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LAND USE

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ARTICLE I

Enactment & Application

§1 Title.

This chapter shall be known and may be cited as the "Town of Madison Residential Use Law."

§2 Enactment; Authority.

The Town Board of the Town of Madison in the County of Madison under the authority of Article 16 of the Town Law and §10 of the Municipal Home Rule Law of New York State hereby ordains, enacts and publishes the following law.

§3 Purpose.

The purpose of this chapter and the land use regulations have been enacted in accordance with the comprehensive plan; that are designed to preserve the character of and provide for the orderly growth of the town and its hamlets; to encourage the most appropriate use of land; 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.

§4 Application of Regulations.

Except for existing uses and other facilities as herein provided:

A) No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, extended or put in place unless in conformity with the regulations herein specified.

B) No building shall hereafter be erected, altered or put in place to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller bordering yards than specified herein.

C) No part of a yard or other open space around any building required in conformity with the provisions of this chapter shall be included as part of a yard or other open space similarly required for another building.

ARTICLE II

Terminology

§1 Word Usage.

Except where specifically defined herein, all words used in this chapter 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;" and the word "shall" is intended to be mandatory. "Occupies" or "used" shall be considered as though followed by words "or intended, arranged or designed to be used or occupied."

§2 Definitions.

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

ACCESSORY STRUCTURE OR BUILDING - Any detached structure or building which is subordinate to and whose use is incidental to the use of the principal structure or building. All accessory structures and buildings must conform to setback requirements.

ACCESSORY DWELLING UNIT (ADUs) - A second dwelling unit either in or added to an existing single-family detached dwelling, or in a separate accessory structure on the same lot as the principle dwelling, for use as a complete, independent living facility with provision within the accessory dwelling unit for cooking, eating, sanitation, and sleeping. Such a dwelling shall be clearly accessory and incidental to the principal dwelling.

BUILDING AREA - The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between the exterior faces of walls.

BUILDING LINE - The foundation of the building nearest the line of the lot. This includes decks, sun parlors, covered porches whether enclosed or unenclosed (but does not include steps). In the case of a cantilevered building, the building line shall coincide with the most projected surface.

BUILDING OR STRUCTURE, PRINCIPAL OR MAIN - A building or structure in which is conducted the principal use of the lot on which it is located.

BUSINESS OR COMMERCIAL - See "Site Plan Review Regulations for Commercial and Industrial Development"

CERTIFICATE OF COMPLIANCE - A certificate issued by the proper officer of the town certifying that the building, structure, system or land alteration and proposed use thereof complies with the provisions of this chapter as of the date of issuance.

CODE ENFORCEMENT OFFICER - The Town of Madison Code Enforcement Officer or such other person as may be designated or appointed by the Madison Town Board to administer and/or enforce the provisions of this chapter.

DUMP - A parcel of land or part thereof used primarily for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind.

DWELLING, ONE-FAMILY - A detached building containing one dwelling unit only and intended for the use of a single-family.

DWELLING, TWO-FAMILY - A detached building containing two dwelling units.

DWELLING, MULTI-FAMILY - A building or portion thereof containing three or more dwelling units and used for occupancy by three or more families living independently of each other.

FAMILY - One or more persons who live together in one dwelling unit and maintain a common household. A family may consist of a single person or of two or more persons, whether or not related.

FLAG LOT – A lot that does not meet the requirements for lot frontage at the street line as defined in Article 3 section 2 of this law, but rather is connected to the public street by an driveway strip or strip of land and covered by an easement or right of way.

LOT - A parcel of land occupied or capable of being occupied by one building and accessory buildings or uses customarily incidental to it, including such open spaces as are required by this chapter. No area shall be counted as accessory to more than one main building or use, and no area necessary for compliance with the open space requirement for one main building or use shall be included or counted in the calculation of the open space accessory to any other main building or use.

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 road right-of-way shall not be included in calculating lot area.

LOT DEPTH - The mean distance between the front and rear lot lines, measured in the general direction of the sidelines of the lot.

LOT LINES - The property lines bounding the lot.

LOT, THROUGH - An Interior lot having frontage on two parallel or approximately parallel roads.

LOT, WIDTH - The mean width of a lot measured at right angles to its depth.

MANUFACTURED HOUSING - A structure, which is transportable in one or more sections, built on a permanent chassis and designed to be used as a family dwelling, with or without a permanent foundation, when connected to the required utilities, and including the plumbing, heating, air-conditioning and electrical systems contained therein.

MOBILE HOMES - A prefabricated dwelling not built on a permanent chassis or sectional dwelling, not designed to be mounted on a permanent foundation. Travel trailers, truck campers and motor dwellings shall not be considered mobile dwellings. Mobile dwellings used for non-dwelling purposes are included in this definition.

