All fences newly constructed or relocated shall be erected so that the most pleasant or good side faces the adjoining properties. No building permit shall be required for such, but compliance with local zoning regulations shall be adhered to. In addition to the foregoing, no wall or fence shall be constructed on any corner lot in the front yard thereof. Amendments of April 12, 2001 and February 9, 2006

5.38 Visibility at intersection: On a corner lot in any district, no fence, wall hedge, sign or other structure or planting, more than three feet in height, shall be erected, placed or maintained within the triangular area formed by the intersecting street lines or straight line joining said street lines at points which are thirty feet distant from the point of the intersection, measured along said street lines or projections. The height of three feet shall be measured above the curb level, if any, or above the existing road level.

5.39 Setbacks from Street Boundary: In the High Density Residential Districts, all principal buildings shall be setback ten feet from the street boundary or street pavement, whichever results in the greater setback. February 9, 2006

**5.40 Accessory Uses**

5.41 Location of Detached Accessory Buildings in Required yard: No accessory building shall be located closer than three feet from any lot line and ten feet from any street boundary or street pavement, whichever results in the greater setback. (2-9-2006)

5.42 Small non commercial structures not intended for human habitation that are less than 140 square feet in size shall not require a building permit; however, compliance with Section 5, shall be adhered to. Amended April 12, 2001.

**5.50 Off-Street parking and Loading Spaces**

5.51 Off-Street Parking Spaces: For any permitted use of premises hereinafter established, parking spaces shall be provided and maintained off the street in accordance with the standards as specified in Schedule II of this Ordinance and below, and any use already established shall conform to these standards to the extent that it conforms at the time of adoption of this regulation.

5.52 Off-Street Parking Lots: parking lots shall be separated from any public street by a curb, fence or other barrier at the street line, except at the points of access.

5.53 Off-Street Loading Space: For all non-residential uses with a floor area of 2,500 square feet, to and including 25,000 square feet, one loading space shall be required. For each additional 25,000 square feet or fraction thereof, one additional space shall be required.

5.54 Maintenance: Off-street parking and loading areas shall be suitably improved (drained and graded) and maintained, so as not to cause any nuisance from excessive storm water, dust or erosion.

**Schedule II**

*Off-Street Parking Requirement*

Uses	Number of Off-Street Parking Spaces Required
(1) Churches, community buildings, or other places of public service or public assembly	One (1) for each four seats
(2) One-family detached and multiple dwelling	One (1) for each dwelling unit
(3) Public Schools	One (1) per classroom in an elementary and junior high school

	and two (2) per classroom in a senior high school, plus load and unloading facilities for school buses
(4) Customary Home occupations	Two (2) for each dwelling unit
(5) Nursing Homes	One (1) for each four (4) beds plus one (1) for each employee
(6) Tourist Accommodation including Hotels and motels	One (1) for each accommodation unit plus one (1) for each employee
(7) Restaurants and eating establishments	Two (2) for each six (6) seats plus two (2) for each three (3) employees
(8) Offices-Business and Professional	One (1) for each 500 square feet of floor area.
(9) Retail stores and shops	Three and one-half (3.5) spaces for each on thousand (1,000) Square feet of gross leasable floor area. 2/9/06 ammended
(10) Public Garages and service Stations	Three (3) for each employee plus space for all vehicles used directly in the conduct of such business
(11) Club houses and permanent meeting places of veterans, business, civic, fraternal, labor and other similar organizations	One (1) for each 100 square feet of gross floor area, but not less than one (1) for each four (4) seats

**5.60 Sign Regulations**

Signs may be erected and maintained only when in compliance with the following provisions:

(a) Within the Adirondack park pursuant to a written permit required by Section 3-0327 of the Conservation Law and issued by the Department of Environmental Conservation.

(b) Within the Lake George park pursuant to a written permit required by Section 847 of the Conservation Law and issued by the Lake George Park Commission.

**5.70 Home occupations**

To be considered a home occupation, a business must meet the following criteria. If any of the criteria are not met, the business use shall be deemed a commercial use rather than a home occupation.

