

AGENDA

Zoning Sub-committee

City of Kingston

March 27, 2017

1. Review and Decision

In order to bring this effort to conclusion, it is important that the committee begin to make decisions regarding the proposed zoning amendments that will be recommended to the Common Council for enactment. The following sections have been discussed at previous meetings and are suggested as being ready for such a decision after final discussion at this meeting:

- a. Consolidation of Residential District Regulations
- b. Neighborhood Context Residential Bulk Standards
- c. Consolidated Planning Board Powers, Duties and Functions
- d. New Section on Zoning Board of Appeals

2. Further Discussion Leading to Decision

Several additional sections have also been discussed at previous meetings and may be ready for a decision to recommend to the Council. These include:

- a. Midtown Form Based Overlay District
- b. Affordable Housing
- c. Environmental and Natural Resource regs.

3. Brief Discussion of Items for Discussion at Future Meetings

- a. Historic Preservation and Design Review: standards and procedures
- b. Uptown Core Area options
- c. Rondout Core Area
- d. Urban agriculture regs.

4. Schedule and procedures for completion

Rec'd 3/22/17

III. DETAILED ZONING AMENDMENTS

A. ADMINISTRATION AND PROCEDURAL

**Revisions
To
ARTICLE IV
District Regulations**

1. §405-9, §405-10, and §405-11 shall be deleted and replaced by the sections below.
2. §405-12, §405-13, and §405-14 shall be deleted and designated as "reserved".

NOTE: It will also be necessary to amend §405-4. Districts enumerated, to delete the RRR, RR, R-1, R-2, R-3, R-4, R-5 and R-6 Districts and replace them with RS (Residence Single Family), RM-1 (Residence Medium Density) and RM-2 (Residence High Density)

§405-9 Schedule of Residential Uses

- A. The Schedule of Residential District Use Regulations is hereby incorporated into and made part of these zoning regulations and shall be referred to as the "Use Schedule". No structure or land shall be used except as provided in the Use Schedule. Uses which are not permitted are prohibited, unless specifically stated elsewhere by this local law.
- B. Supplementary standards which apply to specific uses are referenced in the Use Schedule and set forth in §405-10.
- C. The Use Schedule indicates those uses in each district which are permitted by right and those which require a special permit.
- D. Any use permitted by special permit shall require site plan approval in accord with §405-____. Certain uses permitted by right shall also require site plan approval in accord with §405-____.

E. Lot and bulk requirements for each district are to be found in §405-11 and the Schedule at the end of this chapter.

SCHEDULE OF RESIDENTIAL DISTRICT USE REGULATIONS

USES PERMITTED BY RIGHT	DISTRICTS			SUPPLEMENTARY REGS: See §405.10
	RS	RM-1	RM-2	
One family dwelling	X	X	X	A
Two family dwelling		X	X	
Three family dwelling		X	X	
Dwellings for 4 or more families, including townhouses			X	R
Office use in multiple dwellings		X	X	
Cemeteries	X	X	X	
Places of Worship	X	X	X	B
General Hospitals, nursing and convalescent homes	X	X	X	C
Farms, truck gardens, greenhouses, nurseries and arboretums	X	X	X	D
USES PERMITTED BY SPECIAL PERMIT				
Professional Offices and/or Restaurants within a residential structure			X	S
Radio, television and other electronic transmission stations/towers and public utility transmission lines	X	X	X	E
Rooming Houses and Boarding Houses		X	X	Q
Cluster Development	X			F
Nursery or preschool educational establishments or day-care centers	X	X	X	G
Libraries, museums and/or art galleries	X	X	X	H
Golf, tennis or swimming clubs	X	X	X	I
Annual membership clubs	X	X	X	N
Family day-care homes	X	X	X	J
Agency group homes, agency community residences, intermediate care facilities	X	X	X	K
Renting out of not more than two rooms	X	X	X	L
Accessory apartments	X			M
Adult day-care centers	X	X	X	O
Residential Care/Assisted Living Facilities	X	X	X	P
3/21/17				

§405-10 Supplementary Standards for Residential Districts

- A. One-family dwellings, not to exceed one such dwelling on each lot.
- B. Places of Worship, including parish houses and religious school buildings, and public and private schools and children's homes on land not less than five acres in size, including uses customarily accessory thereto, subject to the following requirements:
 - (1) Notwithstanding any other provisions contained in this chapter, no building shall exceed a height of 42 feet, nor shall the number of stories at any point along the periphery of such building exceed three.
 - (2) No building or part thereof shall be erected nearer than 50 feet to any street line or property line.
 - (3) The sum of all areas covered by all principal and accessory buildings shall not exceed 25% of the area of the lot.
 - (4) Any private school permitted under this subsection shall be a nonprofit organization within the meaning of the Internal Revenue Act and shall be registered effectively as such.
 - (5) All parking and service areas shall be screened from the view of all adjoining residential properties by an opaque fence, wall or hedge of a height not less than six feet nor more than 10 feet. The design and location of such screen shall not be subject to approval by the Planning Board.
- C. General hospitals and nursing and convalescent homes, meeting the requirements of the county or state agency having jurisdiction, intended primarily for the care and treatment of residents of the City of Kingston and adjacent municipalities, provided that:
 - (1) Such hospital does not care mainly for patients suffering from alcoholism, drug addiction or mental disorders.
 - (2) No new building for hospital or nursing or convalescent home purposes shall be erected nearer than its height or 60 feet, whichever is the greater distance, to any street or property line, nor shall any lot on which such facility is erected have an area of less than five acres, except that this provision shall not apply to lands owned by existing hospitals.

- (3) Notwithstanding any other provisions contained in this chapter, no building shall exceed a height of 35 feet nor shall the number of stories at any point along the periphery of such building exceed three.
 - (4) The sum of all areas covered by principal and accessory buildings shall not exceed 25% of the area of the lot.
- D. Farms, truck gardens, greenhouses, nurseries and arboretums on lots having an area of at least five acres, including the sale on the premises of produce grown thereon, provided that:
 - (1) Except as hereinafter provided, any farm building, other than dwellings and buildings accessory thereto, and the heating plant of any greenhouse shall be distant at least 75 feet from any street line or property line.
 - (2) Farm buildings devoted to or intended for the housing of livestock, horses, rabbits, hares, guinea pigs, ducks, geese, live poultry or fowls of any kind shall be erected at least 200 feet from any street or property line.
 - (3) No odorous fertilizer shall be stored within a distance of 75 feet of any street or property line.
- E. Radio, television and other electronic transmission stations and towers and public utility transmission lines, unit substations or other utility installations and disc antennas or devices of similar nature, provided that the establishment of the particular use in the area is necessary for the operation of the public utility system or required to supply utility service to the local area and the Planning Board determines that there is no other reasonable location in a less restricted district that can be utilized for the purpose.
- F. Cluster developments, subject to the requirements of §405.35 of this chapter.
- G. Nursery or preschool educational establishments or day-care centers, subject to the following requirements:
 - (1) The applicant shall have obtained all licenses, certifications or approvals that may be required by federal, state or local law.
 - (2) For each child registered, there shall be a minimum of 35 feet of floor space exclusive of halls, bathrooms and kitchens.

