

**BUILDING AND DEVELOPMENT CONTROL LOCAL LAW  
TOWN OF SMITHFIELD  
AS AMENDED BY LOCAL LAWS  
1992-2, 1993-2, 1995-1, 1995-2, 2004-1, 2005-1, 2006-2, 2007-1, 2010-1**

11/9/2010

**ARTICLE I: TITLE, ENACTING CLAUSE, PURPOSE, APPLICATION**

**Section 1.1 Purposes of the Building and Development Control Local Law**

The purposes of this Building and Development Control Local Law and the regulations herein set forth are to provide for the orderly growth of the Town, to encourage the most appropriate use of land, to promote compatible land uses, to protect and conserve the value of property, to prevent the overcrowding of land, and to promote the health, safety and general welfare of the public.

**Section 1.2 Application of Regulations**

Except as herein provided:

No building or land shall hereafter be used or occupied and no building, structure or mobile home or part thereof shall be erected, moved or altered unless in conformity with the regulation herein specified.

**ARTICLE II: DEFINITIONS**

**Section 2.1 Customary Meaning of Words**

Except where specifically defined herein all words used in this Local Law 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 "plot"; 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 words "or intended, arranged or designed to be used or occupied".

**Section 2.2 Definitions**

**Agricultural Products** – Any organic product with commercial value grown or raised on a farm, including but not necessarily limited to, vegetable, plants, trees, seedlings and other produce, cattle, hogs, chicken, turkeys, goats, sheep, milk and other livestock products, corn, grains, soybeans, hay, straw and other livestock feeds.

**Agricultural Use or Farm** – Lot containing at least ten acres which is used primarily for raising livestock or other agricultural products, including greenhouses and other farm structures and the storage of agricultural equipment; and as an accessory use the sale of agricultural products raised on the property. Cultivation of wood lots is considered an agricultural use.

**Board of Appeals** – Board of Appeals of the Town of Smithfield.

Building – Any structure other than a mobile home having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals, or other personal property.

Building Line – The line parallel to the lot line beyond which a building cannot extend under the terms of Local Law. This is the line from which the setback measurements for purposes of Section 3.4 of this Local Law are determined. If a building has an attached sun parlor, enclosed porch, and/or unenclosed porch projecting more than ten (10) feet from the wall of the building, excluding the steps, then the setback shall be measured from the front edge of the porch rather than from the wall of the main building.

Building Permit – A permit issued by the Codes Enforcement Officer stating that the purpose for which a building or land is to be used is in conformity with all requirements under this Local Law, the New York State Uniform Building Code and any other applicable Codes and Ordinances for the lot on which it is located or is to be located.

Certificate of Occupancy – A certificate issued by the Codes Enforcement Officer upon completion of construction, alteration, or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of this Local Law and such adjustments thereto granted by the Town Board or Planning Board.

Double Wide Mobile Swelling – A single family residence structure containing not less than 1200 square feet of living space, exclusive of basements, garages, attics and similar spaces not constituting habitable space under the New York State Building Code which consists of two separate and distinct halves, each of which contains a permanent towing frame as part of its structure which makes it capable of being towed in a public highway, and each of which is manufactured in such a manner as to be used as a dwelling or place of business only in conjunction with the other half when the halves are placed together.

Dwelling, Modular – A dwelling unit of modular construction consisting of more than one component module and designed to be permanently anchored to a foundation, thereby becoming a fixed part of the real estate. (For the purpose of this Local Law a modular home containing one dwelling unit shall be considered a single-family dwelling.)

Dwelling, Multifamily – A building or portion thereof containing two or more dwelling units and used for occupancy by two or more families living independently of each other.

Dwelling, Single Family – A detached building containing one dwelling unit only.

Dwelling Unit – A complete self-contained residential unit, with living, sleeping, cooking, and sanitary facilities within the unit, for use by one family.

Family – One or more persons living, sleeping, cooking, and eating on the same premises as a single housekeeping unit, provided that unless all members are related by blood, marriage or adoption, no such single housekeeping unit shall contain more than five unrelated members.

Farm Building – Any building used for the housing of agricultural equipment, or agricultural products or for the incidental or customary processing of agricultural products, and provided that such building is located on, operated in conjunction with and necessary to the operation of the farm.

Farm Equipment – Tractors, machinery, trucks and other equipment used in the production, harvesting, handling, maintenance and storage of agricultural products and farm buildings.

Garage, Private – A secondary building used in conjunction with a primary building which provided for the storage of motor vehicles and in which no occupation, business or services for profit (other than incidental and infrequent services for profit) are carried on.

Landscaping – The act of changing or enhancing the natural features of a plot of ground (usually around a building) so as to make it more attractive, as by adding lawns, trees, bushes, shrubs, etc.

Lot – Parcel of land occupied, or designed to be occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are arranged and designed to be used in connection with such buildings.

Lot Area – An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculation lot area.

Lot Depth – The horizontal distance between the front and rear lot lines, measured at right angles to the front lot line.

Lot Lines – The property lines bounding the lot.

Lot Width – The horizontal distance between the side lot lines measured at right angles to its depth at the building line.

Mobile Home – A single, self contained portable structure or vehicle with a permanently affixed towing frame, capable of being propelled or towed on a public highway (whether or not the wheels are presently attached), and so designed and constructed as to permit (pursuant to applicable codes) its use as a residence or as an office for the conduct of a trade, business, profession or occupation. For purposes of this Local Law, travel trailer and motor homes shall not be considered mobile homes.

Mobile Home Park – A parcel of land at least five (5) acres in size owned and operated by a single party upon which (5) or more mobile homes are placed and occupied for residential purposes in accordance with licenses issued by the Town of Smithfield and the Madison County Department of Health.

Mobile Home Site – Any designated parcel of land in a mobile home park provided by the operator and designed for accommodating one mobile home, its accessory buildings, structures and equipment for the exclusive use of the occupants.

Modular Construction – A structure built in accordance with the requirements of the New York State Building Code, which is not constructed on the parcel where it is intended to be placed, but rather is

transported to the site in a substantially constructed state for placement upon a permanent foundation, and which does not contain a permanent towing frame as part of the structure.

**Motor Home** – A motor vehicle propelled by its own power which contains sleeping, and/or cooking and/or sanitary facilities designed and constructed for vacation or other similar temporary use.

**New Mobile Home** – Any mobile home purchased directly from a mobile home dealer which has not been previously utilized as a residence or for the conduct of a trade, business, profession or occupation.

**Nonconforming Use or Structure** – A use, accessory use, structure, secondary structure, accessory structure, lot, yard or any other activity, component or dimension relating to the use of land, and the improvements thereon, which does not comply with the applicable regulations contained in this Local Law, but which was not in violation of any laws or ordinances at the time of adoption of this Local Law.

**Plan (Plot or Site)** – The design of a development, including a: plot or subdivision, all covenants relating to use, location, and bulk of buildings and other structures, intensity or use or density of development, private streets, ways and parking facilities. The phrase “provisions of the Plan” when used in these regulations shall mean the written and graphic materials referred to in this definition.

**Planning Board** – Planning Board of the Town of Smithfield.

**Permanent Residence** – Any building, structure, or mobile home placed on a parcel with the intent that it remain there indefinitely for use as a residence.

**Residence** – A dwelling place so constructed and/or situated, with water, sewage and utility facilities attached or provided, so as to contemplate and permit (pursuant to applicable codes) continuous, year-around use thereof for human habitation.

**Screening** – A permanent barrier including but not limited to, fences, bushes, or trees or other natural and/or artificial material, at least four (4) feet high, which obscures the visual character of any given building or use of land.

**Setback** – The distance between a lot line and principle, accessory, or secondary structure as required by this Local Law. Where a public or private right-of-way abuts a lot line, the setback shall be measured from the boundary line of said right-of-way closest to the interior of the lot.

**Skirting** – Material of rigid composition for placement around all sides of a mobile home extending from the base of the mobile home to the surface of the ground or pad beneath it, with vent spaces as necessary, and painted in such a manner as to be compatible with the mobile home.

**Special Use Permit** – A permit for a use considered generally compatible with other permitted uses, but only if certain conditions are met.

**Street Line** – Limit of street or highway right-of-way line. For the purpose of this Local Law, street line shall be the highway right-of-way line, whether or not set forth in a deed or shown on a map, defining the corridors for vehicular and pedestrian traffic used by the general public.

Structure – Anything constructed, erected, installed on or in the ground or which is attached to something located on or in the ground which shall be safe and stable. Structures included but are not limited to stadiums, signs, and in-ground swimming pools.

