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DOCKET ENTRIES

January 24, 1972 Complaint Filed

April 6, 1972 Notice of Motion and supporting Affidavit to Dismiss Complaint Filed

May 2, 1972 Notice of Motion, Motion and supporting Affidavit of Rochester Home Builders Association, Inc. to Intervene as Party Plaintiff Filed

June 7, 1972 Plaintiffs' Notice of Motion and Motion for an Order making Housing Council in the Monroe County Area, Inc. a Party Plaintiff Filed

June 12, 1972 Plaintiffs' Affidavit of Robert J. Warth Filed

June 12, 1972 Plaintiffs' Affidavit of Andalino Ortiz Filed

June 12, 1972 Plaintiffs' Affidavit of Clara Broadnax Filed

June 12, 1972 Plaintiffs' Affidavit of Angela Reyes Filed

June 12, 1972 Plaintiffs' Affidavit of Rosa Sinkler Filed

June 12, 1972 Plaintiffs' Affidavit of Robert Warth, Lynn Reichert, Victor Vinkey and Katherine Harris Filed

DOCKET ENTRIES

- June 12, 1972 Plaintiffs' Affidavit
of Ann McNabb Filed
- June 12, 1972 Plaintiffs' Affidavit
of Christian G. King, Alan
J. Taddiken and Richard C.
Farley Filed
- December 29, 1972 Order dismissing Com-
plaint, denying Plaintiffs'
Motion to add as Party
Plaintiff Housing Council
in Monroe County Area, Inc.
and denying Motion of Roch-
ester Home Builders Asso-
ciation, Inc. to intervene
Filed
- January 24, 1973 Plaintiffs' Notice of
Appeal Filed
- January 26, 1973 Notice of Appeal of
Rochester Home Builders
Association, Inc. Filed
- August 16, 1974 Opinion and certified
copy of Second Circuit
Court of Appeals Order
affirming Order of District
Court Filed
- October 15, 1974 Petition For Certiorari
Granted

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

ROBERT WARTH, 265 Castlebar *
Road, Rochester, New York *
14610, Individually and on *
behalf of all other persons *
similarly situated, *
LYNN REICHERT, 224 Seneca *
Parkway, Rochester, New York *
14613, Individually and on *
behalf of all other persons *
similarly situated, *
VICTOR VINKEY, 134 Nunda *
Boulevard, Rochester, New *
York, 14610, Individually *
and on behalf of all other *
persons similarly situated, * COMPLAINT
KATHERINE HARRIS, 108 Garson *
Avenue, Rochester, New York, *
Individually and on behalf *
of all other persons *
similarly situated, *
ANDELINO ORTIZ, R.D. 1 *
Wrights Road, Box 202, Wayland, *
New York, Individually and *
on behalf of all other *
persons similarly situated, *
CLARA BROADNAX, 87 Jefferson *
Avenue, Rochester, New York, *
Individually and on behalf *
of all other persons *
similarly situated, *
ANGELA REYES 378 *
*
*

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COMPLAINT

the Town Board of	*
the Town of Penfield,	*
and the TOWN OF	*
PENFIELD, NEW YORK	*
Defendants.	*

Plaintiffs, above named, by their attorneys, Robinson, Williams, Robinson and Angeloff, as and for their complaint against the defendants, allege:

FIRST That this is an action for declaratory judgment, injunctive relief and money damages pursuant to Title 42 USC 1981, 1982, and 1983 and pursuant to Title 28 USC 2201 and for damages and other relief based upon certain pendant and ancillary common law and statutory causes of action. Jurisdiction is conferred upon this Court by Title 28 USC 1331, 1343, and 2201. In addition the Court has pendant and ancillary jurisdiction over several causes

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COMPLAINT

of action herein contained.

SECOND: That now and at all times hereinafter mentioned, the plaintiffs, Vinkey, Reichert, Warth, Harris are and were citizens of the United States of America and of the State of New York and are and were residents of the City of Rochester, a municipal corporation existing by virtue of the laws of the State of New York and within the territorial limits of said state, and said plaintiffs are and were the owners of real property lying within the territorial limits of said municipality and they are and were taxpayers of said municipality being liable to and for the payment of taxes and having paid taxes to said city, including real property taxes with rates and amounts based upon the assessed valuation of

COMPLAINT

their real estate lying within said municipal limits. In addition, the plaintiff Harris is a negro person who is denied certain rights by virtue of her race all as is more hereinafter set forth.

THIRD: Plaintiffs, property owners and taxpayers of the City of Rochester, are aggrieved in that they are paying a greater proportionate share of real estate taxes to the City of Rochester than are other residents of the Rochester metropolitan area to their respective towns because the City of Rochester has and must continue to permit more than its fair share of tax abated housing projects within its territorial limits to meet the low and moderate income housing requirements of the metropolitan Rochester area by reason of the

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COMPLAINT

exclusionary practices of defendants.

FOURTH: That now and at all times hereinafter mentioned, the plaintiff Ortiz is and was a citizen of the United States of America and of the State of New York and is and was a resident of Wayland, New York, and said Ortiz is and was the owner of real property lying within the territorial limits of the City of Rochester, a municipal corporation existing by virtue of the laws of the State of New York and within the territorial limits of the State, and he is and was a taxpayer of the municipality of Rochester, New York, being liable to and for the payment of taxes and having paid taxes to said city, including real property taxes with rates and amounts based upon the assessed valuation of his real estate lying within said

COMPLAINT

municipal limits. In addition, plaintiff Ortiz as a citizen of Spanish/Puerto Rican extraction is denied certain rights by virtue of his race all as is more fully hereinafter set forth. Plaintiff Ortiz is employed in the Town of Penfield, New York but has been excluded from living near his employment as he would desire by virtue of the illegal, unconstitutional and exclusionary practices of the Town of Penfield as more particularly set forth.

FIFTH: That now and at all times hereinafter mentioned, the plaintiffs Broadnax, Reyes and Sinkler are and were citizens of the United States of America and the State of New York and are and were residents of the City of Rochester, New York, and are persons fitting within the classification of low and moderate income as hereinafter defined who solely

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COMPLAINT

by reason of their existing in said classification are and were deprived of certain rights as hereinafter set forth.

SIXTH: That now and at all times hereinafter mentioned, the plaintiff Metro-Act of Rochester, Inc. is and was a non-profit corporation organized pursuant to the laws of the State of New York with its principal office located in the City of Rochester, New York. Metro-Act of Rochester, Inc. is a non-profit corporation with its main purpose being to alert ordinary citizens to problems of social concern; one effort of the corporation has been to inquire into the reasons for the critical housing shortage for low and moderate income persons in the Rochester area and to urge action on the part of citizens to alleviate the general housing shortage for low and moderate

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income persons.

SEVENTH: Plaintiffs bring this action on their own behalf and on behalf of other persons similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The classes which plaintiffs represent are composed of all taxpayers of the City of Rochester, all low and moderate income persons residing in the City of Rochester, all black and/or Puerto Rican/Spanish citizens residing in the City of Rochester and all persons employed but excluded from living in the Town of Penfield who are affected or may in the future be affected by the defendants' policies and practices complained of herein. Plaintiffs and the classes they represent have been and continue to be discriminated against because of their race and income level in ways

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which deprive them of the right to residential housing, low and moderate income multiple unit housing, and land use opportunities equal to those enjoyed by residents of the Town of Penfield. These persons are so numerous that joinder of all parties is impracticable. A common relief is sought. The interests of the classes are adequately represented by plaintiffs. Defendants have acted or refused to act on grounds applicable to said classes.

EIGHTH: That now and at all times hereinafter mentioned, the defendants Ira Seldin, Chairman, James O. Horne, Malcolm M. Nulton, Albert Wolf and John Betlem are and were the members and do now constitute the Zoning Board of the Town of Penfield as constituted and existing pursuant to Chapter 29 of the

COMPLAINT

Town Code of the Town of Penfield, New York, adopted by the Town Board of said Town on the 5th day of May, 1962 and subsequently, and the defendant Ira Seldin is now and was at all times hereinafter mentioned the Chairman of said Zoning Board and as such said defendants are and were in charge of and/or had authority over the administration of a certain zoning ordinance of said Town of Penfield, all as is more fully hereinafter set forth and of granting variances and exercising other administrative and/or discretionary duties with respect to said zoning ordinance and as such they and their predecessors participated in and were responsible for the activities, actions, events and circumstances hereinafter set forth.

NINTH: That now and at all times

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COMPLAINT

hereinafter mentioned, the defendants, James Hartman, John D. Williams, Richard C. Ade and Timothy Westbrook are and were the members and do now constitute the Planning Board of the Town of Penfield, and the defendant George Shaw is now and was at all times hereinafter mentioned the Chairman of said Planning Board and as such said defendants and their predecessors in office are and were in charge of and/or had authority over the processing, administration, and approval of certain low and moderate income housing applications in the Town of Penfield, all as is more fully set forth herein and of granting planning approval and exercising other administrative and/or discretionary duties with respect to said zoning ordinance and as such they participated in and were responsible for the activities, actions and events and circumstances hereinafter set forth.

COMPLAINT

TENTH: That now and at all times hereinafter set forth, the defendants, Irene Gossin, Supervisor, Francis J. Pallischeck, Dr. Donald Hare, Lindsey Embrey and Walter W. Peter are and were members of and do constitute the Town Board of the Town of Penfield, Monroe County, New York, and as such they and their predecessors in office have passed and have continued to maintain and refused to alter a certain zoning ordinance in said Town and they individually and/or through their agents and/or employees have participated in the actions, events, activities and helped cause and create the circumstances hereinafter set forth and complained of.

ELEVENTH: That now and at all times hereinafter mentioned, the defendant Town of Penfield is and was a municipal

COMPLAINT

corporation organized and existing pursuant to the laws of the State of New York and existing within the State of New York and County of Monroe and lying contiguous to the territorial boundaries of the City of Rochester, New York.

TWELFTH: That pursuant to state enabling legislation, the defendants Gossin, Pallischek, Hare, Embrey and Peter and/or their predecessors in office constituting the Town Board of the Town of Penfield, New York, on the 5th day of May 1962, adopted the zoning ordinance of said Town being and constituting of Chapter 29 of the Town Code of the Town of Penfield of which sections 29-1 through 29-29 relating to zoning are attached hereto as Exhibit A and made a part hereof.

THIRTEENTH: That said ordinance,

COMPLAINT

both as enacted and/or as administered by the defendants afore named is violative of the Constitution of the United States and in particular, without intending to limit, the First, Ninth and Fourteenth Amendments thereof, and is further violative of the statutory law of the United States, and, in particular, without intending to limit, 42 USC 1981, 1982, 1983 and 1984.

FOURTEENTH: That the statute as enacted and/or administered by the defendants, has as its purpose and in fact, effects and propagates exclusionary zoning in said Town with respect to excluding moderate and low income multiple unit housing and further tends to exclude low income and moderate income and non-white residency in said Town and thereby deprives persons and has deprived persons

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COMPLAINT

including the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler of the same right to inherit, purchase, lease, sell and/or convey real property and to make and enforce contracts and to the full and equal benefit of all laws and proceedings for the security of persons and property as are enjoyed by persons presently living in said Town.