- (3) For each child enrolled, there shall be provided not less than 75 square feet of usable exterior open space. The Planning Board may authorize the substitution of interior space available for recreation purposes if it determines that the aggregate space to be provided is adequate.
 - (4) No permanently installed play equipment shall be located in any required front or side yard.
 - (5) Any outdoor play area shall be located either not nearer than 30 feet from any lot in an RRR through R-3 District or shall be screened therefrom by a device found sufficient by the Planning Board to ensure visual and auditory privacy to such adjacent properties.
- H. Libraries museums and/or art galleries on lots having an area of not less than 20,000 square feet, provided that no building is erected nearer than 50 feet to any street or property line.
- I. Golf, tennis or swimming clubs, subject to the following requirements:
- (1) The site shall have an area of not less than two acres.
 - (2) No building or part thereof and no parking or loading area shall be located within 150 feet of a street line or of a property line of a lot in an RRR through R-3 District.
- J. Family day-care homes, authorized by the New York State Department of Social Services.
- K. Agency group homes, agency community residences, intermediate care facilities or family care homes and adult care facilities, subject to the following:
- (1) The special permit shall be reviewed every two years.
 - (2) Total occupants shall not exceed one for each 1,000 square feet of lot area.
 - (3) Said home shall not be located within 1,200 feet of any other lot on which another agency community residence or boarding, lodging or rooming house or other similar use is located. Said distance shall be measured from those points on the periphery of the lots on which such houses are located or proposed to be located nearest to each other.
 - (4) Said home shall not erect any sign that identifies or advertisers the use or occupancy of the home.

- (5) Where residents are permitted to own or operate an automobile, one off-street parking space shall be provided for each resident for whom the facility is designed and each employee while on duty, and such parking shall not be located in any required yard.
- (6) Said home shall be registered with the City Clerk, and the following information shall be not be located in any required yard.
- (7) Said home shall be registered with the City Clerk, and the following information shall be filed and kept up-to-date:
 - (a) The name of the operating agency.
 - (b) The name(s) of resident supervisor(s).
 - (c) The maximum number of persons that will live in the facility.
 - (d) The appropriate licenses and certifications.
- L. Renting out of not more than two rooms by a resident family, provided that no sign advertising the availability of such rooms shall be displayed.
- M. Accessory apartments.
 - (1) Purpose and intent. It is the specific purpose and intent to allow accessory apartments on properties with large one-family houses, except where enforceable deed covenants prohibit the same, to provide the opportunity and encouragement for the development of small, rental housing units designed, in particular, to meet the special housing needs of single persons and couples with limited income, both young and old, and of relatives of families presently living in the City. Furthermore, it is the purpose and intent of this provision to allow the more efficient use of the City's existing stock of dwellings to provide economic support for present resident families of limited income and to protect and preserve property values.
 - (2) Owner occupancy required. The owner(s) of the one-family lot upon which the accessory apartment is located shall occupy at least one of the dwelling units on the premises. The special permit and any conditions shall apply to the property.
 - (3) Location and age. An accessory apartment may be located in the principal dwelling, provided that such principal dwelling existed prior to January 1,

1982, contains a minimum of 2,000 square feet of habitable space and conforms to the other requirement of this chapter, unless a variance therefor shall have been granted by the Zoning Board of Appeals.

- (4) Apartment size. The minimum floor area for an accessory apartment shall be 300 square feet, but in no case shall it exceed 25% of the habitable area of the dwelling in which it is located or 600 square feet, whichever is less, unless, in the opinion of the Planning Board, a greater or lesser amount of floor area is warranted by the specific circumstances of the particular building.
- (5) Number of accessory apartments and dwelling units per lot. There will be no more than one accessory apartment nor a total of two dwelling units permitted per lot.
- (6) Exterior appearance. The entry to such unit and its design shall be such that, to the degree reasonably feasible, the appearance of the building will remain as a one-family residence.
- (7) Water and sewer service. Prior to the issuance of a building permit for the establishment of an accessory apartment in a principal dwelling building, approval of the proposed method of water supply and sewage disposal shall be obtained from the Ulster County Department of Health and the City Water Department.
- (8) Off-street parking.
 - (a) Off-street parking spaces shall be provided based upon the total number of bedrooms in both the principal dwelling unit and the accessory apartment according to the following schedule:

Number of Bedrooms	Number of Required Spaces
0-3	3
4 or more	4

- (b) Off-street parking shall be so arranged that no additional curb cut is necessary.

N. Clubs and recreational uses.

- (1) Annual membership clubs, other than golf, tennis or swimming clubs, incorporated pursuant to the provisions of the Not-For-Profit Corporation Law of the State of New York, catering exclusively to members and their guests, and private playgrounds swimming pools, tennis courts and recreation buildings not conducted as business enterprises, provided that the following shall be prohibited:
 - (a) Outdoor entertainment, live or mechanical.
 - (b) The use of outdoor public-address systems for any purpose.
 - (c) Exterior lighting, other than that essential for the safety and convenience of the users of the premises.
 - (d) An artificially illuminated sign or signs in excess of 12 square feet.
- (2) No building erected under the provisions of this subsection shall be located nearer than 50 feet to any street or property line.

O. Adult day-care centers.

P. Residential care/assisted living facilities. The special permit shall not be issued or renewed for a period longer than one year.

Q. Rooming houses and boardinghouses, subject to the following requirements:

- (1) No rooming house or boardinghouse which furnishes rooming or boarding accommodations for hire within the same shall exist or be maintained within the City without a special permit, which shall be issued by the Planning Board of the City of Kingston, as hereinafter provided.
- (2) No special permit shall be issued hereunder and any special permit heretofore or hereafter issued shall be subject to revocation, unless the applicant or holder of such permit fully complies with the following requirements:
 - (a) The applicant shall be the individual owner of such premises.
 - (b) At the time of the issuance of such special permit and at all times when said premises are used as a rooming house or boardinghouse, the owner thereof shall maintain his residence in and shall actually reside in said premises or there shall be a permanent resident of the City of

Kingston who shall be the resident agent responsible for the management of the rooming house and boardinghouse.