Structure Accessory – Structure designed to accommodate an accessory use, but detached from the principle structure such as a garage for vehicles accessory to the principle use, a free standing storage shed, garden house, or similar facility. An accessory structure attached or contained within a principle structure shall be considered part of the principle structure. Barns or other structures designed or intended for the housing of livestock or other animals shall not be considered accessory structures.

Structure Height of – The vertical distance measured from the average elevation of the proposed finished grade at the front of the structure to the highest point of the roof.

Structure, Principle – A structure designed primarily to accommodate the principle use of a lot, such as a dwelling, house, apartment, office, factory, and other commercial structures. A structure designed to provide closed storage of vehicle and which is attached to or contained within a principle structure shall be considered part of the same.

Temporary Residence-- Any mobile home place on a parcel for use as a residence during such time, not to exceed two years, as a permanent dwelling is being constructed upon same parcel.

Travel Trailer – A vehicle not propelled by its own power and drawn by a separate powered motor vehicle, which contains sleeping, and/or cooking and/or sanitary facilities designed and constructed for vacation or other similar temporary use.

Use, Accessory – A use customarily incidental and subordinate to the principle use or structure and located on the same lot with such principle use or structure.

Use, Principle – An activity which may be carried on independently of any other activity and which generally characterizes the primary purpose for which land and/or the principle structures thereon are intended and designed.

Used Mobile Home – Any mobile home other than a new mobile home as defined herein.

Yard – An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided in this Local Law.

Yard, Front – The open space extending the full width of the lot from the front line parallel to the part of the principle building which is nearest to such front lot line.

Yard, Rear – An open space extended across the entire width of the lot from the rear lot line parallel to the part of the principle building which is nearest to such rear lot line, unoccupied except for accessory building and open porches.

## ARTICLE III: REGULATIONS APPLICABLE TO ALL PROPERTIES, BUILDINGS AND USES

Section 3.1 The following uses are permitted uses on all properties within the Town:

- a. Single family dwellings and associated private garages and outbuildings, including tool sheds, playhouses and greenhouses, pet shelters and swimming pools.
- b. Farms and farm buildings, including the sale of agricultural products grown or produced upon the premises.
- c. Orchards, tree and plant nurseries and forestry operations (limited to growing and cutting of trees and excluding commercial operations involving processing and/or manufacturing of trees and tree products).
- d. In-home occupations not involving regular motor vehicle traffic by someone other than a resident of the premises upon or to the premises as a result of the conduct of business constituting the in home occupation.
- e. Municipal buildings, parks, libraries, museums and schools.
- f. Churches
- g. Double wide mobile dwellings upon satisfaction of the following standards, as determined and verified by the Codes Enforcement Officer:
  - i. All double wide mobile dwellings shall be sited upon either a full basement with a concrete floor, a crawl space with a concrete floor, or a six inch floating concrete slab. All concrete slabs shall contain steel reinforcing and shall be at least as large as the exterior dimensions of the home to be placed upon it.
  - ii. All double wide mobile dwellings placed on a concrete slab must be skirted with concrete blocks at least six inches in depth parged with masonry material and waterproof coating. The area beneath the floor of the dwelling must be adequately ventilated as required by the New York State Building Code and the manufacturer's recommendation, as applicable.
  - iii. The roof pitch of the dwelling shall be not less than 4:12.
  - iv. The exterior of the dwelling must be comprised of a material approved for use as siding under the New York State Building Code.
  - v. The roof of the dwelling must be comprised of a material approved for residential roofing applications under New York State Building Code.
  - vi. All double wide mobile dwellings without watertight area suitable for storage, such as a basement or garage area, must include an accessory storage building having at least 100 square feet of watertight storage area. There shall be no outdoor storage of personal property of any kind, (other than motor vehicles in a driveway or suitable constructed

parking area), unless contained within a fenced-in area which prevents the contents of the area from being viewed from outside the fence.

vii. The Codes Enforcement Officer shall inspect the site prior to installation of the double wide mobile dwelling and shall conduct inspections to ensure compliance with the manufacturers set-up requirements and proper electrical, water and septic connections, as well as the applicable site preparation and other requirements of this Local Law.

Section 3.2 The following uses are permitted uses on all properties within the Town upon the issuance of a Special Use Permit by the Planning Board.

- a. Multifamily dwellings (including all buildings housing or intended to house two or more families in separate living quarters).
- b. All commercial uses.
- c. All industrial uses.
- d. In-home occupations other than those specified in section 3.1 (d) of this Local Law.
- e. Facilities for the storage, dismantling or processing of scrap metal, junk, junk cars and equipment or solid waste.
- f. Private clubs and non-commercial recreational uses.

Section 3.3 The following lot size and dimension standards apply to all uses, including single family dwellings, and all structures unless otherwise specified in this Local Law:

- a. Minimum lot size shall be one (1) acre unless an alternate septic system is required to comply with New York State standards, in which case the minimum lot size shall be two (2) acres.
- b. Minimum road frontage shall be two hundred (200) feet.
- c. Minimum lot depth shall be one hundred fifty (150) feet.
- d. Minimum front yard setback shall be sixty (60) feet.
- e. Minimum rear yard setback shall be thirty (30) feet.
- f. Minimum side yard setback shall be thirty (30) feet.
- g. Maximum building height shall be thirty-five (35) feet (farm buildings shall be exempt from this requirement).
- h. Maximum area of lot coverage by building(s) or structures shall be twenty (20) percent.
- i. Lot depth shall not be more than three (3) times the length of the road frontage of the lot.

Wind Power (Sections 3.3B – 3.3D

Section 3.3-B The following lot size, dimension and construction standards apply to wind powered electricity generation facilities only, and shall supersede any other inconsistent provisions of this Local Law:

- a. Minimum lot size shall be five (5) acres.
- b. Minimum road frontage shall be four hundred fifty (450) feet.
- c. Minimum lot depth shall be four hundred fifty (450) feet.
- d. Maximum structure height shall be as determined by the Planning Board in the course of its special permit review.
- e. i. The minimum setback distance between each production line commercial wind power electricity generation unit (wind turbine tower) and: all surrounding street and property

lines, public streets right of way, overhead utility lines, and dwellings, and any other generation units, above-ground transmission facilities, electrical substations and separate meteorological tower facilities, shall be equal to no less than 1.5 times the sum of the proposed structure height plus the rotor radius. The property line setback requirement may be reduced by the Planning Board as an incident of special permit review when the Planning Board finds that the following circumstances apply: the property line in question a) separates two properties that are both part of a commercial wind powered electricity generation facility, and b0 either, I) both properties on each side of the boundary line in question will have electricity generation or transmission facilities constructed n them as part of the project under review, or ii) the owner of the property for which the reduced setback is sought executes and presents for recording a development easement satisfactory to the Town in which the reduced setback is consented to, and construction within, and use of the easement area is appropriately restricted.

ii. No experimental, home built, or prototype wind turbines shall be allowed without documentation by the applicant of their maximum probable blade throw distance in the event of failure, and a determination by the Planing Board of appropriate setback distances on the basis of that documentation.

Section 3.3-C Additional standards for granting special use permits for wind power electricity generation and transmission facilities.

No special use permit shall be granted for commercial wind power electricity generation and/or transmission facilities unless it is determined by the Planning Board that the proposed use meets all of the following criteria, in addition to those general criteria listed in Section 3.3-B:

- a. No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
- b. No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, re transmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. The applicant shall submit documentation to this effect from a recognized consultant practicing in the field.
- c. Use of nighttime, and overcast daytime condition, stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration shall be subject to on-site field testing before the Planning Board as a prerequisite to that Boards approval as it applies to existing residential uses withing 2000' of each tower for which such strobe lighting is proposed on property belonging to anyone other than the owner of the tower facility site in question.
- d. No individual tower facility shall be installed in any location that would substantially detract from or block the view or a portion of a recognized scenic view shed, as viewed from any public road right-of-way or publicly owned land.
- e. Individual wind turbine towers shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed 50 dbA, measured at the boundaries of all the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of special use permit application.