FIFTEENTH: That said exclusions and/or deprivations accomplished as aforesaid and/or hereinafter stated were caused, created and/or perpetuated by the individual defendants and others whose identities are presently unknown, acting under color of said zoning ordinance, the New York State enabling statute, and the custom and usage of the State and has subjected the plaintiffs and others similarly situated to be deprived of

COMPLAINT

certain rights, privileges and immunities secured by the Constitution and laws of the United States.

SIXTEENTH: That contrary to the Constitution and laws of the United States as hereinabove and hereinafter set forth, the individual defendants and their predecessors in office have arbitrarily and capriciously and continuously, for a period of over fifteen (15) years last passed, administered the provisions of the said zoning ordinance by refusing to grant variances, building permits, and by use of special permit procedures and other devices so as to effect and propagate the exclusionary and discriminatory policy, plan and/or scheme afore referred to and also so as to neglect and ignore the minimum requirements of the population of the Town of Penfield and the metropolitan

COMPLAINT

Rochester area, including the City of Rochester, considering the location and movement of local industry, commercial establishments, and population and considering also population density, fluidity and growth of the metropolitan Rochester area and have thereby kept low and moderate income persons (without the capital requirements to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income categories) from residing within the boundaries of said Town of Penfield. That as a result of the aforesaid, plaintiffs, Harris, Ortiz, Broadnax, Reyes and Sinkler and others similarly situated, have been unable to lease sell, hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore

COMPLAINT

had to incur additional added expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs, Harris, Ortiz, Broadnax, Reyes, and Sinkler, individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00)

SEVENTEENTH: That contrary to the Constitution and laws of the United States as hereinabove and hereinafter set forth, the individual defendants and the defendant Town have arbitrarily and capriciously and continuously for a period of over fifteen (15) last past enacted, administered and enforced the provisions of the ordinance as set forth above as Exhibit A and have failed to amend, modify, alter or waive the provisions of the same including the amending, waivering, altering and/or modifying the provisions of

COMPLAINT

the zoning map, the variance and set-back and minimum lot requirements, population density, use density, units per acre density, floor area and sewer requirements, traffic flow, ingress and egress and street location requirements so as to effect and propagate the exclusionary discriminatory policy, plans, and/or schemes afore referred to and also so as to neglect and ignore the minimum requirements of the population of the Town of Penfield and the metropolitan Rochester area including the City of Rochester, considering the location and movement of local industry, commercial establishments, and population and considering also population density, fluidity, and growth in the metropolitan Rochester area, and thereby keep low and moderate income persons (without the capital requirements to purchase real estate) and non-White persons (most of whom statistically exist in the afore-

COMPLAINT

referred income categories) from residing within the boundaries of the Town of Penfield. That as a result of the aforesaid the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional added expenses by way of commuting expenses to their places of employment and others;and as a result,the Plaintiffs,Harris, Ortiz, Broadnax,Reyes and Sinkler, individually

COMPLAINT

and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

EIGHTEENTH: That contrary to the Constitution and laws of the United States, as hereinabove and hereinafter set forth, the individual defendants and the defendant Town of Penfield have arbitrarily and capriciously and continuously and for a period of over fifteen (15) years last past, refused to grant necessary tax abatements and otherwise failed as duly constituted legislative and administrative bodies, and through their agents and employees to cooperate with, assist, and accommodate applicants for low and moderate income multiple unit housing in the Town of Penfield, all in furtherance of a policy of exclusionary zoning as

COMPLAINT

afore stated regarded such housing and also as to neglect and ignore the minimum requirements of the population of the Town of Penfield and the metropolitan Rochester area, including the City of Rochester, New York, given the location and movement of local industry, commercial establishments and population, and considering also population growth, fluidity and density in the metropolitan Rochester area and they have thereby under color of law, ordinance, custom, usage kept low and moderate income class persons (without the capital requirements to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income category) from residing within the boundaries of the Town of Penfield. That as a result of the aforesaid

COMPLAINT

the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell, hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional added expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

NINETEENTH: That the provisions of the zoning ordinance afore referred to and the enactment and administration

COMPLAINT

of the same by the named defendants and their predecessors in office under color of law, ordinance, custom and usage as hereinbefore and hereinafter set forth with regard to lot area, set backs, (including distances between units, front, rear and side set backs, and street set backs) population density, density of use, units per acre, floor area, sewer requirements, traffic flow, ingress and egress, street location, for low and moderate income multiple dwelling unit housing, are contrary to the law and Constitution of the United States in that they make practically and economically impossible the construction of sufficient numbers of low and moderate income multiple dwelling unit housing in the Town of Penfield to satisfy the minimum housing requirements of both the Town of

COMPLAINT

Penfield and the metropolitan Rochester area including the City of Rochester, New York, given the location and movement of local industry, commercial establishments and population, and considering also population growth, fluidity, and density in the metropolitan Rochester area, and thereby kept and keep low and moderate income persons (without the capital required to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income categories) from residing within the boundaries of the Town of Penfield. That as a result of the aforesaid, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell, hold, purchase and/or convey real property within the said Town of Penfield, and they have had

COMPLAINT

to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional added expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

TWENTIETH: That the provisions of the zoning ordinance afore referred to including the provisions relating to the zoning map and/or master plan and the enactment and administration of the same by the named defendants and their predecessors in office under color of law, ordinance, custom, and usage as hereinbefore and hereinafter stated, is contrary to

COMPLAINT

the law and Constitution of the United States in that it fails to allocate and designate sufficient land of good quality for the construction of low and moderate income multiple unit housing in the Town of Penfield to satisfy the minimum requirements and demands of the population of the Town of Penfield and the metropolitan Rochester area, including the City of Rochester, New York, given the location and movement of local industry, commercial establishments, population and considering also population density, growth and fluidity in the metropolitan Rochester area, and thereby keep low and moderate income persons (without the capital required to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income categories) from

COMPLAINT

residing within the boundaries of the Town of Penfield. That as a result of the aforesaid, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell, hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars(\$10,000.00).

TWENTY-FIRST: That as a proximate

COMPLAINT

cause of all of the above, the plaintiffs Vinkey, Reichert, Warth, Harris, Ortiz and Metro-Act of Rochester, Inc., have been damaged in that they have paid and/or are paying greater and/or additional real estate taxes to the City of Rochester than they would have had the defendants not acted as alleged, because the City of Rochester has and must continue to permit more than its fair share of tax abated housing projects within its territorial limits to meet the low and moderate income housing requirements of the metropolitan Rochester area by reason of the exclusionary practices of defendants, and as a result, the plaintiffs, Vinkey, Reichert, Warth, Harris, Ortiz and Metro-Act of Rochester, Inc. individually and/or collectively have been damaged and/or

COMPLAINT

will in the future be damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00)

TWENTY-THIRD: That by reason of all of the afore referred to, the afore-stated ordinance, scheme, acts, actions and activities violate the Ninth Amendment in that this ordinance, scheme, acts, actions and activities are calculated to deny and in fact do deny and/or disparage, certain inalienable rights retained by citizens of the United States, including the plaintiffs Vinkey, Reichert, Warth, Harris, Ortiz, Broadnax, Reyes, Sinkler and Metro-Act of Rochester, Inc., and this ordinance, scheme, acts, actions and activities violate the Fourteenth Amendment to the United States Constitution and the plaintiffs' rights thereunder by denying plaintiffs Vinkey, Reichert, Warth,

COMPLAINT

Harris, Ortiz, Broadnax, Reyes, Sinkler and Metro-Act of Rochester, Inc. due process of law and the equal protection thereof, and this ordinance, scheme, acts, actions and activities do further violate the First Amendment rights of the plaintiffs Vinkey, Reichert, Warth, Harris, Ortiz, Broadnax, Reyes, Sinkler and Metro-Act of Rochester, Inc., in that they are denied the right to peaceably assemble for the purpose of living within the geographical limits of the said Town of Penfield.

TWENTY-FOURTH: That there is no legal basis under the Constitution and laws of the United States for the ordinance afore referred to and the actions, activities plan and scheme afore related.

TWENTY-FIFTH: That by reason of all of the acts, actions and/or activities

COMPLAINT

on the part of the defendants and their predecessors in office hereinbefore and hereinafter set forth, the plaintiffs and others similarly situated have paid, are now paying, and will in the future be forced to pay greater taxes and/or sums of money and/or exactions and/or taxes based upon a higher rate of real estate assessment, than do other persons owning property and/or living in the metropolitan Rochester area, and the plaintiffs and others similarly situated have therefore been subjected to unlike and/or discriminatory taxes and/or exactions all as are in violation of their rights under 42 USC 1981.

WHEREFORE, plaintiffs ask this Court for a judgment and/or order:

A. Declaring the zoning ordinance of the Town of Penfield, including the

COMPLAINT

provisions relating to the zoning map and/or master plan, null and void as contrary to the statutory and constitutional law of the United States of America.

B. Enjoining the defendants and their successors in office from administering and/or enforcing said zoning act.

C. Compelling the defendants to enact and/or administer a non-exclusionary zoning ordinance repairing and/or alleviating the conditions and effects afore complained of.

D. Granting the plaintiffs, jointly and/or severally, damages actual and/or exemplary, in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00).

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COMPLAINT

E. Assessing the damages incurred by the members of plaintiffs' class and granting money judgment for said sum.

F. Granting the plaintiffs such other and further relief as to the Court may seem just and proper.

/s/ Frank A. Aloï
ROBINSON, WILLIAMS,
ROBINSON AND ANGELOFF
Attorneys for Plaintiffs
Office and Post Office
Address
700 Reynolds Arcade
Building
Rochester, New York
14614
Tel. 716-454-1990

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EXHIBIT A

Chapter 29

ZONING

- § 29-1. Title.
- § 29-2. Purpose.
- § 29-3. Districts.
- § 29-4. Zoning Map.
- § 29-5. Interpretation.
- § 29-6. Definitions.
- § 29-7. Non-Conforming use.
- § 29-8. Residential "AA" District.
- § 29-9. Residential "A" District.
- § 29-10. Front Yards — Residential Districts.
- § 29-11. Apartment House or Multiple Dwelling District.
 - § 29-11.1. Town House Dwelling District.
 - § 29-11.20. Planned Unit Development District.
 - § 29-11.21. General requirements for Planned Unit Developments.
 - § 29-11.22. Planned Unit Development application procedure and zoning-approval process.
 - § 29-11.23. Site plan approval process for Planned Unit Developments.
 - § 29-11.24. Other regulations applicable to Planned Unit Developments.
 - § 29-11.25. Financial responsibility for construction in Planned Unit Developments.
 - § 29-11.30. Multiple dwellings for the elderly.

APPELLATE DIV.
LIBRARY
JAN 20 1972
ROCHESTER, N. Y.

EXHIBIT A

- § 29-12. Commercial districts.
- § 29-13. Trailer Park District.
- § 29-14. Industrial District.
- § 29-15. Provisions applicable to all districts.
- § 29-16. Signs.
- § 29-17. Filling of land and dumping of waste material.
- § 29-18. Motor vehicle supply station.
- § 29-19. Utility or communication installations.
- § 29-20. Recreational areas.
 - § 29-20.1. Swimming pools.
 - § 29-20.2. Golf courses.
- § 29-21. Administration.
- § 29-22. Building permits.
- § 29-23. Certificate of occupancy.
- § 29-24. Zoning Board of Appeals.
- § 29-25. Appeal from decisions of Zoning Board of Appeals.
- § 29-26. Amendments.
- § 29-27. Penalties.
- § 29-28. Repeal of existing ordinances.
- § 29-29. Effective date.