- (c) The maximum number of roomers or boarders shall be 12 and the maximum number of rooms shall be 10.
- (d) There shall be no more than two people occupying a room as a roomer or boarder, and such room shall have a minimum of 80 square feet of floor space per occupant.
- (e) Rooming houses and boardinghouses legally operating with a special permit at the time of the adoption of this chapter, as amended, which may be nonconforming uses under this chapter shall be entitled to the issuance of a special permit under compliance with all of the provisions of this chapter, except Subsections B(2)(b)[1], [2], [3] and [4] of this subsection, upon applications made prior to and for the permit year December 31, 1994. After said date, no special permit shall be issued to any applicant unless such applicant fully complies with all of the provisions of this chapter, including said B(2)(b)[1], [2], [3] and [4] of this subsection.
- (f) All rooming houses and boardinghouses shall be heated by a central heating plant or permanently installed electric baseboard panel heating. No portable heating units are allowed.
- (g) No cooking or storage of foodstuffs shall be permitted in any room other than a kitchen.
- (h) In all parts of such building, artificial lighting shall be provided by means of electric current and each electric circuit shall be provided with a circuit breaker or fuse which shall meet the requirements of the New York Board of Fire Underwriters. Each new application shall be accompanied by a New York Board of Fire Underwriters' certificate. This certificate shall not be more than one year old. Thereafter, on renewal applications, a current New York Board of Fire Underwriters' certificate shall be required at least once each five years. Any fees involved in

obtaining this current New York Board of Fire Underwriters' certificate shall be borne by the applicant.

- (i) No sinks shall be installed or used in any sleeping room, but basins, however, shall not be used for washing of clothes and dishes or any unsanitary purposes.
- (j) Bathroom facilities shall be maintained for the owner-occupant separate and apart from bathroom facilities for the roomers and boarders.
- (k) The owner or resident agent of every room house and boardinghouse shall change supplied bed linens and towels therein at least once each week or prior to the letting of any room to any occupant. The owner or resident agent shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.
- (l) All garbage and kitchen wastes in every rooming house and boardinghouse shall be immediately disposed of as needed in such a way as not to be or become offensive or unsanitary.
- (m) All sleeping rooms shall be numbered with raised figures not less than three inches in height placed on the outside of the door to each room, and no two rooms shall bear the same number.
- (n) Each and every floor on which rooms are occupied by roomers and boarders shall be equipped with a fire extinguisher in good working condition readily accessible for use at all times and approved by the Fire Prevention Bureau of the City of Kingston.
- (o) No room shall be occupied by roomers or boarders in the third floor or attic of any dwelling unless the building complies fully with the New York State Multiple Residence Law. In a wood-frame dwelling, no room shall be occupied by roomers or boarders in the third floor or attic.
- (p) Off-street parking must be provided on the premises at the rate of one space per occupant based on maximum possible occupancy, plus one space for each employee.
- (q) All rooming houses and boardinghouses with special permits shall be subject to inspections at all reasonable hours by properly authorized

- representatives of the City of Kingston. Failure to comply with this provision shall constitute grounds for immediate revocation of the permit.
- (r) Every rooming house and boardinghouse and every part of the premises shall be at all times kept clean and free from dirt, filth and rubbish and in a sanitary condition. Cleaning and renovation shall be secured as may be ordered by the Building Safety Division of the Fire Department.
 - (s) No sign shall be erected that identifies or advertises the use of the rooming house or boardinghouse for such purpose.
 - (t) Said use shall conform and be maintained in harmony with the overall character and appearance of the surrounding neighborhood.
 - (u) No rooming house or boardinghouse permitted pursuant to this subsection shall be located less than 1,200 feet from an existing rooming house or boardinghouse.
- (3) Any person maintaining such a rooming house or boardinghouse shall keep upon such premises a register showing the names of all persons residing or living in or upon said premises, as well as the room occupied by each and shall exhibit the same to any member of the Police Department or the Fire Department of the City or his deputy, or any member of the Building Safety Division of the Fire Department of the City of Kingston, at any reasonable time upon demand, and the failure to so exhibit the same shall constitute a violation and be punished in accordance with §405-52.
 - (4) For rooming houses and boardinghouses only, there shall be an annual special permit fee of \$200 per building plus a charge per room of \$20 for each room over four rooms per building which issued as an accommodation for hire. The fee for any special permit required by the provisions of this chapter shall be at the levels fixed from time to time by resolution of the Common Council of the City of Kingston or by local law.
 - (5) No special permit shall be issued or renewed for a longer period than one year, and all permits shall expire one year following the date of issuance. All applications, properly filled out, must be filed with the Planning Board of the City of Kingston at least 30 days prior to the expiration of the previous special

permit hereunder or for subsequent renewals thereof is hereby established for the whole or part of the calendar year.

(6) Every applicant of a rooming house or boardinghouse shall submit with his application to the Planning Board the following information which is to be filed both with the City Clerk and the Fire Officer:

- (a) The name, address and phone number of the owner or operating agency of the rooming house or boardinghouse.
- (b) The name, address and phone number of the permanent resident of the City of Kingston who shall be the resident agent responsible for the management of said rooming house or boardinghouse.
- (c) A description of the property by street number, the number of apartments in each rooming house or boardinghouse, the number of rooms in each apartment, the number of rooms for sole occupancy and the maximum possible occupancy.
- (d) The number of persons occupying each room and/or apartment.
- (e) A plan or diagram of the lot containing the rooming house or boardinghouse and of each floor in the building, showing all dimensions, doors, windows, closets, water closets bathrooms, staircases and means of exit.
- (f) Proof of annual inspection by the Ulster County Department of Health.

R. Dwellings for four or more families, including townhouses. In addition to the provisions of the Lot and Bulk Schedule and §405-30, such uses shall be subject to the following restrictions.

- (1) Length of building. No building shall exceed a length of 160 feet.
- (2) Distance between buildings. The following minimum distances between buildings shall be observed:
 - (a) Between a principal building, other than a one-family dwelling, and a one-story accessory building, 20 feet.
 - (b) Between any two other buildings, a distance equal to the average height of such buildings at the points where such buildings are nearest one to the other.