- f. No wind turbines shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
- g. The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
- h. All power transmission lines from the wind generation electricity generation facilities to on-site substations shall be underground.
- i. Procedures acceptable to the Planning Board for emergency shutdown of power generation units shall be established as part of any special use permit issued.
- j. Prior to issuance of a Building Permit, the applicant shall provide the Town proof in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance, of a level to be determined by the Town Board in consultation with the Town's insurer, to cover damage or injury which might result from the failure of a tower or towers or any other part(s) of the generation and transmission facility.
- k. No wind turbines will be located within eight (8) rotor hub heights (of the model of turbine used) of an existing residence unless either:
  - i. Documentation based on accepted software designed for the purpose is presented demonstrating that the residences would not be affected by seasonal shadow flicker (the casting of moving shadows by rotor blades at certain predictable times of day and year), or
  - ii. Applicant submits a legally binding agreement requiring the shutting down of the turbine or turbines casting the shadow flicker during the identified time periods of the identified days, for each year of operation, when residential shadow flicker would occur.
- l. Turbine towers and rotors shall be painted matte white or matte grey or some other non-reflective, unobtrusive color acceptable to the Planning Board. Advertising on the tower or nacelle is prohibited.

Section 3.3-D Submission of additional supporting data for site plan of wind power electricity generation and transmission facilities.

In addition to the site plan materials otherwise listed in this Local Law, the following material shall be submitted to the Planing Board for the Board's special permit review of applications for commercial wind power electricity generation and /or transmission facilities:

- a. Digital elevation model-based project visibility map showing the impact of topography upon visibility of the project from other locations, to a distance radius of three miles from the center of the project. Scale used shall depict 3-mile radius as no smaller than 2.7 inches, and the base map used shall be a published topographic map showing cultural features.
- b. Color photos, no smaller than 3"x5", taken from locations selected or approved by the Planning Board within a three-mile radius from the center of the project and computer-enhanced to simulate the appearance of the site facilities as they would appear, as built, from these locations. No fewer than four and no more than the number of proposed individual wind turbines plus three of these photo simulations shall be provided, the exact number to be determined by the Planning Board.

### **Section 3.4 Residential Lots Existing Prior to Adoption or Amendment of this Local Law**

For residential uses, upon review and after issuance of a Special Use Permit by the Planning Board, nothing shall prohibit a lot of less area or less frontage than that required for a single family dwelling, provided that a.) the lot cannot be enlarged to conform with these requirements, when such lot, at the time of the passage or amendment of this Local Law regulating the size of building lots, was held under separate ownership from the adjoining lots, or b.) such lot is a principle element of a subdivision map filed in the Office of the Madison County Clerk prior to adoption of this Local Law.

### **Section 3.5 Dwellings on Lots**

There shall be only one residential building on a lot. More than one residence per lot shall only be permissible on farms for hired help or family members of the farm operator only, and then only upon the issuance of a Special Use Permit by the Planning Board.

### **Section 3.6 Building Coverage, Open porches, Carports and Garages**

In determining the percentage of building coverage of a lot or the size of yards, porches or carports open at the sides but roofed, and all principle and accessory buildings shall be included.

### **Section 3.7 Reduction of Lot Area**

No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of this Local Law shall be smaller than herein prescribed. The provisions of this Section shall not apply when part of a lot is taken for a public purpose.

### **Section 3.8 Yards on Corner Lots**

Any yard adjoining a street shall be considered a front yard for the purposes of this Local Law, and shall comply with all requirements for a front yard.

#### Section 3.9 Projection in Yards

In determining and front, side or rear yard setback, the point of measurement on the structure shall be the foundation, unless the structure has sills, cornices, pilasters, chimneys and/or eaves which extend more than two feet out from the foundation, in which case the point of measurement shall be the edge of such extension.

#### Section 3.10 Access and Safety

The Planning Board may require changes or additions in relation to yards, driveways, driveway entrances and exits, landscaping, and the location and height of buildings and enclosures to insure safety, to minimize traffic difficulties, and to safeguard adjacent properties.

#### Section 3.11 Accessory Structures in Residential Lots

Lot line setbacks from the side or rear lot lines shall be reduced to a minimum of ten (10) feet for each accessory structure per lot, which structure shall not exceed 400 square feet of total floor area. The maximum height of such accessory structure shall not exceed 20 feet. This exception shall not apply to garages, which shall meet the setback requirements of Section 3.3.

#### Section 3.12 Storage of Vehicles and Junk

Construction equipment and materials, cans trucks of more than one ton carrying capacity, unlicensed motor vehicles, cars used for drag or stock car racing and accumulations of automotive or machine parts and/or scrap materials (including, but not limited to, metal, wood, paper or rags), rubbish or debris of any type must be stored in an enclosed garage or be hidden from the road and neighboring properties by an opaque fence at least eight (8) feet in height. Any such fence shall be located, to meet the setback requirements of Section 3.4 of this Local Law. All owners of property upon which is situated a junkyard as defined in Section 136 of the General Municipal Law of the State of New York shall secure a license from the Town Board to permit continuance of the Junkyard. All such licenses shall be renewed annually upon application to the Town Board.

Up to two vehicles of the types described herein may be stored or parked upon the premises without complying with nor violating the provisions of this section. This section shall not apply to farm equipment on farms.

#### Section 3.13 Removal of Unlawful Junkyards and Unsafe or Detrimental Condition

- a. If the Town Board determines by written resolution that a property is in violation of Section 3.13 of this Local Law or Section 136 of the New York General Municipal Law, or that the condition of the property is dangerous or detrimental to the public health, safety or welfare, it

may issue an order to the property owner to remedy such condition upon such terms the Town Board deems reasonable and just.

- b. Such a determination may only be made by the Town Board following a public hearing, notice of which was given to the property owner at least fourteen days prior thereto by regular U.S. mail and to the public in general by publication in the official Town newspaper at least five days prior thereto.
- c. Conditions which may be deemed dangerous or detrimental to the public health, safety or welfare shall include, but not necessarily be limited to the following:
  - i. unsafe or damaged buildings, structure, vegetation, pits or underground facilities;
  - ii. accumulation of junk, garbage or material of any sort likely to attract or harbor rodents or insects or foster disease or which hampers or obstructs the ability of fire, police, ambulances or other emergency vehicles to access any structure upon the premises or adjoining premises; and
  - iii. Conditions which may be attractive nuisance for children or others.
- d. Upon notification from the Codes Enforcement Officer that the owner of the property has failed or refused to comply with the order of the Town Board, the Town Board may direct that the Town shall cause the offending conditions to be remedied. After the work has been completed, the Town Board shall compile a verified statement of all the direct costs of same, and add thereto a charge of fifty (50%) percent of the direct costs as compensation to the Town for administering, supervising and handling said work.
- e. Upon completion of the verified statement and acceptance thereof by the Town Board, the Town Board shall direct that the amount thereof, including charges added thereto, shall constitute a lien against said premises and direct that the same shall be added to the next assessment roll of general Town taxes and shall be collected and enforced in the same manner, by the same proceedings, at the same time and under the same penalties, as the general Town tax and as part thereof. In addition thereto, interest shall run thereon from the date of filing the verified statement to the date of actual payment at seven and one-half (7½%) percent per annum.
- f. Notwithstanding any provision herein to the contrary, the Town may at its election institute suit against the owner of the said premises for the direct costs, together with a charge of fifty (50%) percent in addition thereto as compensation to the Town for administering, supervising and handling said work, and enter judgment thereon against the owner personally for the aforesaid amount. The imposition and collection of any fine or penalty herein prescribed shall not bar the right of the Town to collect the costs of the removal or repair of any unsafe structure or condition as herein prescribed.

## ARTICLE IV SUPPLEMENTARY REGULATIONS

### Section 4.1 Sanitary Facilities

- a. All residential, commercial and industrial structures shall have and maintain adequate and sanitary water supplies and sewage disposal systems in accordance with state and local regulations, to include indoor plumbing and adequate and approved septic system or connection to public sewer.
- b. On all premises, any storage or garbage, offal or other noxious domestic wastes that could create a public health nuisance by attracting, feeding or harboring rodents, insects or other animals or by creating an *offensive* odor, shall be stored in a sanitary manner in covered containers and removed from the premises in a regular periodic basis.

## ARTICLE V PRE-EXISTING USES

### Section 5.2 Nonconforming building, structures and uses.

The use of any building, structure or land existing at the time of the enactment of this Local Law may be continued, although such use does not conform to the provisions of this Local Law, except as

hereinafter provided. However, any use of any building or land which under the provisions of prior ordinances or statutes, local or otherwise, is or was unlawful and in violation thereof, shall not operate to legalize such prior violation, nor to prevent enforcement of penalties therefore.

### Section 5.2 Discontinuance

When a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be re-established except in conformity with this Local Law.