[HISTORY: Adopted, Penfield Town Board, 5-5-62; effective 5-19-62 as amendment of ordinance originally adopted 4-23-30 and amended 7-11-38 and 10-6-41. Subsequent amendments noted where applicable.]

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§ 29-1. Title.

This ordinance shall be known as the "Amended Zoning Ordinance of the Town of Penfield."

§ 29-2. Purpose.

The purpose of this ordinance is to promote the health, safety, morals and general welfare of the Town of Penfield, by regulating and restricting the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, court, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, all in accordance with a well considered plan for the development of said Town so as to conserve and stabilize land values and to protect the existing properties during the course of such development, and also to establish penalties for the violation of such regulations.

§ 29-3. Districts.

To carry out the foregoing purpose, the Town of Penfield is hereby divided into districts which shall be designated as follows:

Residential "AA"

Residential "A"

Apartment House or Multiple Dwelling District

Commerical

Trailer Park

Industrial

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§ 29-4. Zoning Map.

The location and boundaries of the foregoing districts are hereby established as delineated on the Amended Zoning Map filed with the Town Clerk of the Town of Penfield and in the description of the boundaries thereof, filed therewith, and which said map is hereby made a part of this ordinance and declared to be the "Official Zoning Map of the Town of Penfield."

§ 29-5. Interpretation.

In this ordinance, if not inconsistent with the context, the singular may be taken for the plural and the plural for the singular, except as to the number of permitted structures; person may include more than one, an association, co-partnership or a corporation. If any section, paragraph, subdivision or provision of this ordinance shall be held invalid, such invalidity shall apply only to the section, paragraph, subdivision or provision adjudged invalid, and the rest of this ordinance shall remain valid and effective.

§ 29-6. Definitions.

Except where specifically defined herein, all words used in this ordinance shall carry their customary meanings. Words used in the present tense include the future and the plural includes the singular; the word "lot" includes the word "plat" or "parcel"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied"

1. **ACCESSORY STRUCTURE OR USE.** A subordinate use or structure customarily incident to and located upon the same lot occupied by the main use or structure.

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2. **APARTMENT HOUSE OR MULTIPLE DWELLING.** A structure arranged or designed to be occupied by two or more families, two or more individuals or two or more groups of individuals, living independently of each other, exclusive of row dwellings. [Amended 1-4-65]
3. **BILLBOARD.** Any outdoor signs, advertising medium, structure or device which advertises, directs, or calls attention to any business, article, substance, service, or any other thing which is painted, printed, pasted, posted or affixed to any building, billboard, wall, fence, railing, natural object or structure of any kind on real property or upon the ground itself.
4. **BOARDING HOUSE.** A structure in which more than two persons are supplied with meals and/or lodging for hire.
5. **BUILDING LINES.** The lines which delineate the area on which a structure may be legally erected.
6. **BUILDING OFFICIAL.** The official designated by the Town Board of the Town of Penfield pursuant to the provisions of the "Building Code Administration and Lot Control Ordinance" to administer the provisions of that ordinance and of this zoning ordinance.
7. **CLUB.** Membership, social or recreational building, but excluding one, the chief activity of which is a service customarily carried on as a business.
8. **CORNER LOT.** A lot or portion of a lot at the junction of and abutting on two intersecting streets.
9. **CUSTOMARY AGRICULTURAL OPERATIONS.** The use of a parcel of land of five acres or more for gain in the raising of agricultural products, livestock, poultry, and dairy products. It includes necessary farm structures within the prescribed limitations and the storage of necessary equipment. It includes also the use of a parcel of land of less than five acres except that on such parcels, the raising of fur-bearing animals, livery or boarding stables, dog kennels and the raising of livestock and poultry for sale and slaughter is excluded and therefore prohibited.

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10. **DWELLINGS, ROW.** A building consisting of a series of one-family sections having a common wall between adjacent sections.
11. **FAMILY.** Any number of individuals living together as a single housekeeping unit and preparing their food as one unit.
12. **FRONT.** The front of a lot shall be the line of the lot corresponding with or approximately parallel with and nearest to the street on which the lot faces as determined by the Town Assessment roll.
13. **FRONT YARD.** The required open space between the street or highway line and the front wall of the main structure including any attachments thereto with the exception only of cornices or entrance steps.
14. **GARAGE ATTACHED.** A private garage which is attached to or forms an integral part of the main structure on the lot.
15. **GARAGE, PRIVATE.** A structure used for the storage of motor vehicles owned or used by the occupants on the lot upon which it is erected for a purpose accessory to the legal use of the lot and with no provision for repairing or servicing such vehicles for profit.
16. **GARAGE, PUBLIC.** Any structure, not a private garage, designed or used for the repair or storage of motor vehicles.
17. **GRADE.** The average level of the finished surface of the ground adjacent to the exterior walls of the building.
18. **HABITABLE AREA.** That area of a building designed to be occupied by one or more persons for year-round living, sleeping, eating or cooking, exclusive of basements, garages and unheated breezeways or porches.
19. **HEIGHT-BUILDING.** The vertical distance measured from grade level to the highest level of a flat roof or to the

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average height of a pitched, gabled, hip or gambrel roof, excluding bulkheads, penthouses, providing they are less than 12 feet in height and do not occupy more than 10% of the area of the roof upon which they are located.

20. **LODGING HOUSE.** A structure in which more than two persons are lodged for hire.
21. **LOT.** A parcel of land which is or may be occupied by a structure or use with accessories thereto, including the open spaces thereon but excluding any part thereof within the bounds of a highway.
22. **NON-CONFORMING STRUCTURE OR USE.** A structure or use of land legally existing at the time of the enactment of this ordinance which does not conform with the regulations set forth herein for the district in which it is situated.
23. **PROFESSIONAL OFFICE.** The office of a doctor, lawyer, dentist and person performing any activity or service licensed pursuant to the provisions of the Education Law of the State of New York.
24. **REAR YARD.** The required open unoccupied space, measured perpendicularly from the rear lot line to the nearest part of the main or accessory structure on the premises.
25. **RESTAURANT.** A permanent structure used for the serving of meals with table or counter and chair facilities, exclusive of hot dog stands or soft drink establishments.
26. **SIDE YARD.** The open unoccupied space measured perpendicularly from the side lot lines to the nearest part of the main or accessory structure on the premises.

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27. **STREET OR HIGHWAY LINE.** The line which is the joint boundary line between a lot and a street or highway right-of-way.

28. **STORY.** The portion of a building which is between one floor level and the next higher floor level or the roof. If a Mezzanine floor area exceeds one-third ($\frac{1}{3}$) of the area of the floor immediately below, it shall be deemed to be a story.

A basement shall be deemed to be a story when its ceiling is six (6) or more feet above the finished grade. A cellar shall not be deemed to be a story if unfinished and without human occupancy.

29. **STORIES, NUMBER OF**

(a) **ONE-STORY BUILDING,** may consist of a basement and one floor providing the basement ceiling is less than six (6) feet above grade.

(b) **TWO-STORY BUILDING,** may consist of a basement, first and second floor providing the basement is less than six (6) feet above grade.

(c) **ONE-AND-ONE-HALF STORY BUILDING,** may consist of a basement, first and second floor, providing the distance from the second floor to the mean of the roof does not exceed seven (7) feet and the basement ceiling is less than six (6) feet above grade.

30. **STRUCTURALLY ALTERED.** Any alteration whereby a structure is adapted to another or different use and to any alteration or repair which would violate any of the regulations herein.

31. **STRUCTURE.** A building or anything constructed or erected which requires temporary or permanent location on or the support of the soil, or which is attached to any structure, exclusive, however, of portable or self-propelled equipment.
32. **USE.** The purpose for which any structure or any part thereof and the premises or any part thereof is occupied or intended to be occupied, or if either is unoccupied, the purpose for which they may be occupied.
33. **PRIVATE SWIMMING POOL.** Any artificial pool of water constructed or maintained outdoors for the purpose of providing swimming or bath facilities for a private family and invited guests, in excess of two hundred (200) square feet of horizontal area or over twenty (20) inches in depth, shall constitute a private swimming pool. [Added 9-6-66, amended 9-5-67]
34. **GROUP SWIMMING POOL.** Any artificial pool of water constructed outdoors or indoors for the purpose of providing swimming or bathing facilities for more than one private family and invited guests, shall constitute a group swimming pool. [Added 9-6-66]
35. **MOTOR VEHICLE SUPPLY STATION.** A structure designated or used:
- (1) For the sale to the public of auto accessories and tires, oil, gasoline and other petroleum products customarily used in the operation of an automobile;
 - (2) For the making of minor repairs, tune-ups, lubrication, and tire changes of automotive vehicles.

The term does not include the making of major engine repairs, body repairs, painting or dismantling of vehicles or storage of disabled vehicles. [Added 7-5-67]

[The next page is 2000]

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§ 29-7. Non-Conforming use.

Any lawful use existing at the time of the passage of this Ordinance may be continued though not conforming to the regulations of the district in which it is maintained subject to the following regulations:

- a. Structural alterations shall not exceed 50% of assessed valuation.
- b. Enlargement of the structure is prohibited without change to a conforming use.
- c. Such use may only be continued on the premises and in the structure where it exists at the time of the adoption hereof.
- d. Any structure destroyed by fire or other calamity may be restored within twelve (12) months of such destruction and the former use continued provided that the reconstruction shall not exceed the dimensions of the destroyed property.
- e. No change may be made in the non-conforming use. The right to continue such non-conforming use shall immediately cease upon any such change unless such change has been approved by the Zoning Board of Appeals.
- f. The failure to exercise any non-conforming use for a period of one year or more shall terminate such non-conforming use of the structure or premises, and thereafter such structure or premises shall be used only in conformity with the provisions of this ordinance.
- g. At any time after the effective date of this ordinance, upon the written request of the user of any structure or premises, or at the instance of the Building Official, a survey of any existing legal use shall be made by said Official. Such survey shall thereafter be filed with the Zoning Board of Appeals who shall thereafter recommend to the Town Board the issuance by it of a Certificate of Existing Use

which shall clearly delineate the premises and structure referred to and shall specify the nature and extent of such existing use. Such Certificate shall be prepared in triplicate, one copy of which shall be filed with the Town Clerk; one copy furnished the Zoning Board of Appeals and one copy served personally upon the owner or user. If such user be not satisfied with the certificate as issued, he may, within thirty (30) days of the receipt thereof, request a review of such decision by the Town Board who shall hear and consider said review. Following such consideration, said Town Board may affirm, modify, enlarge or void such certificate and shall thereupon cause to be issued a final Certificate of Existing Use in conformity with its decision. If no such review is requested by the user or if no proceedings are taken as provided by law to review the decision of the Town Board, the Certificate, as the case may be, shall be and become binding and conclusive upon the user or upon any person or persons claiming in his right as to the application of any provision of this Ordinance or in any action or proceeding instituted hereunder, upon the expiration of thirty (30) days from the receipt of such Certificate or amended Certificate by such user. The fee for the issuance of any Certificate when issued at the request of the user of any structure or premises shall be twenty-five dollars (\$25.00).