- (3) Office use in multiple dwellings, except that not more than one professional office or studio, other than accessory to a use otherwise permitted, shall be permitted for each 25 dwelling units or major fraction thereof on the lot. Such office or studio shall be only on the street floor of any building and on the floor immediately above the street floor only if there is access to such office or studio from other than a public hall.
- S. Professional offices and/or restaurants within a residential structure, limited as follows:
- (1) Not more than two floors in parts thereof may be used for such purposes.
 - (2) Such uses shall be accessible by means other than a public hall leading to residential uses.
 - (3) Not more than 1/3 of the floor space of a structure may be used for such purposes.
 - (4) Restaurants shall have a minimum service area of 1,000 square feet.
 - (5) Drive-in restaurants or restaurants that provide window service or restaurants that have only counter service are not permitted.

§405-11 Neighborhood Context Bulk Regulations in Single Family Districts

Development in single family residential districts, whether on individual lots or in approved subdivisions, should conform to the density, spacing and pattern of development (i.e., the context) of the surrounding neighborhood. The standards set forth below shall apply to properties in the single-family residential districts with regard to lot area, lot width and front building setback. The objective of these standards is that new homes should fit into the existing neighborhood in an unobtrusive and compatible manner.

- A. Lot Area: The area of any proposed lot or lots shall not have an area less than 90% of the average area of all lots in the immediate area, the larger portion of which is within 200 feet of the perimeter of the subject property, or 20,000 square feet, whichever is less.
- B. Building Setback: The front setback of any building need not be greater than the average setback of the four closest buildings, or those within 500 feet, on the same side of the street.
- C. Lot Width: The lot width of any proposed lot shall not be less than 90% of the average width of the four closest lots, or those within 500 feet, on the same side of the street, or 100 feet, whichever is less.

ARTICLE VII
Planning Board Powers, Duties and Functions

§405 Establishment

The City of Kingston Planning Board is established and governed by Chapter 96 of the City Code.

§405- . Site development plan approval

- A. **Purpose.** The purpose of site plan review is to ensure that development is carried out in compliance with these regulations and the guidelines and standards set forth in this Zoning Law and the Comprehensive Plan.
- B. **Applicability.** Site plan approval is required prior to the issuance of a building permit for any buildings or uses set forth in Sections C. and D. below.
- C. **Administrative Site Plans.** Unless a site plan is submitted in connection with an application for a special permit , the City Planning Department staff is authorized to review and approve or deny the following site plan applications:
- (1) New residential development of three or less units.
 - (2) Additions to existing residential development of three or less units.
 - (3) New commercial developments that cumulatively result in:
 - (a) Less than two thousand (2,000) square feet of gross floor area if not within one hundred (100) feet of a residential zoning district.
 - (b) Less than one thousand (1,000) square feet of gross floor area if within one hundred (100) feet of a residential zoning district.
 - (4) Additions to commercial developments that cumulatively result in less than one thousand (1,000) square feet of gross floor area:

- (5) All other applications for site plan approval shall be reviewed and approved or denied by the Planning Board. If the application requires a special use permit, the site plan shall be reviewed and approved or denied in accordance with the procedure set forth as part of the special use permit application.
- (6) Staff Review of Administrative Site Plans and Appeal
 - (a) Staff Review. The Department of Planning shall review the proposed site plan. As part of their review, the Department may seek review comments and recommendations from the Zoning Enforcement Officer or other City department as appropriate. The Planning Department staff shall determine if the proposed site plan satisfies the site plan approval criteria and shall grant, grant with conditions, or deny the application for site plan approval, subject to appeal to the Planning Board.
 - (b) Appeal. An appeal by an aggrieved person of a decision of the Planning Department relating to a site plan may be filed with the City Clerk's Office within ten (10) days of the Department's decision. The Planning Board shall hold a public hearing within 30 days of such appeal to consider the appeal and grant, grant with conditions or deny the application. The decision of the Planning Board is final.
- (7) Minor Revisions to Site Plan. The Planning Director is authorized to allow minor revisions to a site plan approved by the Planning Board after receipt of comments from the Zoning Enforcement Officer and to authorize the issuance of a building permit for construction in accordance with the revised site plan. A minor revision is one which:
 - (a) Does not substantially alter the location of any points of access to the site;
 - (b) Does not change the use of the property;
 - (c) Does not increase the density or intensity of the development to occur on the property;
 - (d) Does not result in a reduction or change of previously approved, open space, setback, building location, or landscaping by more than ten percent (10%);

- (e) Does not result in a material modification or cancellation of any condition placed upon the site plan as originally approved;
 - (f) Does not substantially change the internal or external traffic patterns;
 - (g) Does not add additional property to the site;
 - (h) Does not increase the impervious area of the site by more than ten percent (10%);
 - (i) Does not increase the height of the building(s) including approved roof-top appurtenances.
- (8) Major Revisions to Site Plans. If the requested modification to an approved site plan is not determined by the Planning Director to be a minor revision, the request shall be processed in the same manner as the original approval.

D. Site Plan Approval by the Planning Board.

Site development plan approval by the Planning Board shall be required for:

- (1) The erection or enlargement of all buildings in all districts, other than one, two or three family residences, those listed in Section C. above and those set forth in Subsection D.(4) below.
- (2) All uses of land where no building is proposed and where a building permit or certificate of occupancy is not required. (Note: This should be further explained)
- (3) Any change in use or intensity of use which will affect the characteristics of the site in terms of parking, loading, drainage, access or utilities.
- (4) The erection or enlargement of all structures, including one-, two- or three-family residences, in all L Landmark Districts and in the RT Rondout District.
- (5) Any application for a special permit.

- E. No building permit may be issued for any building within the purview of this section until an approved site development plan or amendment of any such plan has been secured by the applicant and presented to the Fire Officer. No certificate of occupancy may be issued for any building or use of land within the purview of this section unless the building is constructed or used, or the land is developed or

used, in conformity with an approved site development plan or an amendment of any such plan. The Fire Officer shall certify on each site development plan or amendment to a site development plan whether or not the plan meets the requirements of this chapter, other than those enumerated in sections of this chapter regarding site development plan approval.

