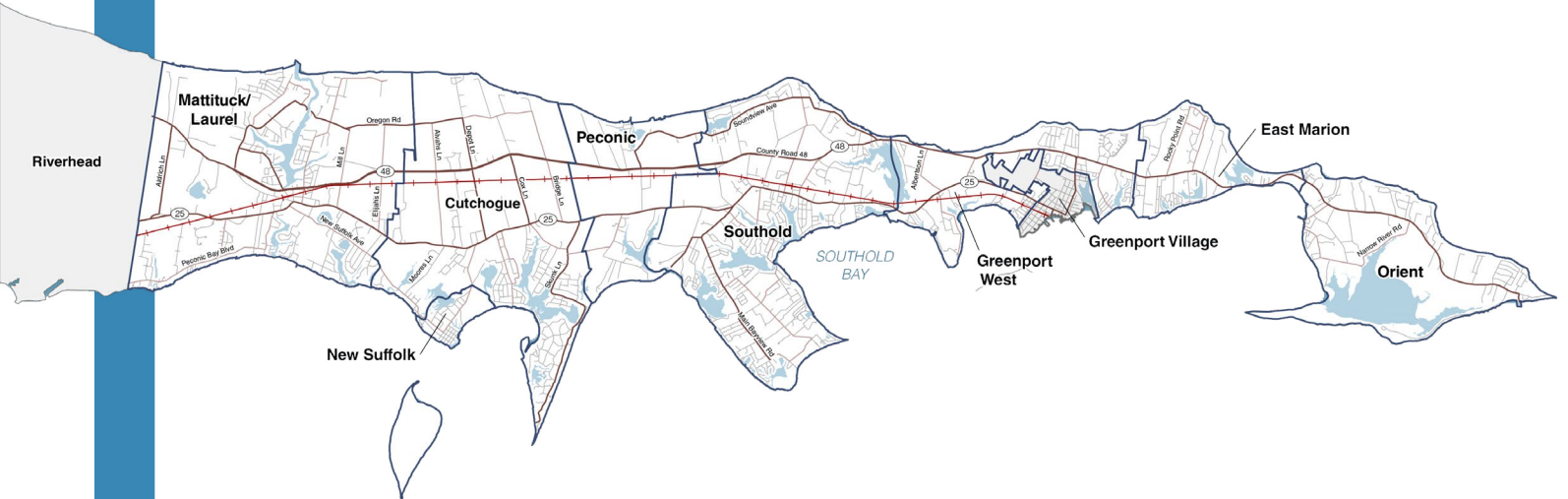


Image Source: Southold Town Comprehensive Plan



SOUTHDOLD ZONING UPDATE ADVISORY COMMITTEE REPORT

June 2nd, 2025



**Department
of State**

This report was prepared with funding provided by the New York State Department of State under Title 11 of the Environmental Protection Fund.

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I) INTRODUCTION

Purpose of this report

This report was prepared on the basis of review of the existing Zoning Code, community tours, hamlet community workshops, and many meetings of the committee and subcommittees.

This report has been prepared by the members of the Zoning Update Advisory Committee with two fundamental purposes:

First, to document the activities of the committee to demonstrate the extent of involvement, due diligence, and public outreach that has contributed to the findings and recommendations within this report.

Second, to serve as a guide and reference for committee members to use when reviewing the Public Review Draft and subsequent drafts of the proposed Zoning Code (Chapter 280). The appendices and reference links are intended to facilitate these reviews.

Mandate of the Zoning Update Advisory Committee

From correspondence received from Heather Lanza, Town of Southold Planning Director, on 10/11/23:

The charge for this committee from the Town Board is as follows:

- Work in cooperation with municipal officials and the project consultant on the zoning update project, and
- Review and provide constructive feedback about all aspects of the zoning update project including the following:
 - The public engagement plan; and
 - The public information sessions; and
 - Review of best practices and the best local approach to achieve the vision reflected in the Southold Town Comprehensive Plan; and
 - Review of the new draft zoning regulations and their consistency with the Southold Town Comprehensive Plan; and
- The committee will meet regularly for the duration of the zoning update project with an expected completion time within 24 months.

From the Town of Southold website for the Zoning Update:

“The Zoning Update Advisory Committee will have the responsibility to review and provide constructive feedback about all aspects of this project.”

From the Work Plan submitted to the NYS Department of State, provided by Heather on 10/13/2024:

<https://regionalcouncils.ny.gov/cfa/project/386484>

Applicant: Southold (I)

CFA number: 118391

Award Amount: \$338,000

Project Name: Southold Prosperity II - Land Use and Zoning Updates

Project Description:

The Town of Southold will analyze and update land use and zoning regulations to implement the community vision set forth in their Local Waterfront Revitalization Program and Comprehensive Plan. The updates will ensure future growth is sustainable and the regional economic drivers of agriculture, tourism, working waterfronts, and natural resources are protected, while maintaining a strong and healthy local economy.

Task 2: Zoning Advisory Committee

Establish a Zoning Advisory Committee (ZAC) to oversee all aspects of the project in cooperation with municipal officials and the project consultant (if applicable). The Committee shall have at least one member from the planning board and zoning board of appeals and shall include representatives from a large range of ethnic, social, and cultural backgrounds and a diverse range of stakeholders, such as residents, civic leaders, business owners, elected officials, environmental experts, neighborhood association representatives, and municipal board members.

The members of the ZAC shall conduct and oversee the development of the Zoning Code. The Committee will generate ideas and build consensus, provide the consultant team with relevant information reflective of the community's current conditions and regulatory environment, review materials prepared by the consultant team (if applicable) and provide constructive feedback. The Committee will also support each of the public participation and outreach efforts, assist the consultant team in integrating the Zoning Code into the existing municipal code, and set the stage for the adoption of the completed Zoning Code. The Contractor shall send a list of proposed members of the ZAC to the Department for review.

Products: List of proposed members of Zoning Advisory Committee (ZAC). ZAC established.

Committee Members

1. Erin Argo
2. Megan Hood
3. Jeannette M Judge
4. Pat Kirkpatrick
5. Pastor Thomas MacLeod (resigned from committee)
6. Bruce Nelligan
7. Jim Rich, (Planning Board Chairperson) (replaced Don Wilcenski)
8. Alvin Schein
9. Kevin Stuessi (Mayor of the Village of Greenport)
10. Leslie Weisman (Zoning Board of Appeals Chairperson/ Department Head)
11. Mark Terry (Assistant Town Planning Director)
12. Heather Lanza (Town Planning Director)
13. Al Krupski (Town Supervisor, Town Board Liaison)

1) Committee Timeline / Activities

April 16, 2024 - Grant Award A
August 2023 - Public Announcement
October 11, 2023 - Committee Selections Notification
October 19, 2023 - Kickoff Meeting
Zoning Update Website Support
The Zoning Update Website was launched on October 18, 2023

2) Community Tours

November 13, 2023 - Mattituck & Laurel
November 14, 2023 - New Suffolk & Peconic
November 17, 2023 - Cutchogue November 30, 2023 - Southold (Hamlet)
December 11, 2023 - Greenport/East Marion/ Orient
July 24, 2024 - Fishers Island

3) Hamlet Community Workshops

February 26, 2024 – Mattituck / Laurel
March 2, 2024 - East Marion
March 3, 2024, Orient
March 7, 2024, Greenport
March 14, 2024 - Cutchogue/ New Suffolk
March 23, 2024 – Southold / Peconic
July 24, 2024 – Fishers Island

4) Committee Meetings and Agenda

May 15, 2024
June 10, 2024, Mattituck & Cutchogue Zoning Map Review
June 24, 2024, New Suffolk, Peconic, Southold Zoning Map Review
July 1, 2024, Southold, Greenport Zoning Map Review
July 15, 2024
July 29, 2024, East Marion, Orient, Fishers Island Zoning Map Review
August 12, 2024, Review, Identify Areas of Opportunity & Concern
August 26, 2024
September 16, 2024
March 26, 2025

II) SUMMARY OF ANTICIPATED BUILD-OUT

The build-out analyses included in the Comprehensive Plan (Refer to Reference #1 for the [Town of Southold Comprehensive Plan](#)) states that 13,818 housing units already exist in the Town of Southold, plus an additional 1,191 in Greenport Village for a total of 15,377 units, and that full residential build-out as currently zoned would allow for 1,840 units on existing lots plus an additional 2,538 units through the subdivision of larger lots, mostly unprotected open land, for a total of 4,378 additional dwelling units. Assuming that the analysis in the Comprehensive Plan is accurate, this represents an increase of 32% over the existing residential build out. It is important to note that potential residential build out is most significant in Cutchogue, Mattituck/Laurel and Southold Hamlets. Similarly, commercial and industrial build out potential is the greatest in these same three hamlets, due to the amount of undeveloped / unprotected land in each.