(a) Property must be the primary residence of the person conducting the home occupation.

(b) In no way shall the appearance of the structure be altered or the occupation be conducted in a manner which would cause the premises to differ from it's residential character by the use of colors, materials, construction, lighting, or emission or sounds or vibrations. No use shall create noise, dust, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance in excess of that created by a residence.

(c) No outdoor display of goods or materials used in the home occupation shall be permitted.

(d) No more than one commercial vehicle used in conjunction with the business shall be parked on the property.

**5.80 Adult Entertainment Business Overlay District**

**5.81 Policy, Statutory, Authority, Legislative Findings**

Under the power vested in the Town of Ticonderoga in Town Law Section 264, the Town has enacted a Zoning Ordinance (1972, as amended).

In the exercise of its police power the Town Board has the power to enact local laws to promote the health, safety, welfare and quality of life for its residents and visitors, and under Article IX of the Town's Zoning Ordinance and Town Law Section 265, the

Town Board has the power to supplement or repeal the regulations and provisions of the Zoning Ordinance after public notice and hearing.

The Town Board has conducted a study of the secondary effects of Adult Entertainment Businesses culminating in a Secondary Effects Study of Adult Entertainment Businesses, which was approved by resolution of the Town Board of the Town of Ticonderoga on December 12, 2002, and a copy of which is on file with the Town Clerk of the Town of Ticonderoga.

Among the findings by the Town Board of the Town of Ticonderoga are the following: that the negative secondary effects of Adult Entertainment Business, as defined herein, include a decrease in property values for properties, both residential and commercial, within a given radius of said uses, and an increase in crime, drug use, prostitution, and serious felonies. That to best protect the residents of and visitors to the Town of Ticonderoga, it is in the interests of the Town of Ticonderoga that an amendment be made to the Town of Ticonderoga Zoning Ordinance providing for an overlay district to regulate such Adult Entertainment Businesses.

In addition, the Town Board of the Town of Ticonderoga expressly states that it is not the intention of the Town of Ticonderoga to regulate the speech offered by such establishments and that such establishments are not prohibited in the Town of Ticonderoga provided the proprietors thereof fully comply with the requirements of this local law and any other applicable State, Federal and/or Town of Ticonderoga Law.

**5.82 Definitions:**

(a) ADULT ARCADE -- Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still- or motion-picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing specified adult activities or specified anatomical areas.

(b) ADULT BOOKSTORE or ADULT VIDEO STORE -- A commercial establishment which offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe specified adult activities.

(2) Instruments, devices or paraphernalia which are primarily intended, labeled, designed, advertised or promoted for use in connection with specified adult activities

(c) ADULT CABARET -- A nightclub, bar, restaurant or similar commercial establishment which regularly features:

(1) Persons who appear in a state of nudity; or

(2) Live performances which are characterized by the exposure of specified anatomical areas or by specified adult activities; or

(3) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified adult activities or specified anatomical areas.

(d) ADULT ENTERTAINMENT BUSINESS -- A public or private establishment, or any part thereof, which presents any of the following entertainments,

exhibitions or services: topless and/or bottomless dancers; strippers; topless waitressing, busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear pasties or G-strings or both; adult arcade; adult bookstore or adult video stores; adult arcade; adult cabarets; adult motels; adult motion-picture theaters; adult theaters; escort agencies; nude model studios and sexual encounter centers. Adult use and entertainment establishments customary exclude persons seventeen years of age and younger.

(e) ADULT MOTEL -- A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified adult activities or specified anatomical areas and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions.

(f) ADULT MOTION-PICTURE THEATER -- A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified adult activities or specified anatomical areas.

(g) ADULT THEATER -- A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified adult activities.

(h) ESCORT -- A person who, for a fee, tip or other consideration, agrees or offers to act as a date for another person; for consideration, agrees or offers to privately model lingerie for another person; for consideration, agrees or offers to privately perform a striptease for another person; or, for consideration but without a license granted by the State of New York, agrees or offers to provide a massage for another person.