F. **Objectives.** In reviewing site plans, consideration shall be given to the public health, safety and welfare; the comfort and convenience of the public in general, or the residents or users of the proposed development and of the immediate neighborhood in particular; and the appropriate conditions and safeguards as may be required to further the expressed intent of this chapter and the accomplishment of the following objectives, in particular:

- (1) That the site plan is in conformance with such relevant portions of the Comprehensive Plan of the City that may be in existence.
- (2) That the design of all structures is compatible with that of surrounding structures. Compatibility shall be determined by a review of proposed use of materials, scale, mass, height, color, texture and location of the structure or structures on the site.
- (3) That all proposed traffic accessways are adequate but not excessive in number; adequate in width, grade, alignment and visibility; not located too near street corners or other places of public assembly; and meet other similar safety considerations.
- (4) That adequate off-street parking and loading spaces are provided to prevent the parking in public streets of vehicles of any persons connected with or visiting the use and that the interior circulation system is adequate to provide safe accessibility to all required off-street parking lots, loading bays and building services.
- (5) That all playground, parking and service areas are reasonably screened, at all seasons of the year, from the view of adjacent residential lots and streets and that the general landscaping of the site is such as to enhance the character of the City and is in character with that generally prevailing in the neighborhood.

- (6) That all existing trees over eight inches in diameter, measured three feet above the base of the trunk, shall be retained to the maximum extent possible.
- (7) That all plazas and other paved areas intended for use by pedestrians use decorative pavements and plant materials so as to prevent the creation of expanses of pavement.
- (8) That all outdoor lighting is of such nature and so arranged as to preclude the diffusion of glare onto adjoining properties and streets.
- (9) That the drainage system and the internal water and sewer systems are adequate and that all connections to City systems are in accordance with City standards.
- (10) That the site plan and building design accommodate the needs of the handicapped and are in conformance with the state standards for construction concerning the handicapped.
- (11) That the site plan and building design maximize the conservation of energy.

G. Procedure.

- (1) Presubmission.
 - (a) Prior to the submission of a formal site development plan, the applicant shall meet in person with the Planning Board and/or its designated representative to discuss the proposed site development plan in order to determine which of the subsequent requirements may be necessary in developing and submitting the required site development plan.
 - (b) Where the site is within an L Landmark District, the applicant should also meet in person with the Kingston Historic Landmark Preservation Commission and/or its designated representative in order to determine the extent to which the proposed development may conform or conflict with the standards of the Commission and this chapter and to discuss the possible diminution or elimination of any conflicts.
- (2) Within six months following the presubmission conference, the site plan and any related information shall be submitted to the Planning Director (PD) in two copies. The site plan shall be accompanied by a fee in accordance with the

schedule of fees of the City of Kingston. If not submitted within this six-month period, another presubmission conference may be required.

- (3) The PD shall certify on each original or amended site plan whether or not the application is complete in accordance with Subsection F below or as may be modified during the presubmission conference and whether the plan meets the requirements of all the provisions of this chapter, other than those of this section regarding site plan review. The PD shall act to certify the application or return it to the applicant for completion or revision within 30 days of submission by the applicant.
- (4) Following certification by the PD, the application shall be forwarded to the Planning Board at least 10 days prior to its next regular meeting, which shall be considered the official submission date.
- (5) Simultaneously with its submission to the Planning Board, the certified application may be forwarded to the Chief of Police, Fire Chief, Health Department, Superintendent of Public Works, Plumbing Inspector and, where required, to the County Planning Board, County Highway Department and any other agency that the Building Safety Division of the Fire Department deems appropriate.
- (6) The Planning Board may hold a public hearing on the site plan if it determines that the matter is of wide public interest. If such a hearing is held, it shall be held within 62 days of the official submission date of the application, and notice shall be given at least five days prior to the date of such hearing by publication in the official City newspaper.
- (7) The Planning Board shall act to approve or disapprove with conditions any such site plan within 62 days after the public hearing or, if no hearing is held, within 62 days of the official submission date. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the board. Conditional approval by the Planning Board shall include written findings upon any site plan element found contrary to the provision or intent of this chapter. In reviewing the application, the Planning Board shall consider whether a proposed plan will conform to the intent and

requirements of this chapter and/or what revisions are appropriate. In reviewing site plans, the Planning Board shall comply with the provisions of the State Environmental Quality Review Act. The decision of the Planning Board shall be filed in the office of the City Clerk within five business days of the rendering of the decision. All conditions must be satisfied prior to issuance of a building permit.

- (8) Amendments to a previously approved site plan shall be acted upon in the same manner as the original site plan except as provided in C.(7) above.
- (9) Following approval of the site plan by the Planning Board, the applicant shall file with the City Clerk a performance bond to cover the full cost of any required improvements in an amount set by the Planning Board upon advice of the City Engineer. If the value of improvements is less than \$25,000, unless the Planning Board determines that improvements of lesser costs are important to the health and welfare of the City or the immediate area, the Planning Board may waive the bonding requirements. Said bond shall be in a form satisfactory to the Corporation Counsel of the City of Kingston and may be in cash or in the form of surety company bonds and, if a surety company bond, shall be in the amount of 100% of the estimated cost or, if a cash bond, 50% of the estimated cost, as certified by the City Engineer, of proposed screening and landscaping, including planting and maintenance thereof for a minimum of one year and a maximum of three years at the discretion of the Planning Board, stormwater drainage systems, public and private streets and drives, water and sanitary sewer systems, outdoor lighting and off-street parking areas, loading areas, means of vehicular access and egress to and from the site onto public streets and recreation areas, including playgrounds and garbage collection stations and fire alarm systems (if any). Said bond shall be conditioned upon the property owner's or developer's completing said work enumerated herein and set forth on the approved site plan in a manner satisfactory to the City Engineer of the City of Kingston and upon the proper functioning of said systems for a period of one year from their completion. In default thereof, said bond or deposit shall be forfeited, and the City shall use

the amount thereof to complete any incomplete portion of said work or to make repairs as are necessary to assure proper functioning of said improvements; provided, however, if any amount of money remains after the City has completed said work, such excess money will be returned to the surety or the person putting up the required deposit. Said surety bond or cash deposit may be reduced by resolution of the Planning Board upon the certification of the City Engineer that one or more particular items required by the Planning Board have been satisfactorily completed. If a fifty-percent cash bond has been posted, such reduction shall be in the ratio that the completed item or items bear to the total estimated costs of the required improvements. The installation of all improvements shall be under the direct supervision of a registered architect or professional engineer.

- H. Time limit on validity of approval. Approval of a site plan by the Planning Board shall be valid for a period of 120 days from the date thereof for the purpose of obtaining a building permit. Failure to secure a building permit during this period shall cause the site plan approval to become null and void. Upon application, the Planning Board may extend the time limit on the validity of the approval to not more than two years from the date of the original approval.
- I. Required submissions. All maps submitted must be at a scale of not less than 30 feet to the inch. Where the site is within an L Landmark Overlay District, an additional copy of such information and letters, and a copy of any additional data required by the Planning Board, must be submitted at the same time to the Kingston Historic Landmark Preservation Commission. The information to be submitted, and which in total constitutes a site development plan, follows.
 - (1) Legal data.
 - (a) The names of all owners of record of all adjacent property and the lot, block and section number of the property, all as shown on the City's Official Assessment Maps.
 - (b) Existing zoning and special district boundaries.