NONCONFORMING BUILDING - Any building which does not conform to regulations.

NONCONFORMING LOT - A lot of record existing at the date of the passage of this chapter, which does not conform, to the minimum lot area, width, depth or frontage standards.

NONCONFORMING USE - Any use of any building, structure or land existing at the time of enactment of this chapter which does not conform to the use regulations.

RESIDENTIAL USE – Building or structure used to provide living accommodation for human occupancy. See dwelling.

SETBACK, FRONT - An open unoccupied space on the same lot with a main building extending the full width of the lot and situated between the edge of the highway right-of-way and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the nearest point of the front line of the building and the road right-of-way. The only exception is permitted roadside stands.

SETBACK, REAR - An open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot. The depth of the rear yard shall be measured between the rear line of the lot, or the road right-of-way if there is a roadway and the nearest point of the rear line of the main building. Accessory buildings may be built on the rear yard, unless the lot is a through lot.

SETBACK, SIDE - An open unoccupied space between the building and the sideline of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a "side line" space on the same lot with the principal building.

SPECIAL USE PERMIT – An authorization of a particular land use which is permitted in the Land Use Law, subject to requirements imposed by such law to assure that the proposed use is in harmony with such local law and will not have a negative affect on the neighborhood. Special Use Permits are obtained through the Town Planning Board.

STREET LINE - The outer boundary lines of a right-of-way used for vehicular traffic, whether public or private.

STRUCTURE – An assembly of materials located on or permanently affixed to the ground with improvements constructed above the ground. A building is one type of structure.

VARIANCE - A legally permitted modification of this chapter to allow for different dimensions or use in the area coverage of a specific parcel of land.

ARTICLE III

Boundary Regulation

§1 Minimum Lot Size All residential structures in the Town of Madison shall have the following minimum lot sizes:

- a) One (1) single-family dwelling: 1.0 acre
- b) One (1) two-family dwelling: 1.5 acre
- c) One (1) multi-family dwelling: 1.5 acre plus 10,000 sq.ft. per additional units.

d) Properties with ADUs are required to be owner or family occupied, either in the accessory unit or the principal unit.

§2 Required Frontage and Depth

All lots within the Town of Madison shall have a minimum road frontage of 100 feet (exception noted in number 4 below) and a minimum lot depth of 125 feet

§3 Required Setbacks

A) All structures shall have a minimum setback from an existing highway right of way of 30 feet, measured from the building foundation.

B) All residential structures shall have a minimum side yard and rear yard setback of 25 feet, measured from the building foundation.

C) Accessory structures larger than 200 sq. ft. shall have a minimum side and rear setback of 25 feet, measured from the longest or widest part of the structures eaves. Accessory structures less than 200 sq. ft. shall have a minimum side and rear setback of 5 feet measured from the widest or longest part of the structures eaves.

D) All residential structures without a basement must have an outside storage structure or garage with a minimum area of 100 sq. ft.

E) For uses requiring Site Plan Approval, the Planning Board may require changes or additions to yards, driveways, entrances and exits, landscaping, and the location and height of buildings, enclosures, and signs to ensure safety, and safeguard adjacent properties.

§4 Flag Lot

A lot that does not meet the requirement for minimum road frontage as required in the Land Use Law, but rather is connected to a public right of way by a minimum of a thirty(30) foot wide property strip (driveway) that connects the road frontage to the lot, either owned or obtained by a legal easement entered in respective deed and recorded. Application has to be made to the Planning Board and a Special Use Permit obtained.

ARTICLE IV

Manufactured Housing Requirements

§1 All manufactured housing placed within the Town shall display the HUD Seal (data plate) conforming to HUD CODE (24 CFR Part 3280).

§2 All manufactured housing shall be installed on a foundation meeting NYS building Code.

ARTICLE V

Nonconforming Uses

For purposes of this section, a nonconformity is defined as any structure, lot or use, which does not conform to the regulations as set forth in this chapter, but which lawfully existed prior to the enactment of this chapter or any revision or amendment thereto, and which is maintained after the effective date thereof, although it does not conform to the use or area regulations.

A) Policy. It is the intent of this section to permit nonconformities to continue, but not encourage their survival, where such nonconformities do not endanger the public health, safety and welfare.

B) Nonconforming Uses. All lawful uses existing at the time of the enactment or amendment of this chapter may be continued even if such uses do not conform with the provision of this chapter, provided that:

1) No nonconforming use shall be extended, expanded or enlarged into any building or lot, or portions thereof, not used for such purposes at the effective date of adoption or amendment of this chapter without a special use permit.

However, a nonconforming use may be extended throughout any parts of a building that was manifestly arranged or designed for such use at the time of the enactment or amendment of this chapter.

2) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this chapter without a special use permit.

3) If any such nonconforming use ceases for any reason for a period of one year or more, such use shall not be reestablished without a special use permit. Intent to reestablish or resume a nonconforming use shall not confer the right to do so. In case of a nonconforming business or commercial use, if the structure remains closed for business for a period of one year or more, the nonconforming use shall be regarded as ceased. Any previously issued special use permit in conjunction with this section shall also cease.

4) No such nonconforming use shall be restored or structurally altered in any way that will increase its degree of nonconformance without a special use permit. A nonconforming use may be structurally altered or renovated so as to decrease its degree of nonconformance.

5) Any nonconforming building or use, if changed to conform to the requirements of this chapter, shall not thereafter be changed back to a nonconforming building or use.

6) Existing structure on non-conforming lot: Camps or residences may be rebuilt or replaced provided the lot and structure meet all applicable requirements of the building code and original foundation dimensions. Evidence must be provided by record that the original lot contained a structure and a record of any easements, liens or covenants that apply to the property must be furnished.

C) Nonconforming Buildings. A nonconforming building may be continued, repaired, structurally altered, moved, reconstructed or enlarged, provided that action does not increase the degree of or create any new nonconformity. A building which contains a use allowed by special use permit may be repaired, structurally altered, moved, reconstructed or enlarged after review, provided that the action does not increase the degree of or create any new nonconformity

D) Nonconforming Lots. Any lot which was duly approved prior to this chapter and which has an area less than required by this chapter may be used for any permitted purpose if:

1) The owner, on the effective date of this chapter, has no adjoining land which would permit the owner to make the lot conforming, and if all other code and local law requirements are satisfied; or

2) The owner obtains a variance pursuant to the provisions of Article VII for any setback, frontage, lot coverage or other requirement of this chapter (other than lot size) which cannot be met. Such a variance may only be granted if the applicant demonstrates that all requirements of New York State law relating to residential lots (such as percolation, sewage disposal and water supply) can be satisfied.

E) Creation of Nonconforming Lots by Reduction of Lot Area. No nonconforming lot shall be created where no nonconforming lot existed prior to the passage of this chapter. No lot shall be so reduced in area that the total area, yard setbacks, lot width, frontage, coverage or other requirements of this chapter shall be less than herein prescribed for each land use without a variance. When part of a lot is taken for public purpose the provisions of this section shall not apply.

ARTICLE VI

Refuse

All properties shall be kept clean and clear of refuse in compliance with the NYS Property Maintenance Code. If a violation of the Property Maintenance Code is determined, the Town may have the refuse removed at the property owner's expense and the actual cost of removal shall be levied to the property owner's town and county tax bill in the next succeeding year.

ARTICLE VII

Administration & Enforcement

Enforcement **§1 Enforcement**

The Code Enforcement Officer or his appointee shall enforce this chapter.

§2 Fees.

The Town Board of the Town of Madison shall, by resolution set, and from time to time amend, the fees that shall be charged for Planning Board applications and Board of Appeals applications. The fee schedule shall be available for inspection at the Town Clerk's Office and the Town's Web Site.

§3 Building Permits. No building or structure shall be erected, put in place or have structural modifications constructed until the Code Enforcement Officer has issued a building permit certifying that it meets all the requirements of this chapter. **Agricultural structures or buildings are exempt from this permit requirement but must comply with the setbacks set forth in this local law.**

§4 Certificate of Compliance Procedure.

A) A certificate of compliance shall be applied for coincident with the application for a building permit. A special use permit shall be applied for prior to beginning a change of use of an existing building, structure or vacant parcel on which new construction will occur.

B) The Code Enforcement Officer shall maintain a record of all certificates, and copies shall be furnished upon request and upon payment of the requisite copying fee, to be set from time to time by resolution of the Town Board.

§5 Board of Appeals; Variances.

A) **Appointment of a Board of Appeals.** The Town Board hereby affirms that existence of the Board of Appeals of the Town of Madison consisting of five members, and having all the authority conferred upon a Board of Appeals pursuant to Article 16 of the Town Law as appropriate.

Its purpose is not to make laws but to interpret the law and to provide flexibility where needed and justified in the application of this chapter.

B) Powers and Duties of the Board of Appeals

(1) Upon appeals of decisions by the Code Enforcement Officer, to decide questions involving interpretation of any provision of this chapter.

(2) To grant area variances upon application, if justified.

(3) Decisions of the Board of Appeals shall be made within 90 days from the time that the complete application has been filed with the Board. Decisions shall be by motion and vote of the Board, and shall contain a full statement of findings of fact in the minutes of the Board.