(i) ESCORT AGENCY -- A person or business association who furnishes or offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

(j) NUDE MODEL STUDIO -- Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration, other than as a part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.

(k) NUDITY or STATE OF NUDITY -- The appearance of specified anatomical areas.

(l) PERSON -- An individual, proprietorship, partnership, corporation, association or other legal entity.

(m) SEMI-NUDE -- A state of dress in which clothing covers no more than the specified anatomical areas, as well as portions of the body covered by supporting straps or devices.

(n) SEXUAL ENCOUNTER CENTER -- A business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, activities between male and female persons and/or persons of the same sex when one or

more of the persons is in a state of nudity or semi-nude.

(o) SPECIFIED ANATOMICAL AREAS -- Includes any of the following:

(1) Unless completely and opaquely covered, human genitals, pubic region, buttocks or breasts below a point immediately above the top of the areola.

(2) Even if completely and opaquely covered, male genitals in a discernibly turgid state.

(p) SPECIFIED ADULT ACTIVITIES -- Includes any of the following:

(1) Actual sex acts, normal or perverted, including intercourse, oral copulation or sodomy.

(2) Masturbation.

(3) Excretory functions.

(4) Actual acts of dismemberment, mutilation or torture of humans or animals.

(q) SPECIFIED CRIMINAL ACTIVITY- Includes any of the following offenses:

(1) Prostitution or promotion of prostitution; dissemination of obscenity; distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to an Adult Entertainment Use; sexual assault; molestation of a child; distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of this state, or other states or countries;

(2) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, if the conviction is of a misdemeanor offense; or

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, if the conviction is of a felony offense; or

(iii) less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the last conviction, whichever is later, if the convictions are of two or more misdemeanor offenses or combination of offenses occurring within any 24-month period.

(iv) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

### **5.83 License Required.**

A person shall be guilty of a misdemeanor if that person operates an Adult Entertainment Use without a license pursuant to this Section 5.80 of the Zoning Ordinance.

(a) An application for a license, and for any license renewal, must be made on a form provided by the Town of Ticonderoga. All applicants must be qualified according to the provisions of this Local Law. A license shall be considered a special permit, and shall comply, in all respects, with the requirements for a special use permit under the Town's Site Plan Review Law, including, without limitation, the requirement that such use undergo site plan review consideration, as well as all requirements under this Section 5.80 of Article V of the Zoning Ordinance.

(b) An applicant for an Adult Entertainment Use license shall file an application

or an Adult Entertainment Business license with the Town of Ticonderoga Planning Board. An application shall be considered complete if it includes all information required in this Section 5.80 of Article V of the Zoning Ordinance. The application shall include all information set forth in paragraphs I through 9, below:

(1) Current business address of the applicant.

(2) Current mailing address of the applicant if different than mailing address.

(3) The Applicant's fingerprints suitable for conducting a necessary background check pursuant to this Local Law and the Applicant's social security number.

(4) The legal name, proposed location, legal description, phone number, and mailing address of the proposed Adult Entertainment Use.

(5) Written proof of age of the Applicant in the form of a copy of the birth certificate and current driver's license or a duly issued passport issued by a governmental agency.

(6) The name and address of the statutory agent or other agent duly appointed to accept service of process on behalf of the Applicant.

(7) A detailed floor plan including the square footage of the building proposed to house such use, and including all details of such building including public rooms, storage rooms, bathrooms, etc. The sketch need not be professionally prepared but shall be submitted on graph paper and be drawn to scale with all dimensions on the interior of the premises marked to an accuracy of plus or minus six (6) inches.

(8) If a person who wishes to operate an Adult Entertainment Use is an individual, he or she shall sign the application for a license as applicant. If a person who wishes to operate an Adult Entertainment Use is a corporation or other business entity authorized and recognized to do business in the State of New York, each officer, director, general partner or other person who shall participate directly in the decisions related to the Adult Entertainment Use shall sign the application as applicant.