§ 29-8. Residential AA District.

a. **USES.** No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Residential "AA" District except for one or more of the following purposes:

1. One family dwelling.
2. Churches and similar places of worship.
3. Elementary, high schools, colleges, universities, public parks and public playgrounds.

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4. Boarders and lodgers not to exceed two (2) in a one (1) family dwelling.
5. Customary agricultural operations, as the same are herein defined, but excluding within one hundred (100) feet of any lot line, any housing of poultry or stabling of livestock or storage of manure or other odor or dust producing material.
6. Public library.
7. Municipal buildings or structures (including Town, school and improvement or fire district).

b. **ACCESSORY USES.** The following accessory uses are permitted in a Residential "AA" District when located on the same lot with a permitted principal use.

1. Private garage, either attached or unattached to the principal structure.
2. Professional offices (when part of the personal residence of and used solely by professional persons), and customary home occupations conducted by the resident only and conducted in the principle building only. There shall be no evidence of such use other than an announcement or sign not to exceed two (2) square feet in area. Exterior alterations to the residence or principle building which change the essential character thereof for such use are prohibited.

c. **AREA OF STRUCTURES.** No one story residential structure shall be hereafter erected unless it shall contain an habitable area, exclusive of open porch or attached garage, of not less than 1,300 square feet, no one and one half story residence or split level residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,400 square feet; and no two story residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,500 square feet.

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d. **MINIMUM SIZE LOTS.** No structure shall be erected on a lot other than a corner lot, unless such lot shall have a width of at least one hundred (100) feet at the building line, an average depth of at least two hundred (200) feet and a total ground area of not less than twenty thousand (20,000) square feet. Corner lots shall have a width of at least one hundred twenty-five (125) feet at the building line, an average depth of at least two hundred (200) feet and a total ground area of not less than twenty five thousand (25,000) square feet. This provision shall not apply to lots appearing on any subdivision plat heretofore approved or of any existing lot of smaller size. In no case, however, shall the size of the lot be smaller than the area necessary, where needed, for adequate and sufficient individual sewage disposal and/or the safe location of a potable water well, where needed.

e. **YARDS.** No church, school or other permitted structure designed for public assembly or open to the public, hereafter erected, structurally altered, reconstructed or moved in a Residential "AA" District shall be nearer to any street line than 100 feet, whether front or side and no such structure shall be nearer than 100 feet to any interior or rear lot line. Every other permitted structure hereafter erected, structurally altered, reconstructed or moved in such District shall be no nearer to any street line, whether front or side, than is provided under the provisions of § 29-10 of this Ordinance and no such structure shall be nearer than ten (10) feet to any interior side or rear lot line. The purpose of this provision is to establish suitable side and rear yards.

§ 29.9 Residential "A" District.

a. **USES.** No structure shall be erected, structurally altered, reconstructed or moved and no structure, land, or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Residential "A" District except for one or more of the following purposes:

1. All uses permitted in a Residential "AA" District, subject to all the use restrictions specified therefore in the provisions relating to said district.

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2. Lodging or boarding houses, where no more than four persons are supplied with meals and/or lodging for hire. [Amended 1-4-65]*

b. ACCESSORY USES. The following accessory uses are permitted in a Residential "A" District when located on the same lot with a permitted principle use.

1. Private garage, either attached or unattached to the principle structure.
2. Professional offices (when part of the personal residence of and used solely by professional persons), and customary home occupations conducted by the resident only and conducted in the principle building only. There shall be no evidence of such use other than an announcement or sign not to exceed two (2) square feet in area. Exterior alterations to the residence or principle building which change the essential character thereof for such use are prohibited.

c. AREA OF STRUCTURES. No one story resident structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,000 square feet; no story and a half or split level residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,200 square feet; and no two story residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,300 square feet.** [Amended 1-4-65]

* Editor's Note: Amendment repealed 2. and renumbered this subsection from 2.
** Editor's Note: Eliminated last sentence which referred to size requirements.

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d. **MINIMUM SIZE LOTS.** No structure shall be erected on other than a corner lot, unless such lot shall have a width of at least one hundred (100) feet at the building line, an average depth of at least one hundred and fifty (150) feet and a total ground area of not less than fifteen thousand (15,000) square feet. Corner lots shall have a width of at least one hundred twenty-five (125) feet at the building line, an average depth of at least one hundred and fifty (150) feet and a total ground area of not less than eighteen thousand seven hundred and fifty (18,750) square feet. This provision shall not apply to lots appearing on any subdivision plat heretofore approved or of any legally existing lot of smaller size. In no case, however, shall the size of the lot be smaller than the area necessary for adequate and sufficient individual sewage disposal, and the safe location of a potable water well, where needed.

e. **YARDS.** No structure hereafter erected, structurally altered, reconstructed or moved in a Residential "A" District, shall be nearer to any street line, whether front or side, or to any interior or rear lot line than is provided under the provisions of § 29-8, paragraph e., of this ordinance.

§ 29-10. Front yards — Residential Districts.

For the purpose of establishing suitable front yards, no structure hereafter erected, structurally altered, reconstructed or moved in any Residential District, shall be nearer to the center line of any highway than herein provided:

1. 108 feet from the center line of the highway of the following streets and highways:

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Atlantic Avenue
Browneroft Boulevard
Carter Road
Fairport-Nine Mile Point Road
Five Mile Line Road
Penfield Road
Plunk Road
Salt Road

2. [Added 8-3-64]. Ninety (90) feet from the center line of the highway of the following streets and highways:

Baird Road, south of Penfield Road
Bay Road
Creek Street
Huber Road
Harris Road
Jackson Road
State Road
Watson Road
Whalen Road

3. [Added 8-3-64]. Eighty-three (83) feet from the center line of the highway of any street or highway not hereinabove specifically set forth.

4. [Added 8-3-64]. Nothing in the foregoing shall prohibit the construction of an addition to a lawfully existing residence, provided that such addition shall not be constructed nearer the center line of the highway than the existing residence, and provided that such addition shall not be in violation of any side- or rear-line setback requirement imposed by this ordinance.

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§ 29-11. Apartment House or Multiple Dwelling District.

A. USES. No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any district designated on the Official Amended Zoning Map of the Town of Penfield as an Apartment-House or Multiple-Dwelling District, except for apartment houses and multiple dwellings as defined in § 29-6, Paragraph 2 of this ordinance and such accessory structures as are customarily incident to and used in connection with such main structure.

B. AREA OF STRUCTURES: No apartment house or multiple dwelling, as herein defined, shall be hereafter erected, or existing structure altered or reconstructed to become such, unless each unit thereof shall contain the following minimum habitable area:

Studio apartment (no bedroom)	500 square feet
One-bedroom apartment	600 square feet
Two-bedroom apartment	800 square feet
Three-bedroom apartment	950 square feet

C. MINIMUM LOT SIZE: [Amended 9-7-65] Every lot in said district shall contain a minimum of three thousand five hundred (3,500) square feet for each apartment living unit to be erected thereon, shall be of such size that the horizontal area of any structure or group of structures to be erected, or as it or they shall exist after alteration or remodeling, shall not occupy more than twenty-five per centum (25%) of the area of the lot. The horizontal area shall be the area determined by projecting the extreme lines of the structure vertically to a horizontal plane. The horizontal area of a group of structures located on the same lot shall be the combined areas of all buildings comprising the group.

D. YARDS: No structure hereafter erected, structurally altered, reconstructed or moved in said district shall be nearer

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to any street line than the height of the building or buildings, and in no event nearer than eighty (80) feet. No structure not in excess of three (3) stories in height shall be nearer than twenty (20) feet to any interior side or rear lot line. No structure from four (4) to six (6) stories in height, inclusive, shall be nearer than thirty (30) feet to any interior side or rear lot line, and no structure seven (7) stories or more in height shall be nearer than forty (40) feet to any interior side or rear lot line. Where the rear or side lot line abuts any lot or land area in a residential district, such structure shall not be located closer than one hundred (100) feet from the line adjoining said residential district, and a fifty-foot strip immediately adjoining said residential district shall be maintained as a landscape buffer area. [Amended 8-3-64]

E. Off-street parking. All premises occupied by apartment houses or multiple dwellings in this district shall provide and maintain at the site of such structures and completely off the limit of any street or highway an improved and usable parking area of sufficient size to provide one and one-half (1½) parking spaces for each apartment or living unit to be contained in such structure, of which requirement one (1) such parking space per apartment or living unit shall be within an enclosed garage. All unenclosed parking areas shall be screened from adjacent properties.

§ 29-11.1. Townhouse Dwelling District. [Added 6-2-69]

A. Definition. Townhouses are defined as buildings or dwelling groups containing individual single-family units permitting separation of such family groups by a party wall. [Amended 8-7-72. effective 8-28-72]

B. Uses. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Amended Zoning Map of the Town of Penfield as a Townhouse Dwelling District, except for townhouses as herein defined and such accessory structures as are herein enumerated.

C. Townhouses. No townhouse or clusters of townhouses as herein defined shall be hereafter erected or existing structures altered or reconstructed to become such except in accordance with the following criteria:

C. TOWN HOUSES. No town house or clusters of town houses as herein defined shall be hereafter erected or existing structures altered or reconstructed to become such except in accordance with the following criteria:

1. **DENSITY LIMITATION.** The overall density shall not exceed nine (9) dwelling units per acre.

2. **AREA REQUIREMENTS.**

a) **Lot size.** No dwelling shall be erected on a parcel of land that has less than twenty (20) feet frontage.

b) **Front yards (setbacks).** No building or part thereof shall be erected or altered in this district that is nearer the private street center line upon which it fronts than forty-five (45) feet.

No building or part thereof shall be erected or altered in this district that is nearer than sixty (60) feet to the center line of a public or dedicated road upon which it fronts.

If any building erected in this district faces a public or dedicated road the opposite side of which is either AA or A Residential District, the front yard setback shall be that which is required by the Residential District.

e) **Side yard setbacks.** A side yard setback of thirty-five (35) feet is required from the center line of a private road on each corner lot; sixty (60) feet from the center line of a public road or dedicated road. No side yards shall be required of interior lots having a common wall. A side yard setback of at least equal to the height of the highest adjacent building and no less than twenty (20) feet shall be required between building groups.