C) Application Procedure. An appeal for interpretation of a decision made by an officer of the town on any part of this chapter or a request for a variance may be made to the Town Clerk or to the Code Enforcement Officer. In reply, the Town Clerk will furnish an application form and instructions, along with a statement of the standards to be followed and the procedure, including a public hearing, required by law. When the application form is filled in and returned to the Town Clerk, along with the prescribed fee, it will be given to the Board of Appeals within one week.

D) Variances.

- 1) A variance is a legal permit for a modification of some part of this chapter to meet an individual hardship. "Hardship" does not refer to a personal hardship of the property owner/user. Rather, "hardship" refers to the inability of the property to be used for a permitted use or to the inability to meet the lot area and/or dimensional requirements.
- 2) If a use or construction authorized by a variance has not been started and continued within one year, the Board of Appeals may revoke the variance and require a new application.
- 3) When a variance is granted, the Board of Appeals may prescribe conditions to be observed in order to protect the health, safety or welfare of the public, to preserve the general character of the neighborhood and to minimize possible detrimental effects on nearby property.

E) Granting Variances.

- 1) The Board of Appeals shall act in strict accordance with the procedure specified by state law and by this chapter. All applications made shall be in writing on forms prescribed by the Board. Every application shall refer to the specific provision of the law involved, the details of the variance being applied for and the grounds on which it is claimed that the variance should be granted.
- 2) Each application shall include a site plan of the proposed use or construction to enable the Board of Appeals to evaluate development constraints inherent in the property and the proposed use or construction compatibility with the existing uses in its vicinity and with the purpose of this chapter. Upon the granting of any variance, the submitted site plan, with any modifications required by the Board, shall become a part of the record on which future compliance with the terms of the variance shall be based.
- 3) Written notice setting forth the general nature of the variance application and the date of the public hearing shall be forwarded by first-class mail by the Town Clerk to owners of real property within the Town of Madison at those addresses as appear on the town tax roll in use at the time of mailing for owners of property located adjacent to and/or within 500 feet of the property parcel which is the subject of the proposed variance.

F) Standards for Granting Variances. No variance for modification of the strict application of any provision of this chapter shall be granted by the Board unless it finds the following:

1) Use variances

(a) For use variances, no use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable regulations and restrictions contained in this and supplemental land use regulations have caused unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that:

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

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

2) Area variances.

(a) For area variances, in making its determination, on each application for an area variance, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider whether:

- (1) An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance
- (2) The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) The requested area variance is substantial;
- (4) The proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood; and

(5) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

(b) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3) Imposition of Conditions.

The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

§6 Penalties for Offenses.

A) Any person may file a complaint about a violation of this chapter. Complaints must be in writing, signed and filed with the Code Enforcement Officer, the Town Clerk of the Town Board. The Code Enforcement Officer shall investigate promptly and take the appropriate action to satisfy that complaint

B) Any violation of this chapter as determined by the Code Enforcement Officer must be reported to the offender by the Code Enforcement Officer of the Town Board with the date by which the violation must be corrected.

C) A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350.00 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350.00 nor more than \$700.00 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700.00 nor more than \$1,000.00 or imprisonment for a period not to exceed six months, or both. Each weeks' continued violation shall constitute a separate additional violation.

D) In case any building or structure is erected, constructed, reconstructed, altered, converted, or any land is divided into lots, blocks or sites in violation of this article or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of this town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

§7 Stop-Work Orders.

A) Whenever the Code Enforcement Officer has reasonable grounds to believe that work on any building or structure is proceeding without a permit or is otherwise in violation of the provision of this chapter or is not in conformity with any of the provisions of the application, plans or specifications on the basis of which a permit was issued or is being conducted in an unsafe and dangerous matter, he shall notify either the owner of the property or the owner's agent or the person, firm or corporation performing the work to immediately suspend all work. In such instance, any and all persons shall immediately suspend all related activities until the stop-work order has been duly rescinded.

B) Such stop-work order shall be in writing on a form prescribed by the Code Enforcement Officer and shall state the reasons for the stop-work order, together with the date of issuance. The stop-work order shall bear the signature of the Code Enforcement Officer or that of a duly authorized designee and shall be prominently posted at the work site.

§8 Appearance Tickets.

Upon resolution of the Town Board of the Town of Madison specifically so designating, the Code Enforcement Officer shall have authority, pursuant to Article 150 of the New York Criminal Procedure Law, to issue appearance tickets as defined therein for the purpose of enforcing the local law.

§9 State Supreme Court Review

Pursuant to the Town Law of the State of New York §267 and §274-a, any person, persons jointly or severally aggrieved by any decision of the Board of Appeals, the Planning Board any officer of the town may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding must be instituted by the aggrieved party within 30 days after the filing of that decision in the Office of the Town Clerk.