(9) A statement by the Code Enforcement Officer that the proposed location meets with any other applicable Zoning Law or other Town Local Law or Ordinance concerning the proposed location of the Adult Entertainment Use.

(c) A non-refundable initial license fee shall be collected at the time of application in the amount of \$250. The renewal fee for a license hereunder shall be \$125.

(d) A person who operates or causes to be operated a Adult Entertainment Business, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a Adult Entertainment Business oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and shall be drawn to a designated scale

or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The Town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant under penalties of perjury.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Planning Board.

(4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(5) It shall be the duty of the licensee to ensure that the view area specified in subsection remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this Section.

(6) No viewing room shall be occupied by more than one person at any time.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access.

(8) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(e) A person having a duty under Subsection (1) through (8) of Subsection (d) above commits a misdemeanor if he knowingly fails to fulfill that duty.

(f) An escort agency shall not employ any person under the age of 18 years. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(g) It shall be a misdemeanor for a person who knowingly or intentionally in an Adult Entertainment Business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six (6) feet from any patron or customer and on a stage at least two feet from the floor.

(h) It shall be a misdemeanor for an employee, while semi-nude in an Adult Entertainment Business, to receive directly any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity directly to any employee, while said employee is semi-nude in an Adult Entertainment Business.

(i) It shall be a misdemeanor for an employee of an Adult Entertainment Business, while semi-nude, to knowingly and intentionally touch a customer or the clothing of a customer.

(j) A person commits a misdemeanor if the person knowingly allows a person

under the age of 18 years on the premises of an Adult Entertainment Business.

(k) No Adult Entertainment Business, except for an adult motel, may remain open at any time between the hours of Midnight and eight o'clock (8:00) A.M. on weekdays and Saturdays, and Midnight and noon (12:00) P.M. on Sundays.

**5.84 Issuance of License.**

At a duly noticed public hearing on the application as more fully set forth in the Town of Ticonderoga Site Plan Review Law, the applicant shall appear before the Planning Board and the application shall be considered thereat. The applicant shall personally appear together with any agents or advisors of such applicant.

(a) In addition to any other reasons for denying an application under applicable Law, the Planning Board may deny the application for the following:

(1) The applicant is less than 18 years of age.

(2) The applicant is delinquent in the payment to the Town of taxes, fees, or penalties assessed or imposed on the applicant in relation to an Adult Entertainment Use.

(3) An applicant has failed to provide information as required under this Section 5.80 of Article V of the Zoning Ordinance.

(4) An applicant, or a business entity for which the applicant had, at the time of an offense leading to a criminal conviction described herein, a management responsibility or a controlling interest, has been convicted of a Specified Criminal Activity.

(5) The application fee required in this Section 5.80 of Article V of the Zoning Ordinance has not been paid.

(6) The proposed Adult Entertainment Business is located or proposed to be located in a zoning district other than a district in which Adult Entertainment Business are allowed to locate as set forth in this Section 5.80 of Article V of the Zoning Ordinance.

(7) The applicant has falsely answered a question or request for information on the application form.

(b) The license, if granted, shall state on its face the name of the person, persons, or entity, to whom the license is issued, the number of the license issued to the applicant, the expiration date thereof, and the address of the Adult Entertainment Business. The license shall be posted in a conspicuous place at or near the entrance to the Adult Entertainment Business so that it may be easily read at any time.

**5.85 Inspection.**

A licensee shall permit all law enforcement officers, and any other federal, state, county or town official in the performance of any governmental function connected with the enforcement of this Section 5.80 of Article V of the Zoning Ordinance, normally and regularly conduct by such officials, to inspect those portions of the premises of an Adult Entertainment Use where patrons or customers are permitted to occupy for the purposes of ensuring compliance with this Section 5.80 of Article V of the Zoning Ordinance, at any time the business is occupied by any person or open for business. The provisions of this Section shall not apply to the areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

**5.86 Expiration of License.**

Each license shall expire one year from the date of issuance and may be renewed

only by making an application as provided in Section 5.83. Application for renewal shall be made at least sixty (60) days before the expiration date, and when made less than sixty (60) days before the expiration date, the expiration of the license will not be affected. If an application for renewal is denied by the Planning Board, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to the denial, the Town finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date denial became final.