The build-out analysis for housing units is broken out by hamlet as follows:

- In Cutchogue, the Comp Plan states that there were 1,496 acres of land available for development. New lots created by subdivision could yield 640 new residential buildings, plus an additional 239, for a total of 879 potential new residential buildings. The Comp Plan does not identify the number of existing housing units in Cutchogue as of the date of the Plan.
- In East Marion, the Comp Plan states that there were 863 existing housing units at the time of the plan, and build out would allow 287 additional units, an increase of 33.2%.
- On Fishers Island, the Comp Plan states that there were 554 existing housing units at the time of the plan, and build out would allow 234 additional units, an increase of 42.2%.
- In Greenport West (not within the Village of Greenport), the Comp Plan states that there were 1,837 existing housing units at the time of the plan, and build out would allow 311 additional units, an increase of 16.9%.
- In Mattituck and Laurel, the Comp Plan states that there were 3,151 existing housing units at the time of the plan, and build out would allow 39 additional units, an increase of 35.8%.
- In New Suffolk, the Comp Plan states that there were 307 existing housing units at the time of the plan, and build out would allow 39 additional units, an increase of 12.7%.
- In Orient, the Comp Plan states that there were 777 existing housing units at the time of the plan, and build out would allow 321 additional units, an increase of 41.3%.
- In Peconic, the Comp Plan states that there were 456 existing housing units at the time of the plan, and build out would allow 321 additional units, an increase of 70.4%.
- In Southold Hamlet, the Comp Plan states that there were over 3,600 existing housing units at the time of the plan, and build out would allow 764 additional units, an increase of 21.2%.

On page 6 of the Comprehensive Plan, under the heading **Handling Future Development**, the Plan states:

“Although future actual buildout is expected to be much lower than the theoretical buildout, especially in terms of residential development, there will be significant growth over time.”

This expectation of lower growth has been further supported by an analysis prepared by the Planning Department of the Town of Southold, presented to the Southold Town Zoning Update Advisory Committee on September 12, 2024, and included as Appendix 7 in this report.

This analysis shows the total number of lots created by subdivision from 2010 through 2023 [84], and noted that an additional 47 new lots were pending subdivision at the time of the presentation.

The analysis also provides a bar graph of new home permits issued per year from 2005, through 2023. The presentation does not provide the total number.

Finally, it shows a summary of the Town’s “Land Preservation Tracking Report”

The analysis concludes: “The takeaway is that our programs are working very well when it comes to slowing, reducing, and avoiding the subdivision and conversion of farmland.”

The Planning Department’s analysis bases its optimism on historical trends over the last 20 years, and projects that the historic Southold Zoning Update Advisory Committee Report

trends will continue for the foreseeable future. The concern of committee members is that outside forces may invalidate this assumption. These outside forces include increased demand in the real estate market accelerated because most of the land in nearby communities has already been developed, particularly on the South Fork. This, and the dramatic increase in home prices since the pandemic appear to have created a tipping point, or point of inflection, after which previous trends may not be useful in predicting future growth.

III) COMPREHENSIVE PLAN GOALS & THE ZONING UPDATE

Comprehensive Plan Goals:

- | | |
|---------|--|
| Goal 1 | Update the Town Code |
| Goal 2 | Review and Update Zoning, Town-Wide |
| Goal 3 | Enforce the Town Code |
| Goal 4 | Improve Traffic Congestion and Safety |
| Goal 5 | Protect the Town Character |
| Goal 6 | Protect and Enhance the Town’s Natural Resources & Environment |
| Goal 7 | Economic Prosperity |
| Goal 8 | Enable the Creation of Attainable Homes |
| Goal 9 | Retain and Advance the Business of Agriculture |
| Goal 10 | Continue to Preserve Farmland and Open Space |

IV) PRIORITIZING THE COMPREHENSIVE PLAN GOALS FOR THE ZONING UPDATE

Throughout this process, the committee has actively engaged with the community, hosting workshops and gathering input from local residents. Many community members, along with several committee members, have voiced deep concern that Southold is at a tipping point—where the town’s character is at serious risk. If these changes were to unfold too rapidly, Southold could become unrecognizable to both residents and visitors, undermining many of the goals set forth in the Comprehensive Plan.

From the committee’s earliest discussions, Town Planning Director Heather Lanza noted that while this Zoning Update is designed to support all 13 goals outlined in the February 2020 Southold Town Comprehensive Plan, some goals may inherently conflict or compete with one another. She emphasized that a key part of the committee’s role is to prioritize and balance these objectives—engaging with stakeholders to ensure that the zoning changes lead to the best possible outcome.

The following findings are made with this mission in mind: how to use this zoning update to help realize the goals of the Comprehensive Plan, i.e., to help envision and create the best possible future for the Town of Southold.

VI) FINDINGS AND RECOMMENDATIONS

01

Goal 1: Update the Town Code

“Revise the Town Code, particularly the Zoning Chapter and other Land-Use-related chapters, to be easier to use.”

Findings

a) While Chapter 280, Zoning, is the focus of this Zoning Update, the committee has identified other chapters of the Town Code that can benefit from updates at this time, if only to eliminate conflicts with underlying State regulations that take precedence over local town code.

As an example, Chapter 148 Flood Damage Prevention, was most recently updated in 2009. Changes to the underlying state codes and has largely made this chapter obsolete. Additionally, consolidating Definitions, found throughout the Code, perhaps into a stand-alone chapter, would greatly reduce conflicts within the Code and the associated confusion such conflicts generate.

b) Similarly, Chapter 240 Subdivision of Land which was updated in 2004 to help encourage agricultural lands preservation (Chapter 70) still allows for development of open land that would be in contradiction to the goals of the Comprehensive Plan, notably Goals 5, 6, 9 & 10

c) Regarding ease of use, the current Chapter 280 Zoning, uses terms and definitions that are not coordinated or reconciled with those used in the NYS Building Code. These discrepancies lead to confusion on the part of applicants to the Department of Buildings, and on the part of Building Department staff reviewing applications.

Recommendations

a) See Goal 12 Below for recommendations regarding Chapter 148 Flood Damage Prevention.

b) Chapter 240 Subdivision of Land should be analysed and updated to align with the goals of the Comprehensive Plan, and the changes made to Chapter 280 as part of this zoning update. Please see Appendix #4 for ZBA Code Interpretations. Please also see Appendix #6 for a Flow Chart Regulatory Analysis of Chapter 240 Subdivision of Land.

c) Terminology - reconcile definitions and other terminology in Chapter 280 with the NYS Building Code (2020, based upon the 2018 IBC), particularly Chapter 3 Occupancy Classifications. This Chapter defines all the various occupancy groups allowed in the state, and used to file with any building application. For example, all Residential Occupancies fall into three groups, R-1, R-2 and R-3. It would be prudent to use these groups and listed occupancies in the new zoning code. Please see Appendix #8-10 for various examples of definitions and terminology already defined by the state code that would be relevant to utilise for the zoning update.



Image Source: Naya Na - stock.adobe.com

02

Goal 2: Review and Update Zoning, Town-Wide

“Ensure that the existing zoning is appropriately located, uses are of the appropriate scale and intensity for the location, and all are consistent with the other goals of this plan.”

Findings

a) Chapter 280 is the focus of this Zoning Update.