- (c) Boundaries of the property, building or setback lines, if different from those required in the Building Zone Ordinance, and lines of existing streets and lots as shown on the City's Official Assessment Maps. Reservations, easements and areas dedicated to public use, if known, shall be shown.
 - (d) A survey showing all lengths shall be in feet and decimals of a foot, and all angles shall be given to the nearest minute or closer if deemed necessary by the surveyor. The error of closure shall not exceed 1 to 10,000.
 - (e) A copy of any covenants or deed restrictions that are intended to cover all or any part of the tract.
- (2) Existing facilities.
- (a) A drawing showing the location of existing buildings.
 - (b) The location of existing water mains, culverts and drains on the property, with pipe sizes, grades and directions of flow.
- (3) Topographic data.
- (a) Existing contours with intervals of five feet or less, referred to a datum satisfactory to the Board.
 - (b) The location of existing watercourses, marshes, wooded areas, rock outcrops, single trees with a diameter of eight inches or more, measured three feet above the base of the trunk, and other significant existing features.
- (4) Development data.
- (a) The name of development, data, North point, scale and the name and address of the record owner, engineer, architect, land planner or surveyor preparing the site development plan.
 - (b) The proposed use or uses of land and buildings and the proposed location of buildings.
 - (c) All means of vehicular ingress and egress to and from the site onto public streets.
 - (d) The location and design of any off-street parking areas or loading areas.

- (e) The location of all proposed waterlines, valves and hydrants and of all sewer lines or alternative means of water supply and sewage disposal and treatment.
- (f) The proposed location, direction, power and time of proposed outdoor lighting.
- (g) The proposed screening and landscaping shown on a planting plan prepared by a qualified landscape architect or architect.
- (h) The proposed stormwater drainage system.
- (i) All proposed lots, easements and public and community areas. All proposed streets with profiles indicating grading and cross-sections showing the width of roadways, locations and widths of sidewalks and the location and size of utility lines, according to the standards and specifications contained in the street improvement specifications of the Department of Public Works, City of Kingston. All lengths shall be in feet and decimals of a foot, and all angles shall be given to the nearest 10 seconds or closer if deemed necessary to the surveyor. The error of closure shall not exceed 1 to 10,000.
- (j) All proposed grades.

J. Waiver of required information. Upon findings by the Planning Board that, due to special conditions peculiar to a site plan, certain information normally required as part of the site plan is inappropriate or unnecessary or that strict compliance with said requirements may cause extraordinary and unnecessary hardships, the Board may vary or waive the provision of such information, provided that such variance or waiver will not have detrimental effects on the public health, safety or general welfare or have the effect of nullifying the intent and purpose of the site plan submission, Official Map, Master Plan or this chapter.

K. Any person or persons jointly or severally aggrieved by any decision of the Planning Board concerning review of a site plan may bring a proceeding to review

in a manner provided by Article 78 of the Civil Practice Law and Rules in a court of record on the ground that such decision is illegal, in whole or in part.

§405- . Special Permits.

On application and after public notice and hearing, the Planning Board may authorize, by resolution, the issuance of a special permit only for those uses in a district where this chapter requires such a permit. In authorizing the issuance of a special permit, the Board shall take into consideration the public health, safety and welfare and shall prescribe appropriate conditions and safeguards to insure the accomplishment of the following objectives. Unless otherwise provided, all special permits shall be valid for a period determined by the Board.

A. Objectives.

- (1) That all proposed structures, equipment or material shall be readily accessible for fire and police protection.
- (2) That the proposed use is of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
- (3) That, in addition to the above, in the case of any use located in or directly adjacent to a residential district:
 - (a) The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or incongruous with said residential district or conflict with the normal traffic of the neighborhood.
 - (b) The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of screening and landscaping on the site shall be such that the use will not hinder

ordiscourage the appropriate development and use of adjacent land and buildings or diminish the value thereof.

B.Procedure. The procedure for a special permit shall be the same as set forth in the General City Law §27-b.

C.Application. Every application for a special permit shall be submitted in two copies and shall contain the relevant items outlined in § 405-, as determined during the presubmission conference.

D. I When authorizing the issuance of a special permit, it shall be the duty of the Planning Board to attach such conditions and safeguards as may be required in order that the results of its action may, to the maximum extent possible, further the general objectives of this chapter. The Board may require that special permits be periodically renewed. Such renewal shall be granted following due public notice and hearings and may be withheld only upon a determination that such conditions as may have been prescribed by the Board in conjunction with the issuance of the original permit have not been, or are no longer being, complied with. In such cases, a period of 60 days shall be granted the applicant for full compliance prior to the renovation of said permit. Any use for which a special permit may be granted shall be deemed to be a conforming use in the district in which such use is located, provided that:

- (1) The provision in this chapter under which such permit was issued is still in effect.
- (2) Such permit was issued in conformity with the provisions of this chapter.
- (3) Such permit shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted.
- (4) All applicable provisions of this chapter not otherwise varied by the special permit approval are adhered to.

E.No special permit shall be authorized for any activity in an L Landmark Overlay District until such application shall have been referred to the Landmark Preservation Commission in accordance with the site plan procedure outlined above.

- F. Any person or persons, jointly or severally aggrieved by any decision of the Planning Board concerning review of a special permit, may bring a proceeding to review in a manner provided by Article 78 of the Civil Practice Law and Rules in a court of record on the ground that such decision is illegal, in whole or in part.

§405- Planning Board may require parkland

- A. The Planning Board may require that a subdivision or site plan containing residential units also contain a park, or parks, or playground suitably located for playground or other recreational purposes.
- B. Before the Planning Board will require that land be reserved for park, playground or other recreational purposes, the Planning Board must make a finding that such requirement is warranted. Such a finding shall include an evaluation of the present and anticipated future needs for park and recreational purposes in the City of Kingston based on the projected population growth to which the particular site plan and/or subdivision will contribute.
- C. The Planning Board shall consult with the Parks and Recreation Department of the City of Kingston in order to assist in the formulation of the findings as referenced in Subsections A and B above.
- D. The ownership of a reservation for park purposes shall be clearly indicated on the site plan or subdivision and established in a matter satisfactory to the Planning Board so as to insure its proper future continuation and maintenance.