#### **5.87 Suspension and Revocation.**

(a) The Code Enforcement Officer shall issue a written intent to suspend the license for a period not to exceed thirty (30) days if he or she determines that a licensee has violated or is not in compliance with this Section 5.80 of Article V of the Zoning Ordinance, or has refused to allow an inspection of the Adult Entertainment Business authorized by this Section 5.80 of Article V of the Zoning Ordinance.

(b) A license may be revoked under provisions of this Section 5.87(b) and under the Hearing provisions of Section 5.87(c). The Code Enforcement Officer shall issue a written statement of intent to revoke a license if:

(1) A cause of suspension in Section 5.87(a) occurs and the license has been suspended within the preceding twelve (12) months.

(2) The Code Enforcement Officer determines that the licensee gave false or misleading information in the material submitted during the application process.

(3) The Code Enforcement Officer finds that a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises.

(4) The Code Enforcement Officer finds that a licensee has knowingly allowed prostitution on the premises.

(5) The Code Enforcement Officer finds that a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur on or in the licensee's premises. This subsection shall not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either (i) in exchange for money, or (ii) in a public place or within public view.

(6) The fact that a conviction is being appealed shall have no effect on any finding by the Code Enforcement Officer or a determination on the revocation of a license.

(c) A written notice of intention to suspend or revoke a license under Sections 5.87(a) or (b), respectively, shall be personally served on the licensee or mailed by certified mail, return receipt requested at the address of the licensee noted on the license. Any written notice of intention to suspend or revoke a license shall include a notice that the licensee may, within 10 business days of receipt of the notice to suspend or revoke, deliver to the Code Enforcement Officer a statement of reasons why the license should not be suspended or revoked, as the case may be. Such notice of intention to suspend or revoke and the licensee's response thereto, if any, shall be delivered by the Code Enforcement Officer to the Planning Board. The Planning Board shall schedule the matter to be by the Planning Board at the next hearing of the Planning Board. If the Planning Board finds that a suspension or revocation of the license is warranted, then the Planning Board shall direct that the license be revoked or suspended, as the case may be. An appeal of the decision of the Planning Board may be had to the Zoning Board of

Appeals in accordance with the Zoning Board of Appeals Law of the Town of Ticonderoga. Any Court action to challenge the decision of the Zoning Board of Appeals of an appeal of a Planning Board Decision under this Section 5.80 of Article V of the Zoning Ordinance shall be commenced within thirty (30) days from the date of the final decision of the Zoning Board of Appeals.

**5.88 Location Of Adult Entertainment Business.**

(a) A person commits a misdemeanor if that person operates or causes to be operated an Adult Entertainment Business in any zoning district other than that defined herein.

(b) A person commits such offense if the person operates or causes to be operated an Adult Entertainment Business outside of an Industrial Zone and/or within 1,000 feet of:

(1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activity;

(2) A public or private educational facility including, but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and/or universities; school includes the school grounds;

(3) A boundary of a residential district as defined in the Zoning Law;

(4) A public park or recreational area which has, been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian bicycle paths, wilderness areas, or other similar public land within the town which is under the control, operation, or management of the town;

(5) The property line of a lot devoted to a residential use as defined in the Zoning Ordinance;

(6) An entertainment business which is oriented primarily towards children or family entertainment;

(7) A license premises, licensed pursuant to the alcoholic beverage control laws of the State of New York;

(8) Another Adult Entertainment Business.

(c) A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one Adult Entertainment Business in the same building, structure, or portion thereof, or the increase of floor area of any Adult Entertainment Business in any building containing another Adult Entertainment Business.