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- d) Rear setback. A setback of at least thirty (30) feet from any other structure or any external boundary line is required on each lot.
3. HEIGHT LIMITATIONS. No building shall exceed two and one-half (2½) stories nor shall any building exceed thirty-five (35) feet in height, except for permitted accessory structures as approved by the Planning Board as hereinafter provided.
4. PARKING REQUIREMENTS. A minimum of two (2) parking spaces shall be provided for each dwelling unit, one (1) of which shall be completely enclosed and covered.
5. SPECIFIC REQUIREMENTS.
- a) Unit size. No town-house-dwelling unit shall be constructed, altered or reconstructed unless it shall contain a minimum of one thousand two hundred (1,200) square feet of habitable area and be not less than twenty (20) feet in width.
 - b) There shall be no more than eight (8) individual town-house units within each building or dwelling group.
 - c) The main structures and all accessory buildings shall not occupy more than twenty-seven percent (27%) of the gross acreage as shown on site plan.
6. PERMITTED ACCESSORY STRUCTURES AND USES. The following accessory uses and structures are permitted subject to the approval of the Planning Board of the site plan and as hereinafter provided:
- a) Private garages.
 - b) Group swimming pools, subject to provisions of § 29-20.1 of this ordinance, except that any pool proposed as an integral part of a town-house pro-

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ject may be approved and a permit issued by the Planning Board as a part of its site-plan approval.

c) Parks, playgrounds and play areas to include structural facilities incidental to recreational areas, such as rest rooms, bathhouses and clubhouses, which facilities are limited to those that are publicly owned or operated not for profit for the benefit of the town-house owners of the district or a part thereof.

d) Maintenance buildings.

7. **SITE-PLAN REQUIREMENTS.** The site plan submitted for review, pursuant to § 29-15, Paragraph 11, of this ordinance, shall include the following items:

a) Topography, including existing and proposed contours.

b) Proposed street system for both public and private streets.

c) Proposed reservation for parks, playgrounds, recreational areas and other open spaces.

d) Off-street parking spaces.

e) Types of dwellings and portions of the area proposed therefor.

f) Locations of all structures and parking spaces, including number of parking spaces.

g) A tabulation of the total number of acres in the proposed project and a percentage thereof designated for the proposed dwelling types, and total ground coverage.

h) A tabulation of overall density per gross acres.

i) Preliminary plans and elevations of the several dwelling types.

- j) Location and size of driveways.
- k) Type and location, size and number of all plantings.
- l) All grassed areas.
- m) All sidewalk areas.
- n) Type and size of fences or hedges.
- o) Design of the proposed buildings including types of finishes on exteriors.
- p) Provisions for disposal of rubbish.
- q) Location of all buildings on site to include distance from lot lines.
- r) Location and sizes of signs, if any.
- s) Exterior lighting, if any.

§ 29-11.20. Planned Unit Development District.
[Added 6-1-70; effective 6-21-70]

A. Intent. It is the intent of the Planned Unit Development (PUD) Article (§§ 29-11.20 through 29-11.25) to provide flexible land use and design regulations through the use of performance criteria so that small- to large-scale neighborhoods or portions thereof may be developed within the town that incorporate a variety of residential types and nonresidential uses, and contain both individual building sites and common property which are planned and developed as a unit. Such a planned unit is to be designed and organized so as to be capable of satisfactory use and operation as a separate entity without necessarily needing the participation of other building sites or other common property in order to function as a neighborhood. This Article specifically encourages inno-

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vations in residential development so that the growing demands for housing at all economic levels may be met by greater variety in type, design and siting of dwellings and by the conservation and more efficient use of land in such developments.

This Article recognizes that the standard zoning function (use and bulk) and the subdivision function (platting and design) are appropriate for the regulation of land use in areas or neighborhoods that are already substantially developed, but that PUD techniques for land development may be more appropriate in areas of the town that are not already substantially developed. This Article recognizes that a rigid set of space requirements along with bulk and use specifications would frustrate the application of the PUD concept. Thus, where PUD techniques are deemed appropriate through the rezoning of land to a PUD District by the Town Board, the set of use and dimensional specifications elsewhere in this ordinance is herein replaced by approval process in which an approved plan becomes the basis for continuing land-use controls. Consequently, where the provisions of §§ 29-3, 29-8, 29-9, 29-10, 29-11, 29-11.1, 29-12, 29-15, 29-20 and 29-20.1 of the amended Zoning Ordinance are inconsistent with the provisions of this section, the provisions of this section shall prevail.

B. Objectives. In order to carry out the intent of this Article, a PUD shall achieve the following objectives:

- (1) A maximum choice in the types of environment, occupancy tenure (e.g., cooperatives, individual ownership, condominium, leasing), types of housing, lot sizes and community facilities available to existing and potential town residents at all economic levels.
- (2) More usable open space and recreation areas.
- (3) More convenience in location of accessory commercial and service areas.

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- (4) The preservation of trees, outstanding natural topography and geologic features and prevention of soil erosion.
- (5) A creative use of land and related physical development which allows an orderly transition of land from rural to urban uses.
- (6) An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs.
- (7) A development pattern in harmony with the objectives of the Master Plan.
- (8) A more desirable environment than would be possible through the strict application of other Articles of this ordinance.

§ 29-11.21. General requirements for Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

- A. Minimum area. Under normal circumstances, the minimum area required to qualify for a PUD District shall be one hundred (100) contiguous acres of land. Where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this Article, the Planning Board may consider projects with less acreage.
- B. Ownership. The tract of land for a project may be owned, leased or controlled either by a single person or corporation, or by a group of individuals or corporations. An application must be filed by the owner or jointly by owners of all property included in a project. In the case of multiple ownership, the Approved Plan shall be binding on all owners.
- C. Location of PUD District. The PUD District shall be applicable to any area of the town where the applicant can

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demonstrate that the characteristics of his holdings will meet the objectives of this Article.

D. Permitted uses. All uses within an area designated as a PUD District are determined by the provisions of this section and the approved plan of the project concerned.

(1) Residential uses. Residences may be of any variety of types. In developing a balanced community, the use of a variety of housing types shall be deemed most in keeping with this Article. To insure a variety of types of residences, to prevent overcrowding, to encourage adequate light and air space for fire protection, the following criteria shall be met:

(a) A minimum of ten percent (10%) by acreage shall contain single-family detached dwellings having the following minimum square feet of habitable area exclusive of open porch or attached garage:

1 story	1,300 square feet
1½ story	1,400 square feet
2 story	1,500 square feet

Side and rear setbacks shall conform to § 29-8 of this ordinance.

Average density shall not exceed two (2) dwelling units per acre.

(b) A minimum of fourteen percent (14%) by acreage shall contain single-family detached dwellings having the following square feet of habitable area exclusive of open porch or attached garage:

1 story	1,000 - 1,300 square feet
1½ story	1,200 - 1,400 square feet
2 story	1,300 - 1,500 square feet

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Side and rear setbacks shall conform to § 29-8 of this ordinance. Average density shall not exceed three (3) dwelling units per acre.

- (c) A minimum of seven percent (7%) by acreage shall contain single-family detached or double homes for sale.

Single-family detached homes shall have the following square feet of habitable area exclusive of open porch or attached garage:

1 story	800 - 900 square feet
1½ story	1,000 - 1,100 square feet
2 story	1,100 - 1,200 square feet

Double homes for sale shall have a minimum habitable area of nine hundred (900) square feet per dwelling unit.

Side and rear setbacks under this subsection shall conform to § 29-8 of this ordinance. Average density shall not exceed four (4) dwelling units per acre.

- (d) A maximum of thirty percent (30%) by acreage may contain single-family detached dwellings having the following square feet of habitable area exclusive of open porch or attached garage:

1 story	850 - 1,000 square feet
1½ story	1,050 - 1,200 square feet
2 story	1,150 - 1,300 square feet

No structure hereon shall be nearer than eight (8) feet to any interior side or rear lot line. Average density shall not exceed three (3) dwelling units per acre.

- (e) A maximum of twenty-seven percent (27%) by acreage may contain multiple dwellings.

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The habitable area of dwelling units shall conform to the requirements of Paragraph B of § 29-11 of this ordinance.

The horizontal area of all structures including garages shall not occupy more than twenty percent (20%) of the land area allocated to the multiple dwelling portion of the PUD.

Each dwelling unit shall have two (2) adequate parking spaces, one (1) of which shall be within an enclosed garage.

Average density shall not exceed nine (9) dwelling units per acre for town houses and twelve (12) dwelling units per acre for apartments.

The setback for structures from any street shall be as prescribed in Subparagraph (f) herein.

There shall be a distance between multiple-dwelling buildings not less than the height of the tallest building.

(f) Front setbacks shall be based on the function of the streets. For state and county highways or major town roads, no building unit shall be closer than one hundred (100) feet from the highway line; for internal subdivision streets that function as collectors and feeders to major roads, no building unit shall be closer than fifty (50) feet from the street line; and on purely internal streets, no building unit shall be closer than thirty (30) feet from the street line.

(g) In all residential areas, the acreage allocated to the various types of residential uses shall include all streets and highways therein, including one-half ($\frac{1}{2}$) the width of any abutting street or highway.

- (2) **Accessory commercial and service uses.** For those developments in excess of one hundred (100) acres, commercial and service uses, not to exceed two percent (2%) of the total acreage, may be permitted where such uses are sited primarily to serve the residents of the PUD.
- (3) **Customary accessory or associated uses,** such as private garages, storage spaces, recreational and community activities, churches and schools, shall also be permitted or required as appropriate to the PUD.
- (4) **A minimum of ten percent (10%) by acreage shall be set aside for recreational use.** Such land must be usable for recreation, such as, but not limited to: picnic areas, playgrounds, hiking trails, ball parks and community centers, and shall be in addition to other open space consisting of areas unsuitable for any use and which by its nature must be left in its natural state for conservation purposes.

E. Common property in the PUD. Common property in a PUD is a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. When common property exists, the ownership of such common property may be either public or private. When common property exists in private ownership, satisfactory arrangements must be made for the improvement, operation and maintenance of such common property and facilities, including private streets, drives, service and parking areas and recreational and open space areas.

§ 29-11.22. Planned Unit Development application procedure and zoning-approval process.

[Added 6-1-70; effective 6-21-70]

- A. General.** Whenever any PUD is proposed, before any permit for the erection of a permanent building in such PUD

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shall be granted, and before any subdivision plat of any party thereof may be filed in the office of the Monroe County Clerk, the developer or his authorized agent shall apply for and secure approval of such PUD in accordance with the following procedures:

B. Application for sketch plan approval.

(1) In order to allow the Planning Board and the developer to reach an understanding on basic design requirements prior to detailed design investment, the developer shall submit a sketch plan of his proposal to the Planning Board. The sketch plan shall be approximately to scale, though it need not be to the precision of a finished engineering drawing: and it shall clearly show the following information:

- (a) The location of the various uses and their areas in acres.
- (b) The general outlines of the interior roadway system and all existing rights-of-way and easements, whether public or private.
- (c) Delineation of the various residential areas indicating for each such area its general extent, size and composition in terms of total number of dwelling units, approximate percentage allocation by dwelling unit type (i.e., single-family detached, duplex, town house, garden apartments, high-rise) and general description of the intended market structure (i.e., luxury, middle-income, moderate-income, elderly units, family units, etc.), plus a calculation of the residential density in dwelling units per gross acre (total area including interior roadways) for each such area.
- (d) The interior open-space system.
- (e) The overall drainage system.

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- (f) If grades exceed three percent (3%), or portions of the site have a moderate to high susceptibility to erosion, or a moderate to high susceptibility to flooding and ponding, a topographic map showing contour intervals of not more than five (5) feet of elevation shall be provided, along with an overlay outlining the above susceptible soil areas, if any.
 - (g) Principal ties to the community at large with respect to transportation, water supply and sewage disposal.
 - (h) General description of the provision of other community facilities, such as schools, fire protection services and cultural facilities, if any, and some indication of how these needs are proposed to be accommodated.
 - (i) A location map showing uses and ownership of abutting lands.
- (2) In addition, the following documentation shall accompany the sketch plan:
- (a) Evidence of how the developer's particular mix of land uses meets existing community demands.
 - (b) Evidence that the proposal is compatible with the goals of the official Master Plan.
 - (c) General statement as to how common open space is to be owned and maintained.
 - (d) If the development is to be staged, a general indication of how the staging is to proceed. Whether or not the development is to be staged, the sketch plan of this section shall show the intended total project.