### Section 5.3 Change of Use

No nonconforming use shall be changed to other than a conforming use.

### Section 5.4 Unsafe Structures, Restoration, Alteration and Extension

- a. Restored to a safe condition.
- b. Repaired if damaged by fire or other causes.

### Section 5.5 Extension of Use

A non-conforming use shall not be extended without the issuance of a Special Use Permit. Extension of a lawful use of a lawful use to any part of a nonconforming building shall not be deemed extension of such nonconforming use.

## ARTICLE VI ENFORCEMENT, ADMINISTRATION AND AMENDMENTS

### Section 6.1 Enforcement

This Local Law shall be enforced by the Code Enforcement Officer of the Town of Smithfield, who shall be appointed by the Town Board and serve at its pleasure. The duties of the Code Enforcement Officer under this Local Law shall be as follows:

- a. Enforce and administer the New York State Fire Code, Property Maintenance Code, Building Code and related State Codes ("State Codes") as provided in Article VI-A of this Local Law.
- b. Conduct inspections in response to bona fide complaints regarding conditions or activities allegedly failing to comply with provisions of State Codes or with the provisions of this Local Law.
- c. Conduct any other inspections required by this Local Law and as otherwise directed by the Town Supervisor and/or Town Board and report to the Supervisor/Town Board for appropriate enforcement action all known violations of this Local Law.
- d. Provide forms and applications for building permits and certificates of occupancy.
- f. Maintain a record in the office of the Town Clerk of all applications, permits, certificates and permits to persons having a proprietary or tenancy interest in the subject building or structure.
- g. Prepare and serve appearance tickets directing any person or persons whom the Code Enforcement Officer has reasonable cause to believe has violated any provision(s) of this Local Law or the State Codes to appear in Town of Smithfield Justice Court, or such other court of competent jurisdiction, to be prosecuted on such charge(s).

## Section 6.2 Fees for Permits and Variances

Fees may be charged for building permits issued, and for processing of variances and Special Permits. A schedule of fees as approved from time to time by the Town Board, shall be kept and posted in the office of the Town Clerk.

## Section 6.3 Violation and Penalties

any violation of this Local Law is an offense punishable by a fine and/or imprisonment not exceeding the maximum penalties for an offense established under New York State law.

## Section 6.4 Complaints of Violations

Whenever a violation of this Local Law occurs, any person may file a complaint in regard thereto. All such complaints shall be made to the Code Enforcement Officer, who shall properly record and promptly investigate such complaint. In the case of written complaints the Code Enforcement Officer shall file a written report of the results of his investigation and send a copy of that report to the complainant with a copy of the complaint and of the report to the Town Supervisor.

# ARTICLE VI-A ADMINISTRATION AND ENFORCEMENT OF STATE CODES

## Section 6A-1 Purpose and Intent

This article provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in the Town of Smithfield. All Local Laws and /or ordinances adopted prior to the adoption of this article which are inconsistent with the provisions of this article are hereby deemed repealed and superseded by this article. Except as otherwise provided in the Uniform Code, other state law, or other section of this local law, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this article.

## Section 6A-2 Definitions

In this article:

“Building Permit” shall mean a permit issued pursuant to section 6A-4 of this article. The term “Building Permit” shall also include a Building Permit which is renewed, amended or extended pursuant to any provision of this Local Law.

“Certificate of Occupancy” / “Certificate of Compliance” shall mean a certificate issued pursuant to subdivision (b) of Section 6A-7 of this Local Law.

“Code Enforcement Officer” shall mean the Code Enforcement Officer appointed pursuant to subdivision (b) of Section 6A-3 of this Local Law.

“Code Enforcement Personnel” shall include the Code Enforcement Officer and all Inspectors.

:Compliance Order” shall mean an order issued by the Code Enforcement Officer pursuant to subdivision (a) of Section 6A-15 of this Local Law.

“Energy Code” shall mean the State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

“Inspector” shall mean an inspector appointed pursuant to subdivision (d) of Section 6A-3 of this Local Law.

“Operating Permit” shall mean a permit issued pursuant to Section 6A-10 of this Local Law. The term “Operating Permit” shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this Local Law.

“Permit Holder” shall mean the Person to whom a Building Permit has been issued.

“Person” shall include an individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

“Stop Work Order” shall mean an order issued pursuant to Section 6A-6 of this Local Law.

“Temporary Certificate” shall mean a certificate issued pursuant to Subdivision (d) of Section 6A-7 of this Local Law.

“Town” shall mean the Town of Smithfield.

“Uniform Code” shall mean the New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

## Section 6A-3 Code Enforcement Officer and Inspectors

- (a) The office of Code Enforcement Officer of the Town of Smithfield is hereby confirmed and continued. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this Local Law. In addition to such other duties and authority as may be conferred upon the Code Enforcement Officer by the Town Board, the Code Enforcement Officer shall have the following powers and duties:
  - (1) to receive, review, and approve or disapprove application for Building Permits, Certificates of Occupancy/ Certificates of Compliance, Temporary Certificates and Operating Permits, and the plans, specifications and construction documents submitted with such applications;
  - (2) upon approval of such applications, to issue Building Permits, Certificates of Occupancy/Certificates of Compliance, Temporary Certificates and Operating Permits, and to include in Building Permits/Certificates of Compliance,

Temporary Certificates and Operating Permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;

- (3) to conduct construction inspections, inspections to be made prior to the issuance of Certificates of Occupancy/Certificates of Compliance, Temporary Certificates and Operating Permits, fire safety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this Local Law;
- (4) to issue Stop Work Orders;
- (5) to review and investigate complaints;
- (6) to issue orders pursuant to subdivision (a) of Section 6A-15 (Violations) of this Local Law;
- (7) to maintain records;
- (8) to collect fees as set by the Town Board of this Town;
- (9) to pursue administrative enforcement actions and proceedings;
- (10) in consultation with this Town's attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this Local Law, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this Local Law; and
- (11) to exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this Local Law.

(b) The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

(c) In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this Local Law.

(d) One or more Inspectors may be appointed by the Town Board to act under supervision and direction of the Code Enforcement Officer and to assist the code

Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this Local Law. Each inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

- (e) The compensation for the Code Enforcement Officer and Inspectors shall be fixed from time to time by the Town Board of this Town.

#### Section 6A-4 Building Permits

(a) Building Permits Required. Except as otherwise provided in subdivision (b) of this section, a Building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a Building Permit is required without first having obtained a Building Permit from the Code Enforcement Officer.

- (b) Exemptions. No building permit shall be required for work in any of the following categories:

- (1) construction or installation of one story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.88 square meters);
- (2) installation of swings and other playground equipment with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (3) installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
- (4) installation of fences which are not part of an enclosure surrounding a swimming pool;
- (5) construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;
- (6) construction of temporary motion picture, television and theater stage sets and scenery;
- (7) installation of window awning supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);

- (8) installation of partitions or movable cases less than 5'-9" in height;
- (9) painting, wallpapering, tiling, carpeting, or other similar fashion work;
- (10) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
- (11) replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
- (12) repairs, provided that such repairs do not involve (i) the removal or cutting away of a load bearing wall, partition, or portion thereof, or of any structural beam or load bearing component; (ii) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; (iii) the enlargement, alteration, replacement or relocation of any building system; or (iv) the removal from service of all or part of a fire protection system for any period of time.

(c) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision (b) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

(d) Applications for Building Permits. Applications for a Building Permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

- (1) A description of the proposed work;
- (2) the tax map number and the street address of the premises where the work is to be performed;
- (3) the occupancy classification of any affected building or structures;
- (4) where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
- (5) at least 2 sets of construction documents (drawings and/or specifications) which (i) define the scope of the proposed work; (ii) are prepared by a New York State registered architect or licensed professional engineer where so required by the

Education Law; (iii) indicate with sufficient clarity and detail the nature and extent of the work proposed; (iv) substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and (v) where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

- (e) Construction Documents. Construction documents will not be accepted as part of an application for a Building Permit unless they satisfy the requirements set forth in paragraph (5) of subdivision (d) of this section. Construction documents which are accepted as part of the application for a Building Permit shall be marked as accepted by the Code Enforcement Officer in writing or by a stamp. One set of the accepted construction documents shall be retained by the code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced until and unless a Building Permit is issued.
- (f) Issuance of Building Permits. An application for a Building Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and the Energy Code. The Code Enforcement Officer shall issue a Building Permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- (g) Building Permits to be displayed. Building Permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- (h) Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the Building Permit. The Building Permit shall contain such a directive. The Permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The Building Permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended Building Permit, such change shall not be made until and unless a new or amended Building Permit reflecting such change is issued.
- (i) Time Limits. Building Permits shall become invalid unless the authorized work is commenced within six (6) months following the date of issuance. Building Permits shall expire twelve (12) months after the date of issuance. A Building Permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon application by the Permit Holder, payment of applicable fee, and approval of the application by the Code Enforcement Officer.