(d) For the purposes of measuring the distances in this Section 5.88, measurement shall be made in a straight line, without regard to the intervening structures, objects, or natural land characteristics, from the nearest portion of the building or structure used as the part of the premises where an Adult Entertainment Business is conducted, to the nearest property line of the premises of a use in Section 5.88(b). Presence of a town, county or other political subdivision boundary line shall be irrelevant for purposes of calculating and applying the distance requirements of this Section. For purposes of measuring the distance between any two or more Adult Entertainment Businesses, distance shall be measured as applied above, with the exception that the

points of reference shall be from the closest exterior walls of the structures in which each business is located.

(e) Any Adult Entertainment Business lawfully operating on the effective date of this Local Law that is in violation with any part of this Section 5.80 of Article V of the Zoning Ordinance shall be deemed a nonconforming use and shall be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or in any way altered except that the use may be changed to a conforming use.

#### **5.89 General Provisions**

(a) TRANSFER OF LICENSE. A licensee may not transfer his or her license to any other person or entity, nor shall an Adult Entertainment Business be operated at any other location other than that approved in the license. For purposes of this Local Law, a transfer shall also be deemed to have occurred if the licensee is a corporation, partnership, company or any other business entity recognized to do business in the State of New York, and the owners or managers thereof, who must also be named on the license, convey a controlling interest, either collectively or independently, in such corporation, partnership, company or other business entity recognized to do business in the State of New York.

(b) EXEMPTIONS. It is a defense to prosecution under this Local Law that a person appearing in a state of nudity did so in a modeling class operated:

- (1) by a proprietary school, licensed by the State of ; a college, junior college, or university supported entirely or partly by taxation;
- (2) by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior r college, or university supported entirely or partly by taxation; or
- (3) in a structure:
  - (i) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - (ii) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
  - (iii) where no more than one nude model is on the premises at any one time.

(c) INJUNCTION. A person who operates or causes to be operated an Adult Entertainment Business without a valid license or in violation of this Section 5.80 of Article V of the Zoning Ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a fine of \$200.00 or thirty (30) days imprisonment. Each day an Adult Entertainment Business so operates is a separate offense or violation.

(d) SEVERABILITY. If any provisions of this Section 5.80 of Article V of the Zoning Ordinance are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this Section 5.80 of Article V of the Zoning Ordinance shall remain in effect.

(e) CONFLICTING LOCAL LAWS REPEALED. In the event of a conflict between any provision of this Section 5.80 of Article V of the Zoning Ordinance and any other Town of Ticonderoga Law, the provisions of this Section 5.80 of Article V of the

Zoning Ordinance shall be deemed to control.

(f) EFFECTIVE DATE. This Local Law shall take effect upon filing with the New York State Secretary of State.

#### ARTICLE VI

Repealed July 29, 1999 by Local Law # 3 1999

#### ARTICLE VII

##### *Non-Conforming Uses and Buildings*

- 7.11 Continuation.** Subject to the provisions of this ordinance, a nonconforming structure containing a nonconforming use may be continued and maintained in reasonable repair but may not be enlarged or extended as of the date this ordinance becomes law, except as follows:
- A.** A single family dwelling or mobile home may be enlarged or rebuilt as follows:
    - (1) All setback provisions of this ordinance shall be met, and
    - (2) No enlargement or rebuilding shall exceed an aggregate of 25% of the gross floor area of such single-family dwelling or mobile home, excepting therefrom any porches or decks whether enclosed or not, immediately prior to the commencement of the first enlargement or rebuilding.
  - B.** In no case shall any increase or expansion violate or increase noncompliance with the minimum setback requirements, height requirements, yard space or land coverage.
  - C.** This article shall not be construed to permit any unsafe use or structure or to affect all proper procedures to regulate or prohibit the unsafe use or structure.
  - D.** Except as cited in Subsection A above, any nonconforming use may be increased only by variance granted by the Zoning Board of Appeals.
  - E.** An existing structure which violates only the area requirements of this ordinance may be enlarged or extended so long as such enlargement or extension does not violate the setback or lot coverage requirements of this ordinance.
  - F.** Site plan approval by the Planning Board shall be required for any enlargement or extension of a nonconforming structure or use of a structure containing a nonconforming use.
  - G.** Nothing in this ordinance shall prevent the use of any lot, or the erection of a building or other structure on any lot, which does not conform to the minimum area, shape or frontage requirement of this ordinance, provided that all other requirements of this ordinance are met.
- 7.12 Discontinuance.** If a nonconforming use is discontinued for a period of 18 Consecutive months, further use of the property shall conform to this ordinance or require an area or use variance as the case may be, from the Zoning Board of Appeals.
- 7.13 Change in use.** If a nonconforming use is replaced by another use, such use shall conform to this ordinance.
- 7.14 Destruction.**
- A. Area nonconformity.** Any structure which is nonconforming due to a