Recommendations

a) This report constitutes the recommendations of the Zoning Update Advisory Committee for the review and update of Southold zoning, Town-Wide



Image Source: Leon718 - stock.adobe.com

03

Goal 3: Enforce the Town Code

“Land use regulations contribute to protecting Southold’s community character and quality of life. Most people comply with those regulations voluntarily; however, occasional reminders are necessary. During every public meeting conducted as part of this comprehensive plan update, the topic of code enforcement was raised.”

Findings

a) Enforcement of Chapter 280 is essential to achieving the overall goals of the Comprehensive Plan. As an example, much of the Town’s housing inventory is used for short-term rentals during summer months through Air BnB in violation of limits set in Chapter 280 for that Town as well as within the Village of Greenport. This illegal use increases non-resident property ownership and significantly reduces the number of housing units available for residents. This drives up prices and aggravates our affordable housing crisis and related problems such as traffic congestion and low enrollment in our schools.

b) Similarly, many houses within the Town are used illegally as multiple dwellings or boarding houses that are owned as real estate investments by unidentified landlords, some of whom ignore safety violations that can endanger the life of occupants, often immigrants whose labor the community relies on.

c) In the NYS Building Code and Residential Code, compliance with the most recent codes, including requirements for flood resistant construction for existing structures in a flood zone is triggered when “substantial improvements” are made, and/ or when repairs of “substantial damages” of buildings and structures are made. To avoid the cost and inconvenience of bringing existing buildings up to code, property owners frequently “game” regulatory requirements so that work can be performed bit by bit, under separate applications so that substantial improvements and repairs can be made without full compliance, defeating the intent of the law.

This lack of compliance puts structures and their occupants at risk, and puts the community at risk for the cost of infrastructure and public safety services supporting such illegal structures.

d) Inconsistencies, lack of clarity, and contradictions within the Chapters of the Town Code, and between the Town Code and other regulations which have jurisdiction in the Town of Southold complicate interpretation of the code, and make it more difficult to use (See Goal 1). Additionally such issues compromise the enforcement of the code and create potential loopholes that may allow applicants to circumvent the intention of the code.

Recommendations

a) The Town of Southold has created a Short-Term Rental Task Force to address this issue. The task force has been “established to address growing concern and to align with the Comprehensive Plan” It is hoped that this task force will develop a solution that can limit illegal short-term rentals, and thereby increase the number of housing units available for year-round rental. Provisions in the Zoning Code should clearly limit short term rentals and establish clear and consistent rules throughout the Town.

b) This committee recommends addressing problems associated with illegal use of single and two family houses as multiple dwellings by creating legal opportunities for worker housing and seasonal worker housing both in the hamlet centers, and at farms. If successful, this could support local businesses and farms, ease, in part, our crisis in affordable housing, and by providing housing nearby to work locations, help ease traffic congestion.

c) The Town should carefully enforce the law regarding Substantial Improvements and repair of Substantial Damage. New York State provides a worksheet to allow property owners and regulatory bodies to accurately calculate SI/SD to determine regulatory obligations. Please see Reference #3 for the [NYS Worksheet for SI/SD calculations](#).

d) See Goal 1, Findings & Recommendations (c)

04

Goal 4: Improve Traffic Congestion and Safety

“Ensure infrastructure supports Town residents and businesses.”

Findings

a) The impact that the potential residential, commercial and industrial build out is projected to have on traffic is profound. For example, total traffic in Cutchogue, the most affected hamlet, is projected to more than triple: from approximately 30,000 vehicles per day to nearly 110,000 vehicles per day on the only two East-West major roads in the Town (Route 48 and Route 25) (see Comp Plan fig. 4.8). In this full build-out scenario, traffic would increase and the daily ‘trade parade’ of construction and service workers commuting into and out of the Town would choke our roadways.

Recommendations

a) Achieving many of the goals of the Comprehensive Plan will help mitigate traffic congestion issues. Increasing the quantity of affordable housing can help reduce the number of workers commuting to the town on a daily basis. Encouraging walkable communities around hamlet centers can increase pedestrian traffic and reduce vehicular traffic. Shifting light industrial uses, landscape businesses and contractors yards away from hamlet centers can further ease traffic.



Image Source: Debbie Ann Powell - stock.adobe.com

05

Goal 5: Protect the Town Character

“Southold retains much of its small-town charm, characterized by a natural and built landscape of wetlands, creeks, bays and shorelines; scenic vistas of farmland and open space along CR 48; and historic homes, churches, and small scale locally owned businesses along Rt. 25 (Main Road). Demographically, Southold has historically been populated by families raising children in a year-round community of homeowners.”

Findings

- a) Southold has experienced drastically increased home and land values. Development pressures on the Town appear to be increasing at an accelerating rate and have created the risk that inadequately restrained development will rapidly and irreversibly alter the fundamental character of the Town. Many believe that Development Rate Trends, discussed in Chapter 3 of the Comprehensive Plan are no longer applicable.
- b) Some businesses are not well suited for the hamlet centers, such as landscape businesses, and contractor’s yards.
- c) The architectural character and scale of historic homes, buildings, small-scale businesses, and hamlet center streetscapes are increasingly threatened by new development that is out of scale or inconsistent with the historic context. Current zoning regulations do not always provide adequate protections to ensure that new construction and renovations respect the established architectural patterns, materials, and proportions of these areas.

Recommendations

- a) Protecting community character is inextricably related to the successful implementation of a number of other interrelated goals and strategies discussed throughout this report and in the C.P. (specifically Goals 6, 9, and 10 related to protecting natural resources, agriculture and open space; Goal 7 economic prosperity; and Goal 8 attainable housing).
- b) These businesses can be situated along Route 48, provided they are set back to maintain goals of the NYS DOT’s Scenic Byways Corridor Management Plan for the North Fork Trail. Please see Reference #2 for the [NYS DOT’s Scenic Byways Corridor Management Plan](#).

Zoning could also permit housing along Route 48, with a 100-foot setback behind it for these yards. The areas along the railroad tracks, which are already industrial, would also be suitable for such uses. Outside of hamlet centers, along the main roads, contractor yards can be located with significant setbacks and appropriate screening. For existing yards and semi-retail spaces, such as stone yards and garden centers, the use of decorative screening buffers should be encouraged, along with relocating activities further from the road.

Concerns were raised that new development may increase the number of curb cuts along CR 48 / NY 25 can add to already hazardous traffic conditions. Additional curb cuts should be discouraged and access to lots facing CR48/NY25 should be made from adjacent North/South streets.
- c) To protect the architectural character and scale of historic homes, buildings, small scale businesses, and hamlet center streetscapes, create historic overlay zones, where appropriate, which require that future development incorporate form-based zoning standards. Continue to review, improve, and update the town code “Big House” legislation.

06

Goal 6: Protect and Enhance the Town's Natural Resources & Environment

"The importance of managing and preserving Southold's natural resources while promoting responsible user experiences is paramount in maintaining the quality of life within the Town."

Findings

a) The increase in residential, commercial, and industrial development will place intense pressure on the town's natural resources & environment. Unchecked development risks the fragmentation of critical habitats, the depletion of groundwater resources, the increased contamination of coastal waters, PFAS/PFOS in the drinking water, and increases flood risks / coastal vulnerability. A rise in impervious surfaces from new construction could exacerbate stormwater runoff, leading to pollution and erosion in the sensitive coastal and inland ecosystems that we have in the Town of Southold.

b) Enforcement of conservation easements is often undermined by lack of judicial familiarity, non-standard easement language, and absence of municipal coordination. This results in long, expensive legal processes for both the Town and land trusts.

Recommendations

- a) See relevant recommendations under Goals 10 and 12, Consider prohibiting uses and businesses that can potentially contaminate soil, water, and/or air.
- b) Develop formal cooperation agreements between Southold and the Peconic Land Trust (and similar entities) for shared enforcement, notification, and litigation strategy on easement violations. Please see Appendix #2 for the Peconic Land Trust & Town of Southampton Presentation about monitoring and enforcement of conservation easements.