- (j) Revocation or Suspension of Building Permits. If the Code Enforcement Officer determines that a Building Permit was issued in error because of incorrect, inaccurate or incomplete information, or the work for which the Building Permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the Building Permit or suspend the Building Permit until such time as the Permit Holder demonstrates that (1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and (2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- (k) Fee. The fee specified in or determined in accordance with the provisions set forth in section 6A-12(Fees) of this local law must be paid at the time of submission of an application for a Building Permit, or for renewal of a Building Permit.

## Section 6A-5 Construction Inspections

- (a) Work to remain accessible and exposed. Work shall remain and accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an Inspector authorized by the Code Enforcement Officer. The Permit Holder shall notify the Code Enforcement Officer when any element of work described in subdivision (b) of this section is ready for inspection.
- (b) Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
  - (1) work site prior to the issuance of a Building Permit
  - (2) footing and foundation
  - (3) preparation for concrete slab
  - (4) framing
  - (5) building systems, including underground and rough-in
  - (6) fire resistant construction
  - (7) fire resistant penetrations
  - (8) solid fuel heating appliances, chimneys, flues or gas vents
  - (9) Energy Code compliance
  - (10) a final inspection after all work authorized by the Building Permit has been completed

- (c) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- (d) Fee. The fee specified in or determined in accordance with the provisions set forth in section 6A-16 (Fees) of this local law must be paid prior to or at the time of each inspection performed pursuant to this section.

## Section 6A-6 Stop Work Orders

- (a) Authority to issue. The Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Code Enforcement Officer shall issue a Stop Work Order to halt:
  - (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
  - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
  - (3) Any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.
- (b) Content of Stop Work Orders. Stop Work Orders shall (1) be in writing, (2) be dated and signed by the Code Enforcement Officer, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.
- (c) Service of Stop Work Orders. The Code Enforcement Officer shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder) personally or by registered mail or certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work affected by the Stop Work Order, personally

or by registered mail or certified mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

- (d) Effect of Stop Work Orders. Upon the issuance of a Stop Work order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.
- (e) Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (a) of this section, and the authority to issue a Stop Work Order shall be in addition to and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under section 6A-15 (Violations) of this local law or under any other applicable Local Law or State Law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

#### Section 6A-7 Certificates of Occupancy / Certificates of Compliance

- (a) Certificates of Occupancy / Certificates of Compliance required. A Certificate of Occupancy / Certificate of Compliance shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or sub classification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a Certificate of Occupancy / Certificate of Compliance.
- (b) Issuance of Certificates of Occupancy / Certificates of Compliance. The Code Enforcement Officer shall issue a Certificate of Occupancy / Certificate of Compliance if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a Certificate of Occupancy / Certificate of Compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the Certificate of Occupancy / Certificate of Compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy / Certificate of Compliance:
  - (1) A written statement of structural observations and/or a final report of special inspections, and
  - (2) Flood hazard certifications.

(c) Contents of Certificates of Occupancy / Certificates of Compliance. A Certificate of Occupancy / Certificate of Compliance shall contain the following information:

- (1) The Building Permit number, if any;
- (2) The date of issuance of the Building Permit, if any;
- (3) The name, address and tax map number of the property;
- (4) If the Certificate of Occupancy / Certificate of Compliance is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of Occupancy / Certificate of Compliance is issued;
- (5) The use and occupancy classification of the structure;
- (6) The type of construction of the structure;
- (7) The assembly occupant load of the structure, if any;
- (8) If automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
- (9) Any special conditions imposed in connection with the issuance of the Building Permit; and
- (10) The signature of the Codes Enforcement Officer issuing the Certificate of Occupancy / Certificate of Compliance and the date of issuance.

(d) Temporary Certificate. The Codes Enforcement Officer shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a BP. However, in no event shall the Codes Enforcement Officer issue a Temporary Certificate unless the Codes Enforcement Officer determines (1) that the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely, (2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (3) that all required means of egress from the building or structure have been provided. The Codes Enforcement Officer may include in a Temporary Certificate such items and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A Temporary Certificate shall be effective for a period of time, not to exceed six (6) months, which shall be determined by the Codes Enforcement Officer and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

(e) Revocation or Suspension of Certificates. If the Code Enforcement Officer determines that a Certificate of Occupancy / Certificate of Compliance or a Temporary Certificate

was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.

(f) Fee. The fee specified in or determined in accordance with the provisions set forth in section 6A-16 (Fees) of this local law must be paid at the time of submission of an application for a Certificate of Occupancy / Certificate of Compliance or for Temporary Certificate.

#### Section 6A-8 Notification Regarding Fire or Explosion

The chief of any fire department providing fire fighting services for a property within this Town shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.

#### Section 6A-9 Unsafe and/or Abandoned Buildings or Structures

Unsafe and/or abandoned structures and equipment in this Town shall be identified and addressed in accordance with Sections 108, 109 and 110 of the Fire Code of New York State and Section 311 of the Fire Code of New York State, and, as applicable, local laws of the Town of Smithfield.

#### Section 6A-9 Operating Permits

(a) Operation Permits required. Operating Permits shall be required for conducting the activities or using the categories of buildings listed below:

- (1) manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19NYCRR section 1225.1;
- (2) hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;
- (3) use of pyrotechnic devices in assembly occupancies;
- (4) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
- (5) building whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Board of this Town.

Any person who proposes to undertake any activity or to operate any type of building listed in this subdivision (a) shall be required to obtain an Operating Permit prior to commencing such activity or operation.

- (b) Applications for Operating Permits. An application for an Operation Permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.
- (c) Inspections. The Code Enforcement Officer or and Inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an Operating Permit.
- (d) Multiple Activities. In any circumstance in which more than one activity listed in subdivision (a) of this section is to be conducted at a location, the Code Enforcement Officer may require a separate Operating Permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a sing Operating Permit to apply to all such activities.
- (e) Duration of Operating Permits. Operating Permits shall be issued for such periods of time, not to exceed one year in the case of any Operation Permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each Operating Permit shall be specified in the Operating Permit. An Operating Permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.
- (f) Revocation or Suspension of Operation Permits. If the Code Enforcement Officer determines that any activity or building for which an Operating Permit was issued does not comply with any applicable provision of the Uniform Code, such Operating Permit shall be revoked or suspended.

#### Section 6A-10 Fire Safety and Property Maintenance Inspections

- (a) Inspections Required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer pr an Inspector designated by the Code Enforcement Officer at the following intervals:
  - (1) Fire Safety and Property Maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every twelve (12) months.

- (2) Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every twelve (12) months.
- (3) Fire safety and property maintenance inspection of all multiple dwellings not included in paragraphs (1) or (2) of this subdivision, and all non-residential buildings, structures, uses and occupancies not included in paragraphs (1) or (2) of this subdivision, shall be performed at least once every 24 months.

(b) Inspections permitted. In addition to the inspections required by subdivision (a) of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at any time upon:

- (1) The request of the owner of the property to be inspected or an authorized agent of such owner;
- (2) Receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
- (3) Receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or the Energy Code exist; provided, however, that nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(c) OFPC Inspections. Nothing in this section or in any other provision of this local law shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control (“OFPC”) and the New York State Fire Administrator under Executive Law section 156-e and Education Law section 807-b.

(d) Buildings Inspected by OFPC. Notwithstanding any other provision of this section to the contrary:

- (1) The Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure which contains an area of public assembly if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;
- (2) The Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure occupied as a dormitory if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;

- (3) The Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a multiple dwelling not included in paragraphs (1) or (2) of subdivision (a) of this section if OFPC performs fire safety and property maintenance inspections of such multiple dwelling at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section; and
- (4) The Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a non-residential building, structure, use or occupancy not included in paragraphs (1) or (2) of subdivision (a) of this section if OFPC performs fire safety and property maintenance inspections of such non-residential building, structure, use or occupancy at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section.