setback violation or, in the case of multifamily housing, due to greater intensity then would be allowed by this ordinance, which is destroyed wholly or in part by fire, flood, wind, hurricane, tornado or other act beyond the control of man shall be allowed to reconstruct according to its original dimension and intensity if substantially completed within 18 months of said destruction.

- B. Use of Nonconformity.** Any structure which is a nonconforming use according to the provisions of this ordinance which is destroyed by fire, flood, wind, hurricane, tornado or other act beyond the control of man, to the extent of 50% of the assessed value of the structure or more, shall be allowed to reconstruct and reuse such nonconforming use according to its original dimension and intensity if substantially completed within 18 months of the destructive incident. If within the eighteen-month period, the structure containing the nonconforming use is not substantially completed, the nonconforming use shall not be reestablished, and the property shall only be used for a conforming use.

#### **7.17 Prohibition Against Residential Uses on the First Floor of Buildings in the Central Commercial District.**

Section 7.17, Schedule 1, and any other conflicting provision of the Town of Ticonderoga Zoning Ordinance are hereby amended such that there shall be no residential use of any building in the Central Commercial District on the first floor of said building. For the purposes of this Local Law, the first floor shall be deemed the first floor accessing the street level in any building in the Central Commercial District. In the event of a dispute concerning what floor constitutes the first floor, a property owner may apply to the Planning Board for a determination relative to whether or not a floor constitutes the first floor as defined herein.

Upon application for site plan approval, the Planning Board may authorize a portion of a first floor to be residential in the Central Commercial District where:

- (a) The remainder of the such first floor is utilized for business purposes as permitted in the Central Commercial District; and
- (b) The portion of the first floor to be used as residential will be occupied by the person conducting the business on the remainder of such first floor; and
- (c) The majority of the square footage (i.e., more than 60%) of such first floor is utilized for commercial purposes.

In the event the person to reside in such residential portion ceases for any reason to reside in such residential portion, the prohibitions against residential use on such first floor of such building shall apply. The rental of the first floor for residential purposes shall not be deemed "commercial" for purposes of this Local Law and this amendment of the Town of Ticonderoga Zoning Ordinance.

Local Law No. 1 of 2011

### **ARTICLE VIII**

#### *Administration and Enforcement*

**8.10 Enforcement Officer:** This ordinance shall be enforced by the Building Inspector, who shall be appointed by the Town Board. No building permit or certificate

of occupancy shall be issued by him except where all the provisions of this ordinance have been complied with.

8.12 Repealed April 12, 2001.

8.13 Repealed April 12, 2001.

### **8.20 Board of Appeals**

8.21 **Creation, Appointment and Organization:** A board of appeals is hereby created. Said Board shall consist of five members. The Board shall elect a chairman from its membership, shall appoint a secretary and shall prescribe rules for the conduct of its affairs.

8.22 **Powers and Duties:** The Board of Appeals shall have all the power and duties prescribed by law and by this ordinance, which are more particularly specified as follows:

(1) **Interpretation:** Upon appeal from a decision by the Building inspector, to decide any question involving the interpretation of any provisions of this Ordinance, including the determination of the exact location of any district boundary if there is uncertainty with respect thereto.

(2) **Special permits:** Repealed April 12, 2001.