405- Cash payment in lieu of reservation

Where the Planning Board makes a finding that the proposed subdivision or site plan presents a proper case for requiring a park or parks suitably located for playground or

other recreational purposes, but that a suitable park or parks of adequate size cannot be properly located on such site plan or subdivision, the Planning Board may require, as a condition to the approval of the site plan or subdivision, a payment to the City of Kingston of a sum of money in an amount to be determined and set annually, by resolution of the Common Council. Fees imposed pursuant to the article shall be paid prior to final site plan or subdivision approval and shall be set aside in a fund to be used exclusively for park, playground or other recreational purposes, including acquisition of property for use as park or playgrounds.

405 Consulting Fees.

- A. The City of Kingston shall have the right to require an applicant who seeks to obtain a site plan or subdivision approval to deposit funds in escrow sufficient to cover the costs being incurred by the City of Kingston for all consultant services, including but not limited to engineering, planning and legal, as well as clerical costs incurred in the processing and reviewing of such application.
- B. The Planning Board, in consultation with the applicant, shall compute the amount of the escrow to be posted with the City of Kingston. Such amount shall be reasonably related to the cost attendant to the City's review of the application. It is understood that the applicant is required only to reimburse and pay to the City of Kingston the fees actually expended by the City. Any such fees incurred by the City of Kingston must be reasonable and subject to all appropriate audit provisions of the City of Kingston with the explicit understanding that the applicant shall only pay at the rate for said services that the City pays for its own consulting service.

ARTICLE X

Board of Appeals

§405-. Purpose.

A Zoning Board of Appeals shall be maintained and operate in accordance with Article 5-A of the New York State General City Law, Sections 81, 81-a, and 81-b. The Zoning Board of Appeals shall have all of the authority, jurisdiction and duties granted to such Board by Sections 81, 81-a, 81-b and any other applicable State law, and shall fulfill its duties in accordance with those grants of authority and in accordance this Zoning Law.

§405- Establishment and Membership.

Pursuant to Section 81 of the New York State General City Law there is hereby established a Zoning Board of Appeals consisting of five (5) members appointed by the Mayor. The members of the Board serving at the time this chapter is passed shall continue in office as members of the Board hereby established.

- A. The Mayor shall choose two (2) of these members to serve one-year terms; two (2) of these members to serve two-year terms; and one (1) member to serve three-year term.

- A. The Mayor shall designate one of the Zoning Board of Appeals members as chairperson to preside at all meetings and hearings and to fulfill the authorized duties of that office. In the absence of the chairperson, the Zoning Board of Appeals may designate another member of the Zoning Board of Appeals to serve as acting chairperson. All meetings of the Zoning Board of Appeals shall be held at call of the chairperson and at such time as the Zoning Board of Appeals may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

- C. Pursuant to Section 81(11)(a) of the New York General City Law, alternate Zoning Board of Appeals member positions for the City of Kingston Zoning Board of

Appeals are hereby established for use when a regular member cannot participate due to a conflict of interest. Under New York Municipal Home Rule Law, alternate Zoning Board of Appeals members may also serve in place of a regular member who is absent. Alternate members shall be appointed by the Mayor.

- (1) The Mayor may appoint up to three (3) alternate Zoning Board of Appeals members.
 - (a) The first appointment shall be for a period of three years.
 - (b) The second appointment shall be for a period of two years.
 - (c) The third appointment shall be for a period of one year.
 - (d) Thereafter, all appointments shall be for a period of three years.
- (2) The Chairperson may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board, or by absence. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Zoning Board of Appeals. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.
- (3) All provisions relating to Zoning Board of Appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, compatibility of office and service of other boards, shall also apply to alternate members.

D. No person who is a member of the Common Council shall be eligible for membership on the Zoning Board of Appeals.

§405- Terms of members now in office.

Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the Board.

§405- Training and attendance requirements.

- A. Each member of the Zoning Board of Appeals and each Alternate Member shall complete a minimum of four (4) hours of training each year, designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four (4) hours in any one (1) year may be carried over into succeeding years in order to meet this requirement. Such training shall be approved by the Common Council and may include, but is not limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to electronic media, video, distance learning and traditional classroom training.
- B. To be eligible for reappointment, a member or alternate member must have completed the training promoted by the city.
- C. The training requirement may be waived or modified by resolution of the Common Council, when, in the Town Council's judgment, it is in the best interest of the city to do so.
- D. No decision shall be voided or declared invalid because of a failure to comply with this requirement.

§405- Vacancies.

Members of the Zoning Board of Appeals shall continue to serve until a successor is

appointed. In the event a vacancy occurs, other than by the expiration of a term, the Mayor shall appoint a new member for the remainder of the unexpired term.

X. Removal of Members.

The Mayor shall have the power to remove, after public hearing, any member or alternate member of the Zoning Board of Appeals for cause. Cause for removal of a member or alternate member may include one of more the following:

- A. Failure to complete mandatory training requirement;
- B. Failure to attend a minimum of ten meeting during the course of one calendar year.

§405- Zoning Board of Appeals Procedure

- A. Meeting, minutes, records. All Zoning Board of Appeals meetings shall be open to the public except for records exempted from disclosure under Article 7 of the New York State Public Officers Law (Freedom of Information Law) or documents which are protected by attorney-client privilege. The Zoning Board of Appeals shall keep the minutes of its proceedings, showing the vote of each member upon every question, including those absent and those abstained, indicating such fact, and shall also keep records of its examinations and other official actions.
- B. Quorum. A quorum shall be established by a simple majority of all members of the Zoning Board of Appeals. The presence of three (3) members of the Zoning Board of Appeals shall constitute a quorum. The concurring vote of three members shall be required to carry out any action of the Zoning Board of Appeals, except as may be statutorily required.
- C. Filing Requirement. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision, or determination of the Zoning Board of

Appeals shall be filed in the office of the city clerk within five (5) business days and shall be a public record.

- D. Assistance to the Zoning Board of Appeals. The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the City of Kingston for such assistance as shall be deemed necessary and as shall be authorized by the Common Council. Such department, agency, or employee may be reimbursed for any expenses incurred as a result of such assistance.
- E. Hearing appeals. Unless otherwise provided in this Zoning Law, the jurisdiction of the Zoning Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination, made by the administrative official charged with the enforcement of any ordinance or local law. For the purposes of this law, the administrative official charged with enforcement shall include the Zoning Enforcement Officer, the Building Inspector and/or the Code Enforcement Officer as applicable pursuant to the provisions of this law and those officers shall be referred collectively in this Article of Law as "Enforcement Officer." Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the City of Kingston. The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Enforcement Officer, to grant use and area variances.
- F. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Enforcement Officer certifies to the Zoning Board of Appeals that, by reason of facts stated in the certificate, in his or her opinion, a stay would cause imminent peril to life or property. In such case, the proceedings shall not be stayed unless a restraining order is issued by the Ulster County Supreme Court or the Zoning Board of Appeals, issued on notice to the Enforcement Officer and on due cause being shown.