(e) Fee. The fee specified in or determined in accordance with the provisions set forth in section 6A-16 (Fees) of this Local Law must be paid prior to or at the time each inspection performed pursuant to this section. This subdivision shall not apply to inspections performed by OFPC.

#### Section 6A-11 Complaints

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this Local Law, or any other Local Law or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate;

- (a) Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- (b) If a violation is found to exist, providing the owner of the affected property and any other Person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in section 6A-15 (Violations) of this Local Law;
- (c) If appropriate, issuing a Stop Work Order;
- (d) If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

#### Section 6A-12 Record Keeping

- (a) The Code Enforcement Officer shall keep a permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:
  - (1) All applications received, reviewed and approved or denied;

- (2) All plans, specifications and construction documents approved;
- (3) All Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates, Stop Work Orders, and Operating Permits issued;
- (4) All inspections and tests performed;
- (5) All statements and reports issued;
- (6) All complaints received;
- (7) All investigations conducted;
- (8) All other features and activities specified in or contemplated by sections 6A-4 through 6A-12, inclusive, of this Local Law, including; and
- (9) All fees charged and collected.

(b) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State Law and regulation.

#### Section 6A-13 Program Review and Reporting

- (a) The Code Enforcement Officer shall annually submit to the Town Board of this Town, a written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in Section 6A-13 (Record Keeping) of this Local Law and a report and summary of all appeals and litigation pending or concluded.
- (b) The Code Enforcement Officer shall annually submit to the Secretary of the State, on behalf of this Town, on a form prescribed by the Secretary of State, a report of the activities of this Town relative to administration and enforcement of the Uniform Code.
- (c) The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials this Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of this Town in connection with administration and enforcement of the Uniform Code.

#### Section 6A-14 Violations

- (a) Compliance Orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this Local

Law. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Compliance Order. The Compliance Order shall (1) be in writing; (2) be dated and signed by the Code Enforcement Officer; (3) specify the condition or activity that violates the Uniform Code, the Energy Code, or this Local Law; (4) specify the provision or provisions of the Uniform Code, The Energy Code, or this Local Law which is/are violated by the specified condition or activity; (5) specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time; and (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property personally or by registered mail or certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Compliance Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by registered mail or certified mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

- (b) Appearance Tickets. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
- (c) Civil Penalties. In addition to those penalties proscribed by State Law, any Person who violates any provision of the Uniform Code, the Energy Code or this Local Law, or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this Local Law, shall be liable to a civil penalty of not more than \$250 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of this Town.
- (d) Injunctive Relief. An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this Local Law, or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this Local Law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this Local Law, or any Stop Work Order, Compliance Order or other order obtained under the Uniform Code, The Energy Code or this Local Law, and action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board of this Town.

(e) Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in section 6A-6 (Stop Work Orders) of this Local Law, in any other section of this Local Law, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in section 6A-6 (Stop Work Orders) of this Local Law, in any other section of this Local Law, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of the penalties specified in subdivision (2) of section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 382 of the Executive Law.

#### Section 6A-15 Fees

A fee schedule shall be established by resolution of the Town Board of the Town,. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this Local Law.

III. This local law shall take effect immediately upon filing with the Office of the Secretary of State.

## ARTICLE VII: APPEALS

### Section 7.1 Creation, Appointment and Organization of the Board of Appeals.

The Board of Appeals of the Town of Smithfield is hereby created in accordance with the provisions of Article 16 of the Town Law of the State of New York.

### Section 7.2 Powers and Duties

The Board of Appeals shall have all the following power and duties:

- a. Interpretation: Upon appeal from a decision of the Codes Enforcement Officer, to decide questions involving interpretation of any provision of this Local Law.
- b. Variances: To vary strict application of the requirements of this Local Law in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved. In granting any variance, the Board shall prescribe conditions that it deems to be necessary or desirable.
- c. Decisions of the Board of Appeals shall be made within ninety days from the time that the application has been filed with the Board; decisions shall be by resolution, shall contain a full statement of findings of fact in the case, and shall be recorded in the minutes of the Board.

### Section 7.3 Granting of Variances.

No variance in the strict application of any provision of this Local Law shall be granted by the Board unless it finds:

- a. Strict application of the Local Law would produce undue hardship and that the hardship is not self-created.
- b. The hardship is unique and it not shared by all properties alike in the immediate vicinity of the property.

- c. The variance would observe the spirit of the Local Law and would not change the character of the neighborhood, be injurious to the neighborhood or otherwise detrimental to public welfare.
- d. The variance is the minimum necessary to grant relief.

#### Section 7.4 Procedure for Interpretation or Variance.

- a. The Board of Appeals shall act in strict accordance with the procedure specified by the Town Law and by this Local Law. All applications made shall be in writing, on forms prescribed by the Board. Every application shall refer to the specific provision of the Local Law involved, and shall set forth the interpretation claimed, or details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted.

### ARTICLE VIII PLANNING BOARD

#### Section 8.1

The existence of the Planning Board of the Town of Smithfield is hereby affirmed and continues. The Planning Board shall continue to consist of seven (7) members to be appointed by the Town Board and it shall have all the powers and duties bestowed by this Local Law and by Article 16 of the Town Law of the State of New York, including the power to review and approve applications for Special Use Permits and Subdivision approval.

#### Section 8.2 Issue of Special Use Permits.

In every case where a Special Use Permit is required by this Local Law, the Planning Board shall action a request for such a permit only after:

- a. Owners of property within 200 feet of the property on which the Special Use Permit is required shall be notified by mail at the same time the public hearing notice is given to the newspaper prior to public hearing.
- b. A public hearing has been held pursuant to the Town Law of the State of New York.
- c. In certain Special Use Permit cases, until the County Planning Board referral requirements of Article 12-8, Section 239-M of the General Municipal Law have been met.

#### Section 8.3 Required Plan.

An application for a Special Use Permit shall be accompanied by three sets of preliminary site plans, and other descriptive matter to portray clearly the intentions of the applicant. These documents shall become a part of the record. Such plans shall show location of all buildings, parking, access and circulation, open space, landscaping, and other information necessary to determine if the proposed special use meets the requirements of this Local Law.

#### Section 8.4 Standards Applicable to All Special Uses.

The Planning Board may issue a Special Use permit only after it has found that all the following standards and conditions have been satisfied.

- a. Location, size of use and structure, nature and intensity of operations involved, size of site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with orderly development of the area and will not alter the essential character of the area.
- b. Location, nature and height of building, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, or impair their value.
- c. Proposed parking and traffic circulation facilities shall be adequate for present and future needs to insure the orderly development of the district.
- d. The proposed use will not create a hazard to public health, safety, morals or the general welfare.
- e. Sufficient and appropriate landscaping or other screening is provided to ensure compatibility with adjoining and nearby uses.
- f. Proposed sanitation facilities (IE. sewage facilities, garbage storage, etc.) shall be sufficient and adequate for all proposed uses to protect health and property values in the area.

## Section 8.5 Performance Bonds

The Planning Board may require as a condition for the approval of an application for a special use permit that the owner file a performance bonds, in such amount as it determines to be in the public interest, to ensure that the proposed development will be built in compliance with the accepted plans.

## ARTICLE IX: MOBILE HOMES

### Section 9.1 – General Regulation of Mobile Homes

- a. It shall be unlawful, within the limits of the Town of Smithfield, to park or place a mobile home except upon compliance with the provisions of this Local Law and the Sanitary Law of the Town of Smithfield.
- b. Except to the extent particular provisions of this Article conflict with or are more specific than other provisions of this Local Law, all provisions of this Local Law pertaining to residence structures and placement of structures upon any lot shall also be deemed applicable to mobile home residences. No mobile home shall be parked or placed within the Town of Smithfield except upon a farm or in a duly licensed mobile home park and upon the prior issuance of a permit therefore by the Town Code Enforcement Office. No mobile home shall be occupied, either as a residence or as a place of business, except upon the prior issuance of a certificate of occupancy by the Code Enforcement Officer.
- c. No more than one mobile home shall be parked or placed on any farm parcel within the Town unless a Special Use Permit has been issued pursuant to the provisions of section 3.5 of this Local Law.
- d. No mobile home shall be parked or placed on any parcel within the Town for any purpose other than use as a principle residence structure. Use of a mobile home on any parcel for any purpose other than as a principle residence, including, but not limited to, storage or animal housing, is hereby prohibited. Junked mobile homes shall not be permitted only in licensed junkyards.
- e. No permit for the placement of a mobile home within the Town shall be issued until all of the following performance standards have been met to the satisfaction of the Codes Enforcement Officer:

- i. The mobile home site must be graded to allow the safe placement of the mobile home. The mobile home site shall have one of the following in place to accommodate the placement of the mobile home
  - a. a six inch thick, steel mesh reinforced concrete pad with dimensions at least as large as the exterior dimensions of the mobile home to be placed upon it, or;
  - b. Concrete piers at least 12" in diameter or width, placed no more than 10 feet apart (or to manufacturer's recommendations if available) around the perimeter of the mobile home, and also placed to a depth of 4 feet below the ground surface or to bedrock, whichever is less.
- ii. Driveway, septic system and water supply must be installed and approved by the Code Enforcement Officer prior to placement of the mobile home on the mobile home site.
- f. All mobile homes shall be skirted prior to the issuance of a certificate of occupancy.
- g. All ground within 25 feet of the mobile home, or to the property line, whichever is less, shall be graded and seeded or paved to allow sufficient access by emergency vehicles and personnel. In addition any ground disturbed during site preparation or placement of the mobile home shall be regarded and seeded or otherwise appropriately landscaped. This provision shall not be construed to require the removal of any trees which the owner otherwise desires to remain for landscaping purposes.
- h. No travel trailer or motor home shall be used as a residence within the Town of Smithfield.
- i. No mobile home may be enlarged or otherwise altered by any construction which penetrates in any way the exterior of the mobile home.

#### Section 9.2 – Residences

No mobile home shall be parked or placed in the Town of Smithfield for use as a residence unless it has affixed to it its original manufacturer's data plate indicating a year of manufacture of 1976 or later.

#### Section 9.3 – Temporary Residences

- a. Upon the issuance of a Special Use Permit, a mobile home may be parked or placed within the Town of Smithfield for use as a temporary residence while the owner of the subject parcel constructs a permanent residence structure.
- b. No mobile home shall be parked or placed in the Town of Smithfield- as a temporary residence for a period longer than two years from the date of issuance of the permit therefore. Upon the expiration of such two year period, one (but no more than one) six month provisional extension of the permit to use a mobile home as a temporary residence maybe obtained from the Code Enforcement Officer upon the Codes Enforcement Officer's determination that the applicant is proceeding in good faith toward the completion of the permanent residence structure, and proof that at least the foundation of the permanent residence structure has been completed.
- c. The permanent residence structure shall consist of either a home of conventional construction or modular construction.

#### Section 9.4 – Used Mobile Homes

- a. No used mobile home shall be parked or placed within the Town (either as a permanent or temporary residence), except upon the issuance of a permit by the Code Enforcement Officer for the placement of a used mobile home.

b. Upon application for a permit for the placement of a used mobile home for a residence structure, the burden of proof shall be upon the Applicant to demonstrate to the Code Enforcement Officer, through the use of documents, photographs or such other appropriate evidence, that each of the following conditions are met:

1. That the mobile home meets all requirements of the New York State Building and Energy Conservation Codes pertaining to mobile homes;
2. The mobile home must be free of detectable defects in the plumbing, heating and electrical systems;
3. No exterior rust shall be visible on the mobile home;
4. The factory or replacement siding and roof shall be intact;
5. All windows shall be intact and functional
6. The mobile home must be identifiable by make, model and year of manufacture and must be accompanied by a manufacturer's data plate indicating a date of manufacture after 1975; and
7. All smoke detectors shall be in place and functional in accordance with applicable state and federal codes and guidelines.

#### Section 9.5 Existing Mobile Homes

- a. Any mobile home situate within the Town and being used as a principle residence pursuant to a valid mobile home permit and/or certificate of occupancy issued by the Code Enforcement Officer as of the effective date of this Article shall be considered a nonconforming use and structure, the occupancy of which may be continued subject to the provisions of this Article and Article V of this Local Law. In the event of any conflict in the provisions of this Article and Article V pertaining to the non-conforming status of mobile homes, the provisions of this Article shall control.
- b. Notwithstanding the provisions of paragraph (a) of this section, or any other provision of this Local Law, any mobile home situate on any parcel within the Town as of the effective date of this Article which is not being used as a principle residence structure as of the effective date of the Article (other than junked mobile homes within a licensed junkyard) shall be permitted to remain on such parcel for a period not to exceed two years from the effective date of this Article. Upon the expiration of such two year period, all properties within the Town shall be in compliance with Section 9.1, paragraph (d) of this Article.
- c. The nonconforming status of any use, structure or parcel grandfathered under the provisions of paragraph (a) of this section 9.5 shall terminate upon cessation of use of the nonconforming mobile home as a principle residence structure upon the parcel for a period of twelve (12) consecutive months.
- d. A mobile home which has a legal nonconforming status as a residence structure under the provisions of paragraphs (a) and (c) of this section may be replaced on the same lot with a newer mobile home upon satisfaction of the following conditions.:
  - i. issuance of a Special Use Permit;
  - ii. all other provisions of this Article are satisfied to the same extent as if it were the initial placement of a mobile home upon the lot;
  - iii. Square footage of the replacement mobile home must equal to or greater than that of the existing mobile home;
  - iv. the replacement mobile home must be of a model year that is newer than that of the mobile home being replaced.

- v. the mobile home being replaced must be removed from the site within thirty days of the completion of the installation of the newer mobile home. No artificer of occupancy for the newer mobile home may be issued until the mobile home being replaced has been removed from the site.

## Section 9.6 License to Operate Mobile Home Park

- a. It shall be unlawful, within the limits of the Town of Smithfield, to operate a mobile home park without first having obtained a mobile home park license from the Town Code Enforcement Officer and the Madison County Department of Health.
- b. Such mobile home park license shall be issued by the Town Code Enforcement Officer upon the payment of an application fee to be determined from time to time by resolution of Town Board, and upon the review and approval of the Planning board, which approval shall be granted only after inspection of the premises by the Town Code Enforcement Officer, and certification by such inspector (or a New York State licensed professional engineer) that said mobile home park location was found to be in conformance with the requirements of this Local Law and the requirements of the New York State Department of Health.
- c. No mobile home park license shall be issued unless the applicant therefore has complied with the following requirements:
  1. The applicant shall submit a scale drawing by a New York State licensed surveyor or engineer of his proposed mobile home park, which plan shall show in detail the exact location of said mobile home park, the number of units for which said park shall be licensed, the distance between the mobile homes, the location of roadways, recreational

facilities, and the proposed plan for water supply and sewage disposal facilities and electrical power.

2. No mobile home park shall be located except in a well drained site suitable for such purpose, and having adequate room for the number of mobile homes authorized in said license.
3. No mobile home shall be placed in a mobile home park within 100 feet of any adjoining public street line.
4. No mobile home shall be placed or parked closer than 50 feet from any permanent structure or closer than 50 feet from any property line.
5. No mobile home shall be placed in a mobile home park closer than 50 feet from an adjoining mobile home or structure attached thereto.
6. No drains from toilets, lavatories, showers or sinks shall be permitted to flow onto the surface of the ground or into any ditch, but must be connected to a sewer line emptying into a septic tank and draining into an adequate seepage field, or such with other approved sanitary systems.
7. All mobile homes located within a mobile home park shall be provided with a connection to a private or public water system providing a steady flow of clear and pure water, found safe to drink after being tested by approved standards.
8. All mobile home parks shall be adequately equipped with sanitary covered receptacles for all garbage and refuse and covered receptacles shall be furnished for the use of the occupants. No uncovered refuse or other unsanitary conditions shall be permitted in any mobile home park.
9. No mobile home park license shall be issued unless the applicant has filed with the Town Clerk a certificate from the Madison County Health Department that the proposed mobile home park has been inspected by the County Health Department, and has been approved and found to be in compliance with New York State Sanitary Code.
10. All mobile homes within a mobile home park shall access the public highway via an internal drive. No mobile home site shall have direct access to the public highway.

d. All mobile home sites and mobile homes located in any mobile home park shall meet all performance standards and other requirements of this Article.

e. The owners of a licensed mobile home park shall keep a registry of all occupants which shall include the occupants name, address, and mobile home license or serial number, the make, model and year of the mobile home and the number of persons occupying same, which registry shall be available at all time for inspection by the Code Enforcement officer or other Town official.

## ARTICLE X DRIVEWAYS

### Section 10.1 Purposes

The purpose of this article is to establish regulations for the construction of driveways allowing access to own roads within the Town of Smithfield. This article is adopted with the understanding that the Town highway system serves two major purposes: it must provide safe and efficient movement of people and goods and reasonably convenient access to the abutting property owner. The intent of this article is to balance these two roles without allowing one to become a serious detriment to the other.