Image Source: Joe Trentacosti - stock.adobe.com

Findings

- a) Historically, Southold’s economy has been anchored by a mix of industries, including agriculture, aquaculture, small-scale manufacturing, and locally owned businesses that serve both residents and visitors.
- b) As land values continue to rise and development pressures accelerate, Southold risks becoming increasingly reliant on a narrow, service-based economy catering to seasonal luxury housing, high-end tourism, and seasonal retail. This shift could have far-reaching consequences for local businesses, employment opportunities, and year-round economic stability. A service-based economy centered on seasonal affluence leads to job market instability, with employment opportunities concentrated in lower-wage, temporary positions rather than sustainable, full-time careers.
- c) As the Town’s population continues to grow, businesses have begun to sprawl away from the Hamlet centers, making them difficult to reach without a car and diverting business from the Hamlet centers. With the increase in population also comes “chain” or “formula” retail and restaurant businesses that wish to take advantage of the population growth.
- d) Currently, there are contractor and landscaping yards near hamlet centers as well as in random places along both main corridors.

Recommendations

- a) Encourage large- and small-scale marinas that support local recreational boating with the preservation of water quality, working waterfronts and commercial fishing and aquaculture. Balance the support of local agriculture with the impact of Agritourism, including special events, on traffic and quality of life.
- b) Support certain permitted uses while considering the adverse cumulative impacts of too many of them (e.g. Hotels/motels, gas stations, battery energy storage systems etc)
- In addition, incentivize uses that are important to encourage in the commercial zones:
- Community Housing
 - Year-round businesses that provide year-round substantial job opportunities
 - Supporting businesses designed for the community as a whole (child care, grocery stores, urgent care, recreational facilities)
 - Incentives for property owners could be the following:
 - Administrative incentives (tax breaks)
 - Floor area for the uses we want to encourage
 - More housing above retail businesses; hybrid zoning
 - Increased density for housing
 - Zoning incentives that trade square footage for desired uses and buildout that gets the design you want when redevelopment occurs
- c) Create zones where businesses are welcome, thereby encouraging local businesses but with better zones. Hamlet centers and business districts should be encouraging retail and restaurants, with walkability a high priority. Contractor and landscaping yards don’t need walkability, making placement outside of the hamlet business district more ideal. This will also help to decrease traffic in the hamlet centers. The use of setbacks and buffers to not block scenic views on Route 48 while still allowing for commercial growth is another way to encourage business without losing character/beauty.
- Form-based code design standards to discourage chain or formula restaurants and retail and to keep the “small town” look and character of the town.
- d) Zoning for landscapers/contractors along the railroad tracks in the industrial areas, outside the hamlet centers along Main Road but with big setbacks and screening required.

07

Goal 7: Economic Prosperity

“Facilitate the growth of existing businesses, and encourage new businesses for stable and sustainable employment.”

e) Often, much-needed businesses that would service year-round residents (day cares, for example) must wait months to be heard by the ZBA behind homeowner property requests, thus discouraging those businesses from opening and placing financial strain on them as they await ZBA approval.

where existing yards and semi retail yards are- ie stone yards and garden centers, encourage buffer zones of decorative screening and move the activity back from the road. Along Rt 48- allow housing along 48 with a 100 foot setback with contractor yards behind the housing. This would help maintain the scenic designation.

e) Consider prioritizing appeals before the ZBA that encourage responsible economic and community growth, so that more community-focused zoning issues (e.g., daycare for the growing population) do not have to wait in line behind less urgent community-wide needs (e.g., garage).



Image Source: Leon718 - stock.adobe.com

Findings

a) Based upon information provided by the Town, there are very few affordable/attainable units. The Village of Greenport Housing Authority has 77 units listed – 72 within the Village and 5 in Southold Town. The Cottages at Mattituck include an additional 21 2-bedroom cottages. This totals 98 plus a handful of additional affordable units throughout the Town. There is a small number, perhaps 25 units in planning stages.

b) What mix of affordable units within the town will allow it to maintain its economic vitality, and protect the Town Character? Making this determination is not within the scope of the work of this report, but there is guidance available from other communities in the region that can give us an order-of-magnitude understanding of the challenge.

c) In the State of Connecticut, CT Section 8-30g of the Connecticut General Statutes, also known as the “Connecticut Affordable Housing Land Use Appeals Procedure, established a goal of 10% of dwelling units for affordable housing. While this may be a crude metric, we believe it to be a reasonable goal and useful in considering the Zoning Update. The Regional Plan Association (RPA) has created a Plan for Affordable Housing Guide for Connecticut that could be a useful tool for Southold Town. Please see Reference #4 for the [RPA Plan for Affordable Housing Guide for Connecticut](#).

The RPA has recently released an additional report “Averting Crisis - Zoning to Create Resilient Homes For All” that identifies anticipated loss of housing due to flood hazards and identifies existing “zoning deficits” where existing zoning does not take into account anticipated loss of housing units due to flood hazards and dilapidation, and anticipated demand. Please see Reference #5 for the [Averting Crisis - Zoning to Create Resilient Homes for All Report](#). The report was produced in partnership with the National Zoning Atlas, a non-profit online zoning analytical tool. Please see reference #6 for the [National Zoning Atlas](#).

As of the date of the Comprehensive Plan (figure 2.12) there were 15,377 housing units in the Town of Southold, i.e. 1,191 in Greenport Village and 14,186 in the rest of the Town. Anticipated build-out based upon existing zoning at the time of the CP would yield 1,840 new units on existing lots and 2,538 units through the subdivision of

Recommendations

The following recommendations address all of the findings within the four following categories:

Establish goals for the number of affordable units within the Town, and establish the mix for the goal between ADUs, rental units, owner occupied units and workforce housing.

1. Increase inventory of ADUs

a) Create ADU code regulations that permit and encourage both the conversion of existing accessory buildings and the construction of new purpose built affordable ADUs in residential zone districts; offer financial incentives such as reduced property taxes to homeowners who create an affordable ADU; and apply flexible multi-use and multi-family zoning in hamlet centers.

b) Incentivize accessory apartments as mixed retail- possibly giving more commercial floor area in exchange.

c) Allow new construction detached ADUs.

d) Increase minimum size of ADUs from 220 sf to 350 sf. 220 sf is simply not enough to comply with state code. Please see Appendix #3 for a regulatory analysis of minimum dwelling sizes using existing code regulations.

e) Increase maximum size of ADUs in secondary buildings from 750 square feet to 1,000 square feet.

f) Allow 1.5 bathrooms in an ADU (instead of just 1 bathroom).

g) Adopt Real Property Tax Law Section 421-p that provides an exemption of increased real estate taxes due to the construction of an ADU. It is effective only if adopted by the town & applies to newly constructed or converted buildings of at least 10 units that are at least 25% income restricted. (Please see Reference #7 for the [Adopt Real Property Tax Law Section 421-p](#)).

2. Increase inventory of affordable rental units

a) Regulations to balance high end housing with commercial uses in hamlet centers (ie Griffin street in Cutchogue)

b) Incorporate higher density multiple dwellings in gateway areas to hamlets.

3. Increase inventory of affordable owner occupied units

a) Prioritize permits to speed up processes and lower cost of carrying property.

Goal 8: Enable the Creation of Attainable Homes

“The Town must take steps to facilitate the creation of attainable housing in Southold.”

open land. 10% of the existing housing stock would be 1,537 affordable units. With full build-out of the existing zoning anticipating a total of 19,755 units, 1,975 affordable units would be required to meet a 10% goal.

Current requirements for attainable housing are limited to 20% of units constructed under a subdivision of open land. (recent changes eliminate a developer’s option to buy their way out of this requirement). Assuming that 2,538 units identified in the CP (i.e., ignoring development that has occurred since the CP was issued which has yielded no affordable housing units) 20% of 2,538 would generate a total of 507 affordable units at maximum build out, only about 26% of a 10% goal. This built-out condition would replicate challenges currently being faced on the South Fork. There, because most of the land is already developed, or protected, communities are contemplating purchasing market-rate housing for conversion to affordable housing, despite prohibitive costs. Southold can avoid this dilemma by prioritizing affordable housing now.

d) The inability of younger middle-class and working-class households with children to find housing in the Town has already caused declining attendance at schools (with an average class size of only 15 students and annual per pupil expenditures of \$43,000) which may force the closing and consolidation of schools.

e) Lack of sufficient numbers of younger adults threaten critical volunteer community services (whose current average age is over 60), notably the volunteer fire departments and EMT services. Such a demographic gap could force the Town to hire salaried fire firefighters and salaried EMT workers, resulting in a significant increase in the Town’s budget and the real estate taxes necessary to support that budget. (Also, see Goal 5, Protect the Town Character.)