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- (e) Evidence of any sort in the applicant's own behalf to demonstrate his competence to carry out the plan and his awareness of the scope of such a project, both physical and financial.

- (3) The Planning Board shall review the sketch plan and its related documents, and shall render either a favorable report to the Town Board or an unfavorable report to the applicant. The Planning Board may call upon the County Planning Council, the Soil Conservation Service, and any other public or private consultants that they feel are necessary to provide a sound review of the proposal.
 - (a) A favorable report shall include a recommendation to the Town Board that a public hearing be held for the purpose of considering PUD districting. It shall be based on the following findings which shall be included as part of the report:
 - [1] The proposal conforms to the Master Plan.
 - [2] The proposal meets the intent and objectives of PUD as expressed in § 29-11.20.
 - [3] The proposal meets all the general requirements of § 29-11.21.
 - [4] The proposal is conceptually sound in that it meets a community need and it conforms to accepted design principles in the proposed functional roadway system, land use configuration, open-space system, drainage system and scale of the elements, both absolutely and to one another.
 - [5] There are adequate services and utilities available or proposed to be made available in the construction of the development.

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(b) An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the applicant what might be necessary in order to receive a favorable report. The applicant may, within ten (10) days after receiving an unfavorable report, file an application for PUD districting with the Town Clerk. The Town Board may then determine on its own initiative whether or not it wishes to call a public hearing.

(4) The Chairman of the Planning Board shall certify when all of necessary application material has been presented, and the Planning Board shall submit its report within sixty (60) days of such certification. If no report has been rendered after sixty (60) days, the applicant may proceed as if a favorable report were given to the Town Board.

C. Application for PUD districting.

(1) Upon receipt of a favorable report from the Planning Board, or upon its own determination subsequent to an appeal from an unfavorable report, the Town Board shall set a date and conduct a public hearing for the purpose of considering PUD districting for the applicant's plan, in accordance with the procedures established under §§ 264 and 265 of the Town Law or other applicable law, said public hearing to be conducted within forty-five (45) days of the receipt of the favorable report or the decision of an appeal from an unfavorable report.

(2) The Town Board shall refer the application to the County Planning Council for its analysis and recommendations, and the Town Board shall also refer the application to the Town Engineer for his review.

(a) The Town Board shall give the County Planning Council at least thirty (30) days to render its

report, and within forty-five (45) days after the public hearing, the Town Board shall render its decision on the application.

- (b) The Town Engineer shall submit a report to the Town Board within thirty (30) days of the referral duly noting the feasibility and adequacy of those design elements under his sphere of interest. This report need only concern itself with general conceptual acceptance or disapproval, as the case may be, and in no way implies any future acceptance or rejection of detailed design elements as will be required in the later site-plan review stage. The Town Engineer may also state in his report any other conditions or problems that must be overcome before consideration of acceptance on his part.

D. Zoning for Planned Unit Developments.

- (1) If the Town Board grants the PUD districting, the Zoning Map shall be so notated. The Town Board may if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements for the applicant to meet. Such requirements may include, but are not confined to, visual and acoustical screening, land-use mixes, order of construction and/or occupancy, circulation systems, both vehicular and pedestrian, availability of sites within the area for necessary public services, such as schools, fire houses and libraries, protection of natural and/or historic sites, and other such physical or social demands.
- (2) PUD districting shall be conditioned upon the following:
 - (a) Securing of final site-plan approval in accordance with the procedures set forth in § 29-11.23.

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- (b) Compliance with all additional conditions and requirements as may be set forth by the Town Board in its resolution granting the PUD District.

§ 29-11.23. Site plan approval process for Planned Unit Developments.

[Added 6-1-70; effective 6-21-70]

A. Application for preliminary site plan approval. Application for preliminary site plan approval shall be to the Planning Board and shall be accompanied by the following information prepared by a licensed engineer, architect and/or landscape architect:

- (1) An area map showing applicant's entire holding, that portion of the applicant's property under consideration, and all properties, subdivision, streets and easements within five hundred (500) feet of applicant's property
- (2) A topographic map showing contour intervals of not more than one (1) foot of elevation shall be provided.
- (3) A preliminary site plan including the following information:
 - (a) Title of drawing, including name and address of applicant.
 - (b) North point, scale and date.
 - (c) Boundaries of the property plotted to scale.
 - (d) Existing watercourses.
 - (e) A site plan showing location, proposed use and height of all buildings; location of all parking and truck-loading areas, with access and egress drives thereto; location and proposed develop-

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ment of all open spaces including parks, playgrounds and open reservations; location of outdoor storage, if any; location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; description of method of sewage disposal and location of such facilities; location and size of all signs; location and proposed development of buffer areas; location and design of lighting facilities; and the amount of building area proposed for non-residential uses, if any.

- (4) A tracing overlay showing all soil areas and their classifications, and those areas, if any, with moderate to high susceptibility to flooding, and moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation.

B. Factors for consideration. The Planning Board's review of a preliminary site plan shall include, but is not limited to, the following considerations:

- (1) Adequacy and arrangement of vehicular-traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.
- (2) Adequacy and arrangement of pedestrian-traffic access and circulation including: separation of pedestrian from vehicular traffic, walkway structures, control of intersections with vehicular traffic and pedestrian convenience.
- (3) Location, arrangement, appearance and sufficiency of off-street parking and loading.
- (4) Location, arrangement, size and design of buildings, lighting and signs.

- (5) Relationship of the various uses to one another and their scale.
- (6) Adequacy, type and arrangement of tree, shrubs and other landscaping constituting a visual and/or a noise-detering buffer between adjacent uses and adjoining lands.
- (7) In the case of apartment houses or multiple dwellings, the adequacy of usable open space for playgrounds and informal recreation.
- (8) Adequacy of storm water and sanitary waste-disposal facilities.
- (9) Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion.
- (10) Protection of adjacent properties against noise, glare, unsightliness or other objectionable features.
- (11) Conformance with other specific charges of the Town Board which may have been stated in the zoning resolution.

In its review the Planning Board may consult with the Town Engineer and other town and county officials, as well as with representatives of federal and state agencies, including the Soil Conservation Service and the New York State Department of Conservation. The Planning Board may require that exterior design of all structures be made by, or under the direction of, a registered architect whose seal shall be affixed to the plans. The Planning Board may also require such additional provisions and conditions that appear necessary for the public health, safety and general welfare.

- C. Action on preliminary site plan application. Within ninety (90) days of the receipt of the application for preliminary

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site plan approval, the Planning Board shall act on it. If no decision is made within said ninety-day period, the preliminary site plan shall be considered conditionally approved. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is conditionally approved. A copy of the appropriate minutes of the Planning Board shall be a sufficient report.

The Planning Board's statement may include recommendations as to desirable revisions to be incorporated in the final site plan, of which conformance with shall be considered a condition of approval. Such recommendations shall be considered a condition of approval. Such recommendations shall be limited, however, to siting and dimensional details within general use areas, and shall not significantly alter the sketch plan as it was approved in the zoning proceedings.

If the preliminary site plan is disapproved, the Planning Board's statement shall contain the reasons for such findings. In such case, the Planning Board may recommend further study of the site plan and resubmission of the preliminary site plan to the Planning Board after it has been revised or redesigned.

No modification of existing stream channels, filling of lands with a moderate to high susceptibility to flooding, grading or removal of vegetation in areas with moderate to high susceptibility to erosion, or excavation for and construction of site improvements shall begin until the developer has received preliminary site plan approval. Failure to comply shall be construed as a violation of the Zoning Ordinance and, where necessary, final site plan approval may require the modification or removal of unapproved site improvements.

- D. Request for changes in sketch plan. If in the site plan development it becomes apparent that certain elements of

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the sketch plan, as it has been approved by the Town Board, are unfeasible and in need of significant modification, the applicant shall then present his solution to the Planning Board as his preliminary site plan, in accordance with the above procedures. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of the zoning resolution. If a negative decision is reached, the site plan shall be considered as disapproved. The developer may then, if he wishes, produce another site plan in conformance with the approved sketch plan. If an affirmative decision is reached, the Planning Board shall so notify the Town Board, stating all of the particulars of the matter and its reasons for feeling the project should be continued as modified. Preliminary site plan approval may then be given only with the consent of the Town Board.

- E.** Application for final detailed site plan approval. After receiving conditional approval from the Planning Board on a preliminary site plan, and approval for all necessary permits and curb cuts from state and county officials, the applicant may prepare his final detailed site plan and submit it to the Planning Board for final approval; except that if more than twelve (12) months have elapsed between the time of the Planning Board's report on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.

The final detailed site plan shall conform substantially to the preliminary site plan that has received preliminary site plan approval. It should incorporate any revisions or other features that may have been recommended by the Planning Board and/or the Town Board at the prelim-

inary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.

F. Action on the final detailed site plan application. Within sixty (60) days of the receipt of the application for final site plan approval, the Planning Board shall render a decision to the applicant and so notify the Town Board. If no decision is made within the sixty-day period, the final plan shall be considered approved.

(1) Upon approving an application, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward it to the Building Inspector, who shall then issue a building permit to the applicant if the project conforms to all other applicable requirements.

(2) Upon disapproving an application, the Planning Board shall so inform the Building Inspector. The Planning Board shall also notify the applicant and the Town Board in writing of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.

G. Staging. If the applicant wishes to stage his development, and he has so indicated, then he may submit only those stages he wishes to develop for site plan approval, in accordance with his staging plan. Any plan which requires more than twenty-four (24) months to be completed shall be required to be staged, and a staging plan must be developed. At no point in the development of a PUD shall the ratio of nonresidential to residential acreage or the dwelling unit ratios between the several different housing types for that portion of the PUD completed and/or under construction differ from that of the PUD as a whole by more than twenty percent (20%).

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§ 29-11.24. Other regulations applicable to Planned Unit Developments.

[Added 6-1-70; effective 6-21-70]

- A. Regulation after initial construction and occupancy. For the purpose of regulating and development and use of property after initial construction and occupancy, any changes other than use changes shall be processed as a special permit request to the Planning Board. Use changes shall also be in the form of a request for special permit except that Town Board approval shall be required. It shall be noted, however, that properties lying in PUD Districts are unique and shall be so considered by the Planning Board or Town Board when evaluating these requests, and maintenance of the intent and function of the planned unit shall be of primary importance.
- B. Site-plan review. Site-plan review under the provisions of this Article shall suffice for Planning Board review of subdivision under town subdivision regulations, subject to the following conditions:
- (1) The developer shall prepare sets of subdivision plats suitable for filing with the office of the Monroe County Clerk in addition to those drawings required above.
 - (2) The developer shall plat the entire development as a subdivision; however, PUD's being developed in stages may be platted and filed in the same stages.
 - (3) Final site-plan approval under § 29-11.23F shall constitute final plat approval under the town subdivision regulations, and provisions of § 276 of the Town Law requiring that the plat be filed with the Monroe County Clerk within ninety (90) days of approval shall apply.