### Section 10.2 Permits

Any person, institution or corporation desiring to construct a residential driveway or commercial driveway (as such terms are defined in this Article) for permanent or temporary vehicular access to a town highway shall obtain a driveway permit prior to the commencement of construction from the

Town Codes Enforcement Officer upon the advice and recommendation of the Town Highway Superintendent. Farm driveways (as defined in this Article) and in-home occupations using existing residential driveways and not involving regular motor vehicle traffic by someone other than a resident of an existing residence shall not be subjected to the provisions of this Article.

- a. Application:
  - i. Application for a driveway permit shall be on such forms as determined and supplied by the Town codes Enforcement Officer and shall include such information as may be necessary to determine compliance with this article and any other applicable codes, rules and regulations.
  - ii. The applicant shall furnish with the application maps detailing the location of the property and the specific location of the proposed driveway for which approval is requested. The Town Code Enforcement Officer and/or Town Highway Superintendent may require such other additional documentation including but not limited to photographs, surveys or reports sole discretion shall deem appropriate.
- b. Issuance. Within a reasonable time after the submission of a completed application, appropriate fee, and additional documentation, if necessary, the Codes Enforcement Officer shall cause a copy of the application to be delivered to the Town Highway Superintendent for review. Should compliance be determined, the Code Enforcement Officer shall issue a permit for the construction of the driveway as specified on the application. An incomplete application or lack of sufficient information shall be cause for denial of the permit.

### Section 10.3 Classifications

Driveways shall be classified as to the most prominent use of the driveway. All driveways entering town roads shall be classified as follows:

- a. Farm Driveways: a driveway servicing a farm yard, cultivated or uncultivated field, timberland, or undeveloped land not used for a non agricultural purpose, and utilized primarily by farm vehicles such as tractors, and other off-road agricultural vehicles.
- b. Residential Driveways: a driveway servicing a private home or other single or multiple family residence.
- c. Commercial Driveway: a driveway servicing a commercial establishment, industry, governmental or educational institution, private utility, hospital, church, apartment building or other comparable traffic generating facility.

### Section 10.4 Design regulations for Residential and Commercial Driveways.

- a. The maximum number of driveway entrances onto a town road shall be one per building lot having 200 feet of frontage or less, which restriction shall not be deemed to prohibit circular or u-shaped driveways where they are necessary for safe ingress and egress to and from the public road. If the lot frontage is greater than 200 feet, two or more driveway entrances may be allowed if all other standards of the Article are met and there is no detrimental effect on public safety.
- b. No driveway shall be constructed within 100 feet of a road intersection measured from the nearest intersection of the right-of-way lines.

- c. The angle of all driveways with town roads shall be as close to 90 degrees as practicable, but in no event less than 45 degrees.
- d. The minimum driveway width shall be 10 feet.
- e. The minimum return radius at the intersection of driveways and the road surface shall be 10 feet and in no case shall the radius extend beyond the intersection of the pavement edge and the side property line as projected.
- f. Driveways shall slope down from the road surface to the drainage line at grades of  $\frac{3}{4}$  inch per foot or existing shoulder pitch, whichever is greater.
- g. The sizes and slopes of driveway storm drains and culverts within the town road right-of-way shall be as specified by the Town Highway Superintendent. The owner shall bear all costs for pipe, grating, paving, etc., required within such right-of-way.
- h. No driveway shall be constructed where the sight distance is less than 10 times the legal posted maximum limit. The applicant shall also trim brush and maintain his/her property in such a manner as to maintain optimal sight distance.
  - i. Driveways and parking areas shall be designed so that no parking, loading or servicing of vehicles will take place within the town road right-of-way and so no vehicles will be required to back onto the town road to gain ingress or egress to the abutting property.

#### Section 10.5 Drainage Regulations

- a. All existing and proposed drainage conditions shall be indicated on the plans submitted by the applicant.
- b. Facilities to carry water through and/or off the owners' property shall be designed and constructed so that no damage or surface ponding will occur to, or on, existing and proposed buildings, driveways, adjacent properties, drainage facilities and public improvements.
- c. In no case shall a driveway be constructed so as to convey water onto the road surface.

#### Section 10.6 Location and layout

- a. A driveway system shall be so located as to provide:
  - i. The most favorable vision, grade and alignment conditions for motorists using the proposed driveway and highway
  - ii. The least interference with the free and safe movement of highway traffic, and
  - iii. The maximum safety and convenience for pedestrians and other users of the highway right-of-way.
- b. Placement. In the interest of public safety and convenience, the Town Codes Enforcement Officer may restrict the placement of a driveway to a particular location along the owner's road frontage or require the relocation of existing driveways subject to this Article.
- c. Restrictions. Driveway for new subdivisions shall, where necessary for safe ingress and egress to and from the individual lots and the public road, utilize one or more shared private drives for common access to the highway in order to minimize, to the maximum extent practicable, the number of new driveway access points to town roads. The Code Enforcement Officer shall impose such other restrictions and conditions on the issuance of a driveway permit as, in his discretion, maybe required to implement the purposes of this Article. Such other conditions and restrictions may include, but are not limited to, traffic control devices, pavement markings, turn restrictions or other conditions deemed necessary.

## Section 10.7 Liability

The adoption of this Article is to provide a minimum procedure for the regulation of access to Town highways. Its adoption and enforcement is not intended to relieve the property owner and the individuals constructing driveways in the Town from any obligation or responsibility to avoid the creation of dangerous conditions. Additionally, the adoption, administration or enforcement of this Article shall not act as the basis for any claim of any nature against the Town of Smithfield concerning the locations, existence, maintenance, construction, regulation or design of driveways.

## Section 10.8 Maintenance Responsibility

- a. Property owners having access to a Town highway shall be fully responsible for maintenance of their driveway and channelization, including the portion from the highway right-of-way line to the outside edge of the highway shoulder or curb line. The maintenance responsibility includes removal of snow and ice and keeping the portion within the highway right-of-way in a safe condition for the general public.
- b. The property owner shall be responsible for the maintenance of ditches, pipes, catch basins, grates and other drainage structures constructed in connection with providing access to his/her property. All traffic control devices, such as stop and yield signs, etc., installed by the property owner in the highway right-of-way with the permission of the town, shall conform to the Manual of Uniform Traffic Control Devices and be maintained, and replaced by the property owner. The property owner shall also trim brush and maintain his property in such a manner as to maintain optimal sight distance.

## Section 10.9 Performance Bonds and Deposits

A performance bond and/or deposit may be required for a permit issued for construction or reconstruction of a commercial driveway to protect the town against the cost of completing construction or correcting deficiencies. The deposit shall be returned when the work is satisfactorily completed. The performance bond amount or deposit will be prescribed by the Town Highway Superintendent, consistent with the scope and magnitude of the work involved.

## Section 10.10 Fees/Modification of Approvals

The fees charged for driveway permits shall be determined from time to time by the Town Board. Any driveway permit and/or site plan approval or special use permit may be revoked or modified by the Code Enforcement Officer (with respect to driveway permits) and the Planning Board (with respect to site plan approval and special use permits) if the classification or use of the driveway(s) serving the premises is changed or other hazard(s) becomes apparent after construction and use of the driveway begins. All costs for any warning devices and/or signs shall be borne by the applicant.

## Section 10.11 Construction standards and regulations

- a. accepted materials for drainage structures.
  - i. Driveway pipe shall be either reinforced concrete, corrugated steel pipe, corrugated polyethylene storm drain pipe meeting NYSDOT Material Standards and shall be of a size and type as determined by the Highway Superintendent.

- ii. Back fill around driveway pipes shall consist of gravel or crushed stone containing no stone greater than four inches in diameter and shall extend at least 12 inches above the driveway pipe. The back fill shall be thoroughly compacted with particular attention given to the proper placing and compaction of the back fill under the pipe haunches.
- iii. No head walls may be built on ends of driveway pipes, Flared end section may be required.
- iv. Catch basins, if required, shall conform with such specifications as determined by the Code Enforcement officer and /or Highway Superintendent.

b. Sub base and surface materials.

- i. The driveway sub base shall consist of 12 inches of gravel.
- ii. The driveway surface shall be consolidated in such a manner so to prevent loose material from being scattered onto the town road surface.

c. Excavation for drainage structures. Roadside ditches shall be excavated to the width and depths specified by the Highway Superintendent.