Over the past 24 plus years, (January 2010 to March 2025), only 51 accessory apartments were approved in a legally existing accessory building on a lot with a principal dwelling, per code required standards. The vast majority (44) were created for occupancy by family members; while only 7 were designated specifically for occupancy by persons eligible for affordable housing.

f) Short term rentals have removed a high percentage of starter, lower cost houses.

4. Increase inventory of worker housing

a) Encourage businesses, particularly hotels, to provide employee housing by offering incentives such as the ability to operate additional hotel rooms beyond current zoning allowances. A similar approach could be applied to other industries, granting businesses specific benefits—such as increased capacity or operational flexibility—in exchange for dedicating a portion of their space to workforce housing.

Additional recommendation:

5. Rezone the areas of Greenport West that have access to the Greenport sewer system to permit development of multiple dwellings and not single family dwellings.

6. Adopt a NYS tax real estate tax exemption statute called 421-pp. It applies to newly constructed or converted buildings of at least ten units that are 100% income restricted. Please see Reference #11 for the [NYS tax real estate tax exemption statute 421-pp](#).

7. Please see Appendix #1 “The Town of Southold should be a Pro-Housing Community” for additional recommendations, contributed by Alvin Schein.

Goal 9: Retain and Advance the Business of Agriculture

"Agricultural uses occur on 30 percent of the land area in Southold Town, are important to the economy, and represent vital elements of the community's character."

Findings

- a) The continued conversion of farmland into residential neighborhoods threatens the viability of the agricultural industry and is directly in contradiction to the Town's goal of preserving the scenic vistas of farmland. A threat for unpreserved farmland is housing/subdivision/development.
- b) With rising housing costs and a diminishing stock of workforce housing, farm laborers are being priced out of the area. Many cannot afford to live in Southold and are forced into long, costly commutes, making it increasingly difficult for farms to attract and retain a stable workforce.
- c) With the rise of real estate prices on the North Fork, the business of agriculture is only set to decline, thus negatively impacting our economy.

Recommendations

- a) Continue to encourage farmers to sell development rights to the town via the Community Preservation Fund. Ensure that farmland is zoned R-80 at a minimum if not preserved.
- b) Allow farms to provide worker housing on farmland, provided the housing is commensurate with the number of workers needed on the farm.
- c) Allow reasonable and sustainable agritourism to take place on farms, including farm stands (possibly with less/more reasonable restrictions) and animal interactions and experiences.



Image Source: Parichat - stock.adobe.com

10

Goal 10: Continue to Preserve Farmland and Open Space

“Southold’s character is created in large part by its open spaces, including farmland, natural lands, and parks.”

Findings

a) Farmland and open spaces, as mentioned before, will ultimately be lost to development, risking the town’s character and creating a plethora of additional issues that are outlined under several other comprehensive goals.

Recommendations

a) Encourage farmers to sell development rights to the town to encourage preservation. Ensure that farmland is zoned R-80 at a minimum if not preserved. Find ways to encourage/incentivize agriculture and discourage farmers from selling farmland to developers.

Prioritize land preservation within the zoning code as much as possible.

Offer incentives such as reduced local taxes (in addition to the state ag assessment) if owners agree to preserve farmland or engage in agricultural production. This encourages landowners to keep their land in farming rather than selling it for development.

An agricultural district overlay could include provisions that make it easier for farmers to build structures such as barns, greenhouses, or farm stands. It can also help farmers diversify their incomes through agri-tourism while preserving the agricultural nature of the land.



Image Source: Leon718 - stock.adobe.com

11

Goal 11: Provide Quality Human Services

“To meet the needs of its citizens, the Town should continue to fund its rich array of programs and resources for people as well as seek to improve their lives through additional resources.”

Findings

a) Southold’s ability to provide essential services like healthcare, senior care, and childcare depends on a stable local workforce. However, rising housing costs are making it difficult for service providers to live in town, leading to a reliance on an imported workforce that must commute long distances.

This increases costs, limits service availability, and reduces accessibility, particularly for vulnerable groups like seniors and low-income families. Long commutes and a lack of local providers result in longer wait times, fewer services, and difficulty retaining skilled professionals, ultimately straining Southold’s human services infrastructure.

Recommendations

a) See relevant recommendations under Goal 8, Attainable Housing and Goal 7, Economic Prosperity.

Ensure that the new zoning text encourages and incentivizes the creation of childcare services to allow the local workforce to reside in Southold Town, and allow both parents of children to be able to work.

The zoning code should also encourage and incentivize the creation of healthcare services for all age groups of the Town’s population. This could occur in the hamlet zoning district, allowing for mixed-use development - housing, retail and services.



Image Source: Clement Coetzee/peopleimages - stock.adobe.com

Goal 12: Prepare the Town for Natural Hazards

“Southold Town is subject to natural hazards, including hurricanes, flooding, and sea level rise, which can imperil human lives, property, and the environment.” seek to improve their lives through additional resources.”

Findings

a) Southold Town is vulnerable to natural hazards such as hurricanes, flooding, and sea level rise. The town’s growing development, especially in areas vulnerable to these hazards, exacerbates these risks. As more land is developed, impervious surfaces—such as roads, parking lots, and buildings—replace natural landscapes like wetlands and forests, which once helped absorb rainwater, reduce flooding, and protect against storm surges. The increase in impervious surfaces disrupts the natural flow of water, leading to higher volumes of runoff during storms and heavier flooding, particularly in low-lying areas. This runoff can overwhelm drainage systems, erode coastlines, and damage infrastructure.

b) The current Chapter 148 of the Town Code, Flood Damage Prevention, was drafted in 1993 and most recently updated in 2009. Since 2009 New York State has adopted a new NYS Building Code, based on the IBC, first adopted in 2010 and updated in 2020 (Please see Reference #8 for NYS Building Code 2020). Similarly, the current NYS Residential Code was adopted in 2010 and updated in 2020 (Please see Reference #9 for NYS Residential Code 2020). Both codes have sections that specifically address flood hazards: Section 1612 of the NYS Building Code identifies Flood Loads and reference design standards ASCE 7 Chapter 5 and ASCE 24 (See Appendix #8e). These reference standards are produced and regularly updated by the American Society of Civil Engineers. Appendix G, Flood-Resistant Construction (See Appendix #8f), establishes requirements across the full range of applications including administrative requirements and requirements for the subdivision of land. Appendix G similarly references ASCE 24, Flood Resistant Design and Construction. In the NYS Residential Code, Section 322, Flood-Resistant Construction provides prescriptive requirements, but also allows compliance with ASCE 24 as an alternative compliance path (See Appendix #9b).

All of these requirements must be met for any work performed in the Town of Southold, and because the requirements in Chapter 148 are now 16 years old, they have largely been superseded by the more modern and more restrictive requirement of the State Codes and ASCE 24. The State Codes and ASCE standards are updated on a regular basis, making it difficult for communities like Southold to keep its local Code in compliance with State requirements.

Consequently, the existing Town of Southold Code is

Recommendations

a) The Town must adopt a Flood Hazard Map in accordance with NYS BC 1612.3

As permitted by NYS BC 1612.3.3, the Town should expand the boundaries of the Flood Hazard Map to anticipated Sea Level Rise in accordance with the NYC DEC projections for the 75 percentile probability for 2050 (21” ~ 2 feet). See Table 2 (below) as related supporting data.

This map should establish the boundaries of areas where compliance with the Code for Flood Resistant Construction must be created and capture all of the relevant coastal hazard zones established in FEMA maps and other relevant regulations having jurisdiction.

The Flood Hazard Map should also capture areas within the town known to flood (by Town Engineer / Highways Engineer) due to the particularities of our local geography, hydrography and weather patterns.

Designation should be made even where these areas are at higher elevation than currently designated by FEMA, or anticipated as being affected by SLR. Related supporting data should be provided in accordance with the Code as evidence supporting their inclusion to minimize legal challenges to such designation.

b) The ideal mechanism for meeting this State requirement would be to rewrite Chapter 148 of the town code to clearly reference the provisions of the NYS Building Code, NYS Existing Building Code, and NYS Residential Code. Write these references so that they refer to the most recent Codes adopted by NYS so that our local Chapter 148 remains compliant with the most current state codes which have jurisdiction. These codes’ definitions for Substantial Improvements and Repairs of Substantial Damage must be carefully enforced.

confusing both for applicants hoping to build in the Town, and for Town personnel reviewing applications. From NYS Building Code Chapter 16, Section 1612.3 (See Appendix #8e):

“To establish flood hazard areas, each community (this includes Town of Southold) regulated under Title 19, Part 1203 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at a minimum, the special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Study of the community as amended or revised with:

- 1. The accompanying Flood Insurance Rate Map (FIRM),*
- 2. The Flood Boundary and Floodway Map (FBFM no longer produced by FEMA), and*
- 3. Related supporting data along with any revision thereto.*

The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.”

Thus creating a flood hazard map is already an obligation of the Town. This could be included in a Coastal Resilience Overlay Zone, or simply established by the Town in response to its obligations under NYCRR Title 19, Part 1203.

c) We recognize that the effect of the surrounding waters on the Town of Southold is more complex than the rise and fall of tides. The Town regularly experiences extraordinary high tides and (recently) low tides driven by wind strength, wind direction and the shape of the Town's geography and bodies of water. This includes Storm Water Management – the financial hazard of infrastructure investment in areas likely to be subject to flooding.

We applaud the efforts of the Town's Engineering Department and Highway Department and their knowledge of problem areas throughout the Town.

d) It is important to keep in mind that the FEMA flood maps that all these codes reference are based upon actuarial information because their fundamental purpose is to determine flood insurance rates. They are by definition backward-looking and assume a static state for our climate. We know that this assumption is false and that we are in a time of rapidly changing climate and rising sea levels.

The NYS Department of Environmental Conservation has issued projections for Sea Level Rise as part of the State's recent update to NYS Rules and Regulations, Title 6 part 490, provided below for reference.

Typical recommendations for the Long Island Region include assuming the 75th percentile probability for Sea Level Rise in our area, i.e. SLR of 21 inches by 2050.

c) The Town should avoid making infrastructure investments in areas known or expected to be at risk of flooding.

d) To the extent possible, critical public safety services - buildings, equipment storage, hospitals, senior care and other emergency facilities, etc., should not be permitted uses in areas that are or will be prone to flooding, according to the most current data and SLR projection. In Chapter 280, such uses should be prohibited from permitted uses in areas of high risk flood hazard zones (FEMA V Zones, VE Zones and Coastal A Zones). Exceptions should be made for Marine Uses that will necessarily be located within the Flood Hazard zones, yet are also necessary for Marine Access and Safety.

Other uses that pose increased risk for life safety and property damage and liability should be excluded as permitted uses in high risk flood hazard zones.

The Town should consult FEMA and NYS maps referencing coastal flooding and continue its efforts to protect or elevate roadways and other access to maintain public safety during a flood event or other emergency.

It is important to note that the requirements in the code and the projections for SLR will be revised on a regular basis going forward and climate science develops and more data is gathered. Code references to the standards adopted by the State will be recommended for inclusion to updates of the Southold Town Code (rounded up to the nearest foot for SLR).

Additional recommendations:

- e) Emergency facilities should be required to be equipped with stand-by power generation that will allow them to function stand-alone in the event of a power outage.
- f) All new residential uses should be encouraged to be constructed to allow residents to “shelter in place” during an emergency.
- g) Low-lying coastal areas should be prioritized for uses that can better survive weather events including farmland, forest/wooded lands, public parks and nature preserves, thereby reducing the liability of a potentially developed area and creating amenities that further support the goals of the comprehensive plan.
- h) The Town should obtain funding to undertake a Coastal Assessment and Resilience Plan (CARP) like those prepared for other Eastern Long Island towns. Such a plan can identify longer term hazards and help better focus Town resources for the future.

Table 2. Updated projections of sea level rise for three tidal regions of New York State, based on DEC’s proposed methodology. Projections are in inches, relative to a 1995-2014 baseline, and are based on a combination of the SSP2-4.5, SSP5-8.5-medium confidence and SSP5-8.5-low confidence projections.

Projection	Low	Low-Medium	Medium	High-Medium	High	Very High
Percentile	10th	25th	50th	75th	90th	RIM Scenario
Long Island Region (Montauk Point)						
2030s	7	8	10	12	14	NA
2050s	13	15	18	21	25	NA
2080s	23	26	32	41	48	83
2100	27	32	39	54	69	114
2150	42	50	63	94	185	NA

[Community Risk And Resiliency Act \(CRRA\) - NYSDEC](#)

13

Goal 13: Provide Quality Parks and Recreation Opportunities

"Southold offers a diversity of recreational opportunities, from public tennis courts and playing fields, to nature trails and beaches."

Findings

- a) Southold's valuable recreational spaces will be threatened by the growing development pressures. Available land for these amenities will be significantly reduced and the town's ability to expand or maintain these vital resources will be extremely limited.
- b) Public recreation facilities within the Town are notably deficient and undermine many of the goals of the Comprehensive Plan including Protecting the Town Character and supporting families and Economic Prosperity. Notably, many of the residents in the Town, and especially many of its children do not know how to swim, creating both a safety hazard, and denying them many of the joys offered by Southold's extensive coastline.

Recommendations

- a) The creation of Parks is consistent with several of the Goals of the Comprehensive Plan, including: Goal 5 Protect the Town Character, Goal 6 Protect and Enhance the Town's Natural Resources & Environment, Goal 10 Continue to Preserve Farmland and Open Space, Goal 11 Provide Quality Human Services, Goal 12 Prepare the Town for Natural Hazards.

Expanding existing Parks and establishing new Parks in coastal areas can simultaneously protect open land, natural resources and reduce the risk of natural hazards.
- b) Encourage the creation of additional public recreation facilities, especially a public swimming pool. A pool and other public recreational facilities could also effectively supplement child care services, especially during summer months.



Image Source: Andrii - stock.adobe.com

VII) CONCLUSIONS

The goal of the Zoning Update Advisory Committee is to advise the Town on how it should amend the Zoning Code to bend the arc of inevitable change towards a future that will best realize the vision and goals of the Comprehensive Plan. The Committee is mindful of the impact and import of these decisions on future generations of Southold residents. The Committee has taken this opportunity to encourage the Town to put into place zoning regulations that will incentivize and prioritize services, preservation, diverse housing and an economy that supports all local residents, whether they are aging in place or are young families with children who will sustain enrollment in our local public schools and our volunteer fire departments as older residents age out.

Certainly, zoning will not by itself determine the future of Southold, but it is one important tool to help steer our path forward.



Image Source: Joe Trentacosti - stock.adobe.com

VIII) APPENDICES

1. The Town of Southold should be a Pro-Housing Community, Alvin Schein

The Governor's Pro-Housing Communities Initiative delivers up to \$650 Million of discretionary funding each year for communities that pledge to modestly increase their housing supply via "Pro-Housing Community" certification. This year, Governor Hochul is proposing an additional \$110 million in funding to cover infrastructure and planning costs for Pro-Housing Communities.

The discretionary programs include:

- Downtown Revitalization Initiative, administered by the Department of State
- NY Forward, administered by the Department of State
- Regional Council Capital Fund, administered by Empire State Development
- New York Main Street, administered by New York State Homes and Community Renewal
- Market New York capital grants, administered by Empire State Development
- Mid-Hudson Momentum Fund, administered by Empire State Development
- Public Transportation Modernization Enhancement Program, administered by the Department of Transportation

To date, 335 municipalities across New York State have applied for certification as Pro-Housing Communities. Brookhaven, Southampton, East Hampton, Riverhead, Shelter Island and the Village of Greenport have all pledged to become Pro-Housing Communities. Southold is the only municipality from Brookhaven to the eastern end of Long Island that has not yet applied to be certified as a Pro-Housing Community.

By way of example, Riverhead recently received a capital improvement grant from the State in the amount of \$1.4 million to help build its downtown riverfront amphitheater. This grant amounts to 50% of the cost of the project. The amphitheater will double as a public park, hosting activities like exercise classes, movie nights and children's events. Similarly, the Village of Greenport recently received a \$1.2 million grant from the State to support the construction of a new outdoor ice rink at Mitchell Park, for which the total estimated for the engineering and construction of the new ice rink is \$1.7 million.

In contrast, the Town of Southold relies entirely on the issuance of bonds for infrastructure projects. Bonds are debt on which interest must be paid until the capital amount has to be repaid. In practice, the total bond debt of the Town of Southold grows each year as maturing bonds are reissued at the prevailing rate of interest at that time. A set of bonds totaling \$650,000 to maintain stormwater mitigation projects and sidewalk improvements were recently approved by Southold Town Board. If the Town of Southold was a Pro-Housing Community, it is very likely that at least \$325,000 of the cost of these projects could have been covered by State grants, thus reducing the amount of the bond issuance by at least half.

There is a common misconception that becoming a Pro-Housing Community involves "ceding zoning and land use to the State". This is not correct. This is the pledge of a Pro-Housing Community, verbatim:

- A. Streamlining the permitting process for multifamily housing, affordable housing, accessible housing, accessory dwelling units, and supportive housing;
- B. Adopting policies that affirmatively further fair housing;
- C. Incorporating regional housing needs into planning decisions;
- D. Increasing development capacity for residential uses; and
- E. Enacting policies that encourage a broad range of housing development, including multifamily housing, affordable housing, accessible housing, accessory dwelling units, and supportive housing.

It should be apparent from the language above that the Pro-Housing Community pledge does not give the State the power over zoning or land use. Instead, a policy framework is set out that is intended to stimulate the production of all types of housing that a community needs, including affordable housing, accessible housing and ADU's, all of which are critically important for the preservation of the Town of Southold as we know it.

2. Peconic Land Trust & Town of Southampton Presentation, Monitoring and Enforcement of Conservation Easements

East End Supervisors and Mayors Meeting / April 9, 2025 (20-25 minutes)

History of Conservation Easements/ Primary Tool of Conservation (5 minutes)

- Public Purchased Easements/ Suffolk County Farmland Protection Program
 - o mid-1970s
 - o Purchase of Development Rights (Easement)
 - o Towns followed suit/ bond issues/ later CPF
 - o NYS §247 General Municipal Law initial enabling legislation
 - o NYS §49 Environmental Conservation Law provides broader authorization to units of government and land trusts
- Private Donated Easements/ US Congress/ IRC 170(h)
 - o mid-1970s
 - o Donation of Conservation Easement (DRs)/ charitable deduction
 - o Qualified conservation organizations/ land trusts and units of government
 - o NYS §49 Environmental Conservation Law key enabling legislation for land trusts
 - o Tremendous growth of land trusts (nationally and in NY)
- Public Regulatory Easements/ All levels of government
 - o 1970s onward
 - o NYS §247 General Municipal Law
 - o Wetlands setbacks; scenic easements; ag reserves/ cluster subdivisions
- Hybrid Easements
 - o Public Purchased Easements with Bargain Sale component
 - o Must meet IRC 170(h) requirements/language
 - o Donated Easement that meets, exceeds, or precedes cluster requirements
 - o Land Trust as qualified holder of Public Regulatory Easements
 - o Third Party Enforcement among easement holders

Monitoring and Enforcement of Conservation Easements (6 minutes)

- Challenges
 - o Extraordinary number of easements
 - ☐ Town Easements (#; violations; litigation)
 - ☐ Trust Easements (#; violations; litigation)
 - o Extraordinary number of public and private easement holders
 - o Lack of consistency in easement documents
 - ☐ Easements necessarily evolve over time with lessons learned
 - ☐ Different jurisdictions/entities have different templates
 - o Lack of consistency in monitoring easements
 - ☐ Lack of baseline documentation
 - ☐ Lack of consistent monitoring (PLT practice is annual)
 - o Tremendous cost to defend easements

- ☐ Land Trusts – TerraFirma Insurance
- o Lack of case law and few precedents
 - ☐ Bad precedents impact all easement holders

Conclusion/ Where do we go from here? (7 minutes)

- Greater communication among easement holders
 - o Recognition that we are all in the same boat
 - o Share and discuss easement templates/ recognize that not one size fits all
 - o Add checkbox on Municipal Permit Applications to identify all easements, public and private
- Necessity of Baseline Documentation
 - o If you don't have it, go out and get it
 - o Use GIS capabilities/ historical aerials as a starting point
- Necessity of Annual Monitoring
 - o How can we work together?
 - ☐ Joint monitoring/ onsite and remote
 - ☐ Sharing technology/ drones
- Regular Notification of Violations and Enforcement Actions
 - ☐ Joint Litigation Clearinghouse
 - ☐ Amicus briefs
- Share strategies to update problematic easements
 - ☐ Amend and restate easements when mitigation is necessary

Questions (7 minutes)

East End Supervisors and Mayors Meeting

I. The Importance of Cooperation and Coordination Between Local Government and Land Trusts

- a. Conservation Easements are an extremely important land use tool for local governments – for obvious reasons, and**
- b. They can be a valuable tool for private landowners who can achieve several purposes:**
 - i. they can dedicate the land to conservation purposes, limit the development, and regulate the use of their land both during and after their ownership; and
 - ii. they can obtain a charitable tax deduction for the value of any development rights that are terminated and conveyed to the easement holder, whether that is a land trust or the local government – **or both**; and
 - iii. they can also potentially benefit from a reduction in the value of their taxable estate as well as their property taxes.
- c. But with the obvious benefits of these easements come some problems with enforcing them.**
 - i. The language and terms of conservation easements are not standard and, with few exceptions, the terms are not directed or required by State Law or the Internal Revenue Code.
 - ii. Conservation easements are increasingly negotiated instruments. They are negotiated much more than they were 10 or more years ago.
 - iii. And while PLT has a template for our easements, we have found that landowners and grantors increasingly engage counsel to represent them and to negotiate the terms of their particular easement with their particular objectives in mind.

- iv. So nuances and differences in the language of various easements, as well as differences in what they protect, allow and prohibit, can result in differences that can cause interpretation and enforcement issues.
- d. **There are several issues that complicate enforcement of both the older and the newer easements:**
- i. First, generally, conservation easements were created by the Environmental Conservation Law in 1983. “The law was a long sought effort by conservationists and environmental groups to bring this important conservation tool to use in partnership with willing private land owners across New York State.”
 - ii. The Environmental Conservation Law defines a conservation easement as an:

... interest in real property [...] which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in” the law.
 - iii. But despite the 40 years since its enactment, there is not yet a well-developed body of case law that defines the law in this area. This complicates enforcement and makes enforcement very expensive for both land trusts and the local government.
 - a. PLT filed its first enforcement action in 2016, against a grantor that clear-cut 4 acres of land in Hampton Bays claiming that the Southern Pine Beetle destroyed the forest, at least half of which was oak.
 - b. We filed our second in 2019. In that case the landowner acquired title to the land burdened by our conservation

easement, and cut down over 100 trees on the day of the closing – without notice or consent.

- c. Both of those cases are still pending. (More on those cases later)
- d. Both local governments and the land trust have experienced an increase in litigation and push back over the restrictions in our conservation easements.
- e. PLT's easements require that the landowner notify us when they transfer the property or take any action – even actions that are otherwise permitted – if the contemplated action could or might adversely effect the conservation values or purposes of the easement. **But it is not clear that the courts will consider a failure to give notice as a material breach or violation of the easement.**
- f. At the moment, without coordination, a landowner can apply for municipal permits without indicating that the land is subject to a conservation easement that is implicated or impacted by the permit application and eventual permit.
- g. For example, in the Amagansett case, we hold an easement on agricultural reserves that prohibits the cutting or removal of trees in certain expressly identified circumstances. And those exceptions do not allow the clearing of trees simply to enlarge the farmable area.
 - i. In that case, even though the landowner argued that he wanted to engage in agriculture, we obtained a preliminary injunction against further cutting and removal of trees.
 - ii. In its decision, the Court correctly wrote “that defendants’ tree clearing activity does not fall within any of the express exceptions to the

prohibition of that type of landscaping activity.”

- iii. But notwithstanding that conclusion, the Court also seemed to suggest that it would entertain defendants’ argument that they should nonetheless be allowed to clear trees along the perimeter of the property because that is what farmers customarily do to maximize the usable land.
- iv. The Court then left open the question “whether defendant’s tree clearing serves a benefit or purpose supporting the overall suitability of their land for agricultural and farming.”
- v. This even though the easement provides to the contrary.
- vi. Even though clearing for agriculture is not one of the express exceptions, the Court nonetheless appeared to entertain the argument that clearing might be permissible – despite the express language of the easement.

e. Judges’ unfamiliarity with conservation easements, and the applicable law, especially how they differ from more traditional restrictive covenants.

- i. We have found that sometimes judges simply are not familiar with conservation easements, the purposes they serve, the benefits they provide – both public and private – and the legal differences.
- ii. Before the Environmental Conservation Law was amended to provide for conservation easements, New York law provided that restrictive covenants were to be construed narrowly and strictly against enforcement of the restriction, as they were viewed as a limitation on the owner’s right to use his/her land.

- iii. The law provides that conservation easements are to be treated precisely in the opposite manner: they are construed in favor of the conservation easement holder and to further the easement's purposes.
- iv. Judges are familiar with the first rule, which they learned in their basic property class in law school; but they may not be familiar with the rule as it applies to conservation easements. We have found in our cases that judges need to be educated and reminded that conservation easements are permissible restrictions on the owner's use of his/her own land.

II. Conflicts – or Perceived Conflicts – Between Local Law and Conservation Easements

- a. There should be few if any instances when a landowner cannot use his/her land consistent with both the easement and local law (e.g. the Zoning Code).
- b. But there are instances when something that is or may be permitted under local Zoning law is prohibited under a conservation easement.
- c. And we have seen cases where the landowner has argued that a restriction in a conservation easement – especially one that was agreed to by the original grantor – is inconsistent with a local policy and should therefore be permitted under the conservation easement, and the restriction in the conservation easement should be extinguished or unenforceable.
 - i. In the Amagansett case, the landowner argued that because the land subject to the easement is an agricultural reserve, he should be permitted to do anything that furthers his agricultural use of the property, even if it violates the easement. He has argued that the Town's policy of promoting agriculture and allowing farmers to clear cut their land should override the language of the easement, even though the original owner/grantor voluntarily restricted his – and his successors' – right to do so.
 - ii. But more important for this group, there are situations where, for example, construction of a non-residential structure is prohibited by the easement, or where it is permitted only with PLT's consent.

The landowner may apply to the Town for a permit to erect a structure – which is permissible under local Zoning. But the Town’s application does not necessarily require that the applicant advise the Town whether the property is subject to a conservation easement.

- A. If the permit is granted, the landowner will argue that the permit overrides the conservation easement, complicating enforcement of the easement.
 - B. In other cases, the easement may prohibit something that the Town’s policy – although not even its own conservation easements – supports. We have seen this in relation to farm labor housing.
- d. The law says that simply because some act is permitted under local Zoning law – such as construction of a non-residential structure – that does not mean that the structure is or must be permitted under the easement, or that the prohibition in the conservation easement is not enforceable.¹
 - e. This creates obvious enforcement and policy issues, as a court may be inclined to view PLT’s – or even a Town’s – enforcement of its easement to be unreasonable if it conflicts with a Town’s local law or Zoning Code.
 - f. We have seen cases where a landowner will apply for and secure a permit, and then proceed to build the structure or do some other act that would (or might) violate the conservation easement. But because code enforcement is unaware of the conservation easement, they may green light the conduct.

¹ As the New York Court of Appeals has stated:

“the use that may be made of land under a zoning ordinance and the use of the same land under an easement or restrictive covenant are, as a general rule, separate and distinct matters, the ordinance being a legislative enactment and the easement or covenant a matter of private agreement.” *Chambers v. Old Stone Hill Road Associates*, 1 N.Y.3d 424, 432 (2004) (“a particular use of land may be enjoined as in violation of a restrictive covenant, although the use is permissible under the zoning ordinance”); *Friends of Shawangunks, Inc.*, 64 N.Y.2d at 392.

- i. We saw this in the Hampton Bays case. The landowner sought to clear-cut 4 acres subject to our easement. He called Southhampton and was told there is no municipal restriction against tree-cutting. So he started cutting. When the neighbors called the police, the police were told that it did not violate any Town law.
 - ii. And nobody thought to call the land trust. That litigation is now ongoing since August 2016.
 - iii. The landowner's violation of the easement, especially once it was determined by the Court, impacted the tax abatement/reduction otherwise available on that land.
- g. The First Blue/Scuttle Hole Horse Farm case. In this case, our easement prohibits construction of residential structures. The Town of Southhampton has an easement on a different part of the Horse Farm. The landowner wanted to build farm labor housing on the portion of the Horse Farm that is subject to PLT's easement restriction. We had deny permission – a decision that was upheld in Supreme Court but which is now on appeal.

III. The Increase in Litigation

- a. **The Subsequent Purchaser Problem.**
- b. PLT has found that as the individuals who initially put a conservation easement on their property later sell or transfer their property, the subsequent purchasers or landowners are more likely to view the conservation benefits of the easement as being less important; and they are more likely to violate or challenge or seek modifications of the conservation easement.
- c. We have seen this whether the property is sold, or simply inherited by or transferred to the original grantor's family members
- d. And they are more likely to violate the easement and litigate their conduct.
- e. Commencing and prosecuting, or defending, enforcement litigation is expensive – for both of us. This has adverse impacts for all of us.

- f. Our experience is consistent with what other land trusts around the country are experiencing.
- g. Even though PLT's easements require that a landowner give us notice when he/she sells the property, and state in the deed that the conveyance is subject to our easement, that requirement is rarely followed.

h. Joint Enforcement.

- i. There are also some easements where the Town and PLT are "joint enforcers" – where both of us have the right (and the obligation) to enforce violations. These easements present special problems that warrant our coordination and cooperation.

- i. For these reasons, we believe that coordination and awareness of the threats of litigation and/or the commencement of litigation – whether by the landowner or by PLT or the Town – is important and can be beneficial.
 - ii. A landowner should not be encouraged to argue in court that his/her conduct is not a "material" violation because only one "enforcer" is prosecuting the violation.
 - iii. We should have a clearinghouse or a designated officer(s) or attorney(s) who can collect the pleadings, briefs and rulings in cases that we might otherwise be unaware of.
 - iv. With increased information, our ability to prosecute and defend enforcement litigation is improved.
 - v. And our ability to predict what issues might be subject to litigation will be increased.
 - vi. We should take steps to ensure that there is as little "daylight" between each of us as is possible.

IV. Proposals for Cooperation and Coordination

- a. Municipal Permit Application Forms could include a box or other means of requesting that the applicant indicate whether the property is subject to a conservation easement.
- b. Litigation Clearinghouse. We should establish a joint clearinghouse to collect and advise each other of easement-related litigation.
- c. So much of the litigation on the issues that impact all of us is unreported – meaning that it is not available on Westlaw or Lexis – and may not be found by our attorneys when they have to prepare their cases. This clearinghouse would alert each of us – the Towns and the land trust – of litigation that might affect many or all of us, but which might not be public until a court decision is issued or a news article is published. At which time, it might be too late for us to put our heads together and impact the result.
- d. A clearinghouse/coordination could help us develop the law in a way that supports our easements and land use policies.
- e. Given the cost of litigation, coordination and the possibility of reducing the likelihood and cost of litigation could only benefit all of us.

For more information, please contact:

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631-283-3195 x136

Jessie McSwane, Director of Stewardship