(3) **Variances:** To vary or adapt the strict application of any of the requirements of this Ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved. No variance in the strict application of any provision of this Ordinance shall be granted by the Board of Appeals unless it finds:

(a) That there are special circumstances or conditions, fully described in the findings of the Board, applying to such land or buildings and not applying generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or buildings.

(b) That, for reasons fully set forth in the findings of the Board, the granting of the variance is necessary for the reasonable use of the land or buildings and that the variance as granted by the Board is the minimum variance that will accomplish this purpose.

(c) The Board of Appeals shall act in strict accordance with the procedure specified by law and by this Ordinance. All appeals and applications made to the Board shall be in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provisions of the Ordinance involved and shall exactly set forth the interpretation that is claimed, the use of which the special permit is sought, or the details of the variance that is applied for, and the grounds on which it is claimed that the variance should be granted, as the case may be.

### **8.30 Violations-Penalties**

1. Whenever a violation of this law occurs any person may file a complaint in regard thereto. All such complaints shall be in writing and shall be filed with the Zoning Board Administrator who shall properly record and immediately investigate such complaint. If the complaint is found to be valid, the Zoning Board Administrator shall issue an order to cease and desist until the violation is corrected. If the violation is not corrected within the specified time the Zoning Board Administrator shall take action to compel compliance.

2. Pursuant to criminal procedure law Section 150.20 (3), the Zoning Administrator is hereby authorized to issue an appearance ticket to any person causing a violation of this law, and shall cause such person to appear before the town justice.

3. Pursuant to municipal Home Rule Law Section 10 and Town Law Section 268, any person, firm or corporation who commits an offense against, disobeys, neglects, or refuses to comply with or resist the enforcement of any of the provisions of this ordinance shall, upon conviction, be deemed guilty of a violation and subject to fine. Any violation of this law is an offense punishable by a fine not exceeding \$350.00 for conviction of a first offense; for conviction of a second offense both of which were more than \$700.00; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than that of \$750.00 nor more than \$1,000.00. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violation of this ordinance shall be deemed misdemeanors and for such purpose only. All provisions of the law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

4. The Town Board may maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of this ordinance. The town attorney or any aggrieved person may take such action, criminal, civil or both, as may be provided by law against any person or organization who violated or may intend to violate this ordinance. Amended April 12, 2001.

## ARTICLE IX

### *Amendments*

#### **9.10 Procedure for Amendments**

The Town Board may from time to time on its own motion, or on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Ordinance after public notice and hearing.

Every such proposed amendment or change, whether initiated by the Town Board or petition, shall be referred to the Planning Board for report thereon before the public hearing hereinafter provide for. The Town Board by resolution adopted at a stated meeting shall fix the time and place of a public hearing on the proposed amendments and cause notice to be given as follows:

(1) By publishing at least ten days notice of the time and place of such hearing in a paper of general circulation in the Town.

(2) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any state park or parkway shall be given to the Regional State Park Commission having jurisdiction over such state park or parkway at least ten days prior to the date of such public hearing.

(3) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any village or town or within such municipality and to the clerk of the Board of Supervisors at least ten days prior to the date of such hearing.

(4) A written notice of any proposed change or amendment affecting real property within 500 feet of the boundary of the Town of Ticonderoga from the boundary of any exiting or proposed county or state 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 for which the county has established channel lines, or from the existing or proposed boundary of any state owned land on which a public building institution is situated shall be referred to the Essex County Planning Board as provided for by Sections 239-12 and 239-m of Article 120B of the General Municipal Law. If the Essex County Planning Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all members thereof and after adoption of a resolution setting forth the reason for the contrary action.

(5) In case, however, of a protest against such change, signed by the owners of twenty percent or more of the area of land included in such proposed changes or of that immediately adjacent extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least four members of the Town Board.

## ARTICLE X

### *Separability*

#### **10.10 Separability Clause**

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

## ARTICLE XI

### *Effective Date*

#### **11.10 Effective Date**

This Ordinance shall take effect June 22, 1972.

#### **11.20 Effective Date of Amendments**

The Amendments of this Ordinance shall take effect June 17, 2003.