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§ 29-11.25. Financial responsibility for construction in Planned Unit Developments.

[Added 6-1-70; effective 6-21-70]

No building permits shall be issued for construction within a PUD District until improvements are installed or performance bond posted in accordance with the same procedures as provided for in § 277 of the Town Law relating to subdivisions. The Town Board may require other proof of financial responsibility of the developer so as to insure completion of each phase of any development.

§ 29-11.30. Multiple dwellings for the elderly.

[Added 7-6-71, effective 8-1-71]

The Town Board may, on special application, issue a permit for the construction and maintenance of multiple dwellings for the elderly, as hereinafter defined, in any district of the town except Residential "AA" District.

A. "Multiple dwelling for the elderly" is defined as a building or a group of buildings whose primary purpose is to house one (1) or more persons of the age of sixty (60) years or more in independent living accommodations, but not including independent kitchen and dining facilities. Central kitchen and dining facilities to permit the congregate feeding of the residents are a required part of the concept. The following accessory facilities may be included within the structure or structures: Hobby shop, game rooms, library, meeting rooms, health center.

B. No such permit shall be issued until the application has been referred to the Planning Board for a recommendation. Prior to recommending the issuance of such permit, the Planning Board shall find after public notice and hearing that:

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- (1) The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community.
 - (2) The proposed use would not endanger or tend to endanger public health, safety, morals or general welfare of the community. In making such determination, the Board shall consider: lot areas; necessity for and size of buffer zones; type of construction; parking facilities; traffic hazards; fire hazards; offensive odors, smoke, fumes, noise and lights; the general character of the neighborhood; the availability of public sewers; the nature and use of other premises and the location and use of other buildings in the vicinity; and whether or not the proposed use will be detrimental to neighborhood property.
 - (3) The proposed use will be in harmony with the probable future development of the neighborhood and will not discourage the appropriate development and use of adjacent lands and buildings or impair the value thereof.
- C. After receiving the recommendation of the Planning Board, the Town Board may grant such a permit, or refuse to grant the same, as hereinafter provided:
- (1) If the Planning Board has recommended the granting of the permit, the Town Board may grant the same forthwith.
 - (2) If the Planning Board has recommended the denial of the permit, the Town Board may deny the same forthwith.
 - (3) If the Planning Board has recommended the granting of the permit, the Town Board may deny the same after public notice and hearing.

(4) If the Planning Board has recommended the denial of the permit, the Town Board may grant the same after public notice and hearing, and after making the findings provided in Paragraph B of this section.

D. In granting such a permit the Town Board may attach such conditions and limitations as it considers desirable in order to assure compliance with the application and the purposes of this ordinance.

E. Subject to the payment of the annual renewal fee, as hereinafter provided, any such permit granted hereunder shall be deemed to be indefinitely extended; provided, however, that it shall expire if the special use shall be terminated, abandoned or cease for more than six (6) months for any reason, or if there is a default in the payment of the renewal fee; and further provided that it may be revoked by the Town Board after due hearing on not less than ten (10) days' notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

F. The Town Clerk of the Town of Penfield shall issue a permit to the applicant upon a proper resolution by the Town Board and the payment of a fee of one hundred dollars (\$100.) and shall issue a renewal annually thereafter in January of each year upon payment of a like fee.

§ 29-12. Commercial districts.

A. USES: No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any commercial district designated as such on the Official Zoning Map of the Town of Penfield, except for one (1) or more of the following purposes:

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- 1. Any use permitted in any residential district, subject to all of the provisions applicable to such use in such district, unless specifically modified herein.**
- 2. Billiard hall, bowling alley, dance hall, pool hall and theatre; provided that:**
 - (a) If the premises on which a structure for such use is located adjoins a residential district, the part of the structure facing such residential district shall have no openings other than fixed windows.**

3. Boat sales and service.
4. Bus passenger station.
5. Cemetery or burial ground by special permit of the Town Board.
6. Commercial parking areas.
7. Convalescent or nursing home.
8. "Drive In" restaurants and dairy bars, where persons are served in automobiles; provided that the nearest point of the property is not less than two hundred (200) feet from the boundary of any residential district.
9. Dry cleaning and laundry collection stations.
10. Hospital.
11. Hotel and Motel.
12. Institutions.
 - a) Charitable
 - b) Educational
 - c) Financial
 - d) Religious
 - e) Fraternal
 - f) Social
13. Laundry, dry cleaning and dyeing establishments (including coin-operated) provided that no more than five (5) persons are employed on the premises in laundry, dry cleaning and dyeing process or combination thereof.
14. Medical clinic.
15. Monument works may be permitted only when adjacent to a cemetery.
16. Mortuary or Undertaking parlors.
17. Offices.
 - a) Business
 - b) Insurance

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- c) Professional
 - d) Real Estate
18. Public parking garage.
19. Restaurant, grill, bar, cafe, cocktail lounge and night club, including dancing and entertainment, provided that if the premises on which a structure for such use is located adjoins a residential district, the part of the structure facing such residential district shall have no openings other than fixed windows.
20. Sanitarium.
21. Schools (business or commercial), provided machinery used for instructional purposes is not objectionable due to noises, fumes, dust, smoke, odor or vibration.
22. Shops.
- a) Antique.
 - b) Art.
 - c) Artists' supply.
 - d) Bakery or pastry (employing not more than five (5) persons in production).
 - e) Barber, beauty and personal service.
 - f) Bicycle (sale and repair).
 - g) Book.
 - h) Farm implements (sale and repair).
 - i) Florist.
 - j) Gift.
 - k) Heating, plumbing, air conditioning and electrical.
 - l) Luggage.
 - m) Motor vehicle (sale and repair).
 - n) Printing and publishing.

- o) Shoe repair.**
- p) Tailor (employing not more than five (5) persons in production.**
- q) Tire and battery (exclusive of rebuilding operations).**

23. Stores.

- a) Appliance (employing not more than five (5) persons in repair or servicing).**
- b) Athletic and sporting goods.**
- c) Business machines.**
- d) Clothing and clothing accessories.**
- e) Confectionery and soda fountain.**
- f) Delicatessen.**
- g) Drug.**
- h) Dry goods.**
- i) Furniture (employing not more than five (5) persons in repair or servicing).**
- j) Grocery or meat market.**
- k) Hardware.**
- l) Jewelry.**
- m) Farm, garden and nursery supply stores.**
- n) Leather goods.**
- o) Liquor (package).**
- p) Music, radio and television stores and repair. There shall be no loudspeakers on the streets.**
- q) Notions.**
- r) Optician and Optometrist.**
- s) Photographic (equipment and supply).**
- t) Shoe.**

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- u) Stationery.
- v) Variety.

24. Studios.

- a) Artist, dance and music (for instruction only).
- b) Photography.

25. Other uses which, after a public hearing, the Board of Appeals shall find are of the same general character as those listed above and which will not be detrimental to the district in which they are to be located.

B. MINIMUM SIZE LOTS. No structure shall be hereafter erected, structurally altered, reconstructed or moved on a lot in a Commercial District unless such lot shall conform to the following requirements:

- a) If said lot is to be used for residential purposes, it shall have a width, average depth and total ground area of a permissible lot in a Residential "A" District.
- b) If said lot is to be used for a business purpose and a sanitary sewer is available, it shall be of such width, depth and total ground area so that any structure to be erected thereon shall occupy no more than forty per cent (40%) of the total ground area, and all yard requirements hereinafter set forth are met. In areas where there are no sanitary sewers, such lot in addition to complying with the foregoing requirements, shall be not less than one hundred (100) feet in width at the building line; have an average depth of one hundred fifty (150) feet; and a total ground area of fifteen thousand (15,000) square feet.

C. YARDS. No structure hereafter erected, structurally altered, reconstructed or moved in a Commercial District shall be nearer than eighty (80) feet to any front lot line, thirty (30) feet from the rear lot line nor twenty (20) feet from any side lot line, except that where the rear or side lot line abuts any lot or land area in a residential district, such structure (unless for a use per-

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mitted only under and subject to the provisions of Subdivision A, paragraph 1 of this Section), shall not be located closer than one hundred (100) feet from the line adjoining said residential district and a fifty (50) foot strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.

Upon the filing of proper plans, the Zoning Board of Appeals may on application permit a structure to be erected on or in close proximity to one side lot line and/or the rear line provided: (1) the wall of the structure adjoining said lot line shall be a Class "A" Fire wall; (2) the written consent of all property owners adjoining said lot lines is filed with the Board; and (3) said side or rear lot line does not adjoin land in a residential district.

D. MISCELLANEOUS REQUIREMENTS

- (a) Any structure, hereafter erected or moved in a Commercial District to be used or occupied solely for residential purposes, shall be subject to all the conditions and restrictions applying to a Residential "A" District.
- (b) No other structure, or group of structures, shall hereafter be erected and no structure, land or premises shall be used in a Commercial District unless the following requirements are fully observed:
 - 1. All such operations within a Commercial District, including the storage of equipment, fixed or portable, motor vehicles and of materials, are to be suitably housed and enclosed.
 - 2. No such equipment, fixed or portable, motor vehicles or materials shall be permitted to be stored or displayed nor shall any stands for sale or display be permitted in such a district outside an enclosed building unless a special permit therefor shall have first been obtained from the Zoning Board of Appeals. Such Board may permit the outdoor display or storage of such equipment or materials upon such conditions as it may deem reasonable provided; (1) such storage and display is

an accessory use to the main business conducted or to be conducted on the premises; (2) such storage and display is not within one hundred (100) feet of the line of a residential district; (3) such storage and display is not at such distance from any public highway as to interfere with the safe use of such highway; (4) such storage and display does not unreasonably interfere with the quiet enjoyment of property by adjacent property owners. The fee for the issuance of such a permit shall be Ten Dollars (\$10.00). Any permit granted hereunder may be revoked by the Zoning Board of Appeals after due hearing on not less than ten days written notice to the person holding such permit in the event that the holder of such permit violates any of the conditions of the issuance thereof or of this section.

3. All uses within a Commercial District, all structures erected therein and all processes hereafter permitted in said districts shall be so designed and arranged as to prevent noxious gases, fumes, dust, odors, smoke or noises from being discharged to the outside air, in such quantities as to become a nuisance, or any contaminated liquids containing either deleterious, biological compounds or chemical constituents from being discharged into any watercourse.
4. At any time when the specific use originally permitted within a Commercial District is to be changed so that it involves a separate, different and distinct use, process or product, application must be made to the Zoning Board of Appeals for a permit, at which time the Board may require that any and all phases of the operation, which have become or are liable to become detrimental to the neighborhood, be corrected prior to the issuance of such permits.

§ 29-13. Trailer park district.

(a) **USES.** No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Trailer Park District except for one or more of the following purposes:

1. All uses permitted in a Residential "A" District, subject to all of the conditions and requirements applying to uses permitted in such a Residential "A" District.
2. Trailer parks subject to all of the provisions of the Tourist Camp and House Trailer Ordinances of the Town of Penfield as the same may be in force at the present time and as it may be hereafter amended.
3. Such commercial uses as may be necessary to the operation of a Trailer Park as may be approved by the Zoning Board of Appeals.
4. No addition to any Trailer Park shall be constructed within two hundred and fifty (250) feet of the line of any Residential District, of which area, a fifty (50) foot strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.