G. Filing of administrative decision and time of appeal.

- (1) Each order, requirement, decision, interpretation or determination of the Enforcement Officer charged with the enforcement of the Zoning Law shall be filed in the office of such Enforcement Officer within five (5) business days from the day it is rendered and shall be public record.
- (2) All appeals must be taken within sixty (60) days after filing of any order, requirement, decision, interpretation or determination of the Enforcement Officer by filing with the Enforcement Officer and with the Zoning Board of Appeals a notice of appeal. The notice of appeal shall:
 - (a) specify the property involved;
 - (b) specify the grounds for such appeal;
 - (c) specify the relief sought;
 - (d) identify the specific section of the Zoning Law or other code or law involved.
 - (e) describe precisely and in detail either the interpretation claimed or the variance or other relief that is sought; and
 - (f) state the grounds upon which it is claimed the relief should be granted.
- (3) The Enforcement Officer from whom the appeal is taken shall immediately transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- (4) The applicant is responsible for any filing fees at the time of the filing of the appeal in an amount in accordance with the fee schedule, which may be updated from time to time.

H. Public Hearing. The Zoning Board of Appeals shall fix a reasonable time for hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the City of Kingston at least five (5) days prior to the date of the hearing. The cost of sending or publishing the notice shall be borne by the appealing party and shall be paid to the Zoning Board of Appeals before the public hearing occurs. Any party may appear in person, or by agent or attorney at the hearing.

- (1) The Zoning Board of Appeals shall give notice to the Ulster County Planning Board as required by section 239-m of the New York State General Municipal Law. Such notice shall be in writing sent at least five (5) days prior to such public hearing.
- (2) If the land affected by the appeal lies within five hundred (500) feet of the boundary of any other municipality, the Clerk of the Zoning Board of Appeals shall also submit at least five (5) days prior to the public hearing to the municipal clerk of such other municipality or municipalities a copy of the notice of the substance of every appeal, together with a copy of the official notice of such public hearing.
- (3) In any application or appeal for a variance, the Clerk of the Zoning Board of Appeals shall provide written notice of the public hearing, along with the substance of the variance appeal or application, to: the owners of all property abutting, or directly opposite, that of the property affected by the appeal; and to all other owners of property within five hundred (500) feet of the property which is subject of the appeal. Such notice shall be provided by certified mail at least five (5) days prior to the date of the hearing.

I. Compliance with the State Environmental Quality Review Act. The Zoning Board of Appeals shall comply with the provisions of the New York State Environmental Quality Review Act ("SEQRA") under Article 8 of the Environmental Conservation Law and its implementing regulations.

J. Time to Render Decision. The Zoning Board of Appeals shall make its decision on the appeal within sixty-two (62) days after the close of the public hearing. The time in which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Zoning Board of Appeals.

K. Voting Requirements.

- (1) Decision of the Board. Except as in the case of a Rehearing as set forth in Article ____ of this Law, every motion or resolution of the Zoning Board of

Appeals shall require for its adoption the affirmative vote of a majority of all the members of the Zoning Board of Appeals as fully constituted regardless of vacancies or absences. Where an action is subject to referral to the County Planning Board , the voting provisions of Section 239-m of the New York State General Municipal Law shall apply.

- (2) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the Zoning Board of Appeals is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the Enforcement Officer within the time allowed under Article ____ of this Law, the appeal is denied. The Zoning Board of Appeals may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed being subject to the rehearing process, as set forth in Article ____ of this Law.

- L. Filing of Decision. The decision shall be filed in the office of the city clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

§405- Powers and duties.

The Zoning Board of Appeals shall have all the powers and duties prescribed by Section 81-b of Article 5-A of the New York State General City Law and by this chapter, which are more particularly specified as follows:

- A. Orders, requirements, decisions, interpretations and determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the Enforcement Officer. To that end, the Zoning Board of Appeals shall have all the powers of the Enforcement Officer from whose order, requirement, decision, interpretation or determination the

appeal is taken.

B. Use Variances. The Zoning Board of Appeals, upon appeal from the decision or determination of the Enforcement Officer shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by the terms of this chapter.

(1) No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under this Zoning Law for the particular district where the property is located:

- (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
- (b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
- (c) The requested use variance, if granted will not alter the essential character of the neighborhood; and
- (d) The alleged hardship has not been self-created.

(2) The Zoning Board of Appeals, in granting the use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

C. Area Variances. The Zoning Board of Appeals, upon appeal from the decision or determination of the Enforcement Officer, shall have the power to grant area variances.

(1) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the

neighborhood or community by such grant. In making such determination, the Zoning Board of Appeals shall also consider:

- (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - (b) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - (c) Whether the requested area variance is substantial;
 - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (e) Whether the alleged difficulty was self-created. This consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (2) The Zoning Board of Appeals, in the granting of the area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (3) The Zoning Board of Appeals shall, in granting both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Law and Comprehensive Plan for the City of Kingston, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

§405- Rehearing.

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination not previously reheard may be made by any member of the

Zoning Board of Appeals. A unanimous vote of all members of the Zoning Board of Appeals then-present at the meeting is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original public hearing. Upon such rehearing, the Zoning Board of Appeals may reverse, modify or annul its original order, decision or determination. The vote must be unanimous of all the members of the Zoning Board of Appeals that are present at the meeting, provided the Zoning Board of Appeals finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

§405- Relief from Decisions.

Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals or any officer, department, board or bureau of this City may apply to the Ulster County Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision of the Zoning Board of Appeals in the office of the city clerk.

§405- Strict Construction.

All provisions of this Article pertaining to the Zoning Board of Appeals shall be strictly construed. The Zoning Board of Appeals shall act in strict conformity with all provisions of law and of this Article and in strict compliance with all limitations contained therein, provided however, that if the procedural requirements set forth in this Article have been substantially observed, no applicant or appellant shall be deemed deprived of the right of application or appeal.

§405- Other Provisions of General City Law Section 81.

All other provisions of Section 81-a of the New York State General City Law with regard to Zoning Board of Appeals procedures, not set forth herein, are incorporated herein by reference and shall apply to the Zoning Board of Appeals.