§ 29-14. Industrial district.

A. **PERMITTED USE.** No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any district designated on the official zoning map of the Town of Penfield as an Industrial District except for one or more of the following purposes:

1. Any use (other than residential), permitted in a Commercial District subject to the restrictions applicable thereto, and set forth in the provision relating to said District, except only the restriction relating to the number of employees.

2. Customary and ordinary industrial uses which are conducted wholly within a building are permitted. Those uses of lands, buildings, structures or industrial processes that may be noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration or similar substances or conditions or for any other reason may prove dangerous to persons or property, are expressly prohibited.
3. In each case where a building or use is proposed in this District pursuant to the provisions of sub paragraph 2 hereof, the Building Inspector shall refer the plans, description of proposed use, and site plan to the Zoning Board of Appeals. Such Board shall hold a public hearing thereon following the procedure required by law for the granting of variances hereunto and shall determine upon the evidence produced at such hearing: (1) whether all requirements of this ordinance have been met; (2) whether the health, safety, morals or general welfare of the community would be protected and (3) whether said plans should be approved as submitted, approved subject to such conditions, restrictions and safeguards as may be deemed necessary by said Board, or disapproved.

B. LOT SIZE. No structure shall be hereafter erected, structurally altered, reconstructed or moved on a lot in an Industrial District unless such lot shall be of such width, depth and total ground area so that any structure to be erected thereon shall occupy no more than forty per cent (40%) of the total ground area, and all yard requirements hereinafter set forth are met.

C. YARDS. No structure hereafter erected, structurally altered, reconstructed, or moved in an Industrial District shall be nearer than one hundred (100) feet to any front lot line, nor less than fifty (50) feet from any side or rear lot line, except that where the rear or side lot line abuts any lot or land and area in a residential district, such structure shall not be located closer than one hundred (100) feet from the line adjoining said residential district and a fifty (50) foot strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.

Upon the filing of proper plans, the Zoning Board of Appeals may on application and after the public hearing referred to herein, permit a structure to be erected on or in close proximity to one side lot line and/or the rear lot line provided; (1) such line does not abut premises in a residential district; (2) the wall of the structure adjoining said lot line shall be a Class "A" Fire Wall and (3) the written consent of all property owners adjoining said lot lines is filed with the Board.

D. STRUCTURES. Only one main structure, with accessory buildings may be erected on any parcel of land for a use permitted in this district.

E. SUBDIVISION OF LAND. Whenever the owner of premises in this district, desires to erect more than one structure thereon, he must prepare and file with the Planning Board such a subdivision, complying with the rules and regulations of said Board applying to all realty subdivisions, including a plan of such highways as are necessary to provide for direct frontage on a State, County or Town Highway or on a highway which appears upon a map approved by the Penfield Planning Board. For purposes of this subdivision, direct frontage is defined as ownership in fee and not access by way of easement and a frontage of sixty (60) feet shall presumptively be sufficient for that purpose.

§ 29-15. Provisions applicable to all districts.

1. **LOT AREA.** No lot in any District shall be so reduced in size that its area or any of its dimensions or open spaces shall be smaller than required by this Ordinance nor shall any part of a lot in any District, required by this Ordinance for any building or use be included as part of a lot similarly required for another building or use.

2. **HEIGHTS.** No structure, except for farm use, and structures in an Apartment House and Multiple Dwelling District, which shall exceed the height of a two story structure as defined in this Ordinance, shall be erected, structurally altered, reconstructed or moved in any District in the Town.

3. DRIVEWAYS. In all Districts, all plans for structures to be erected, altered, moved or reconstructed, and for the use of premises within such districts, shall contain a plan for the proposed driveway access to the premises. No such plan shall be approved unless such driveway access is onto a dedicated public highway or a highway within a subdivision which appears upon a subdivision map approved by the Planning Board. All such plans for structures or uses, other than for a one or two family dwelling, or for farm or dairy structures or uses, shall contain provisions for a separate paved entrance and exit driveway with a minimum width of eight (8) feet, or if a single driveway is provided, the same shall be sixteen (16) feet in width, and marked with a suitable sign "Double Driveway".

4. OFF-STREET PARKING

A. The following parking spaces (9' x 20') shall be provided and satisfactorily maintained by the owner of the property on the premises or in convenient connection therewith for each building which, after the date when this ordinance becomes effective, is erected, enlarged or altered for use for any of the following purposes:

- (1) **DWELLING:** At least one parking space for each dwelling unit.
- (2) **PROFESSIONAL OFFICE OR CUSTOMARY HOME OCCUPATION:** Six (6) parking spaces for each person engaged in the profession or home occupation.
- (3) **THEATER, CHURCH OR OTHER PLACE OF PUBLIC ASSEMBLAGE:** at least one (1) parking space for each three (3) seats, based on maximum seating capacity.
- (4) **RESTAURANT OR OTHER EATING PLACE:** At least one (1) parking space for each three (3) seats, and one (1) parking space for each employee.

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- (5) HOSPITAL, SANITARIUM, NURSING HOME, ETC.: At least one (1) parking space for each four (4) patients, and one (1) parking space for each employee, attendant or member of the staff.
- (6) COMMERCIAL DISTRICTS: All uses in commercial districts except office buildings, shall provide eight (8) parking spaces for each one thousand (1,000) square feet of gross building floor area exclusive of covered sidewalks or malls. [Amended 10-2-67]
- (7) OFFICE BUILDINGS: At least one (1) parking space for each two hundred and fifty (250) square feet of office floor area.
- (8) INDUSTRIAL BUILDING: At least one (1) parking space for each four hundred (400) square feet of gross floor area, or for each two (2) workers, whichever provides the greater amount of parking space.

B. The recurrent parking of any vehicle on the right-of-way of a highway or the impeding of traffic or creation of traffic hazards by the parking of any such vehicle shall be prima facie evidence of the failure to provide adequate and suitable parking area on the premises or in convenient connection therewith.

5. NIGHT ILLUMINATION. Where any use in any District, other than for a dwelling for one or two families or for a farm or dairy use, involves operation between the hours of one-half hour after sunset and one-half hour before sunrise, proper exterior illumination of suitable intensity as approved by the Building Official shall be provided at each entrance and exit and along each side of any building so used.

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6. **JUNK YARDS.** No lot in any District may hereafter be used nor any structure erected, reconstructed, structurally altered or moved in any District for use as a junk yard where two or more abandoned automobiles are stored or dismantled for sale of used parts thereof or where junk of any kind or nature such as papers, metals, rags, any second-hand material, lumber or building materials are stored or offered for sale.

7. **ROADSIDE STANDS.** Any person within any District may erect a roadside stand and sell from same agricultural products produced primarily on his premises. Any such stand of permanent construction shall comply with all the conditions and regulations prescribed for structures in the District in which the stand is located. Any such stand of temporary construction may be erected not nearer to a street line than twenty (20) feet and such stand may be erected and maintained between April 1st and November 30th of any year, but must be removed on or before November 30th of the same year. There must be provided for any roadside stand an off-street parking area sufficient to accommodate vehicles of customers and to eliminate traffic hazards.

8. **TEMPORARY STRUCTURES.** No structure of a temporary character, basement, tent, shack, garage, barn or other building shall be used on any lot at any time as a residence either temporarily or permanently.

9. **CLEAR VIEW AT INTERSECTING STREETS.** No obstruction to view between a height of two and one-half (2½) and

ten (10) feet, measured perpendicularly from the street grade, shall be maintained on the premises in the angle formed by intersecting streets so as to interfere with the view of traffic approaching the intersection within the distance of one hundred (100) feet measured along the center line of each street from the intersection of such center lines.

10. FENCES AND HEDGES

- (1) No fence, solid hedge or solid shrubbery over three (3) feet in height shall be erected or maintained within twenty (20) feet of any highway line.
- (2) The provisions of this section shall not apply to fences on premises used for farm purposes.

11. SITE-PLAN REVIEW [Added 9-7-65]

Prior to issuing a building permit for the construction of a building on a lot in any district, except for a one-family dwelling, the Building Official shall refer the site plan of such lot to the Planning Board for its review and approval. This review shall include, but is not limited to the following:

- (1) Adequacy and arrangement of vehicular and pedestrian traffic access and circulation;
- (2) Location arrangement and sufficiency of off-street parking;
- (3) Location of the building or buildings on the premises;
- (4) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a buffer between these and adjoining lands; and
- (5) In the case of an apartment house or multiple dwelling, the adequacy of usable open space, including recreational areas.

- (6) Adequacy of the provision for the disposal of storm-water and sanitary wastes.

Except for one-family dwellings, no building permit shall be issued except in accordance with a site plan that has been approved by the Planning Board.

12. STORMWATER SEWER DISTRICT [Added 9-7-65]

No building permit shall be issued for the construction of a building on a lot in any district unless such lot is within the boundaries of an established stormwater-sewer district or unless an application to annex such lot to an established stormwater-sewer district or to form a stormwater-sewer district to include such lot has been filed with the Town Board.

13. PARKS AND PLAYGROUNDS [Added 5-1-69]

A. Where deemed essential by the Planning Board upon consideration of the particular type of development proposed in the subdivision, and especially in large-scale neighborhood-unit developments not anticipated in the Master Plan, the Planning Board may require the dedication or reservation of areas or sites of a character, extent and location suitable to the needs created by such development for a park or parks, playground or other recreational uses.

B. If the Planning Board determines that a suitable park or or parks of adequate size cannot be properly located in any such subdivision, or is otherwise not practical, the Board shall require as a condition to approval of the subdivision plat a payment to the town of a playground or recreation site and development fee of seventy-five dollars (\$75.) per unit, based upon the following schedule of units:

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Single-family dwelling	One (1) Unit
Two-family dwelling	Two (2) Units
Multifamily dwelling, apartments, apartment houses or town houses:	
Studio or one-bedroom apartments	One-Third ($\frac{1}{3}$) Unit
Two-bedroom apartments	Two-thirds ($\frac{2}{3}$) Unit
More than two-bedroom apartments	One (1) Unit

Such fee shall be paid to the Building Inspector at the time of the issuance of a building permit for new residential or apartment construction. Where a letter of credit is required, the respective fees shall be included in such letter of credit. Such fees shall be paid over to the Town Clerk and shall be deposited by the Supervisor in a fund designated "Capital Fund for Recreational Development" and shall be used exclusively to purchase, acquire, develop and equip park, playground and other recreational areas.

§ 29-16. Signs. [Amended 2-2-70, effective 2-13-70]

A. Purpose and scope. The purpose is to provide standards to safeguard life, health, property and public welfare by controlling location, construction, installation, illumination and maintenance of all signs and sign structures.

It is the further purpose of this ordinance and regulation of signs to control the quality and quantity of signs so as to enhance the businessman's identification and improve the aesthetics of the community.

B. Definition. A "sign" is defined as any outdoor advertising medium, structure or device which advertises, directs or calls attention to any business, article, substance, service or any other thing which is painted, printed, pasted, posted or affixed to any building, billboard, wall, fence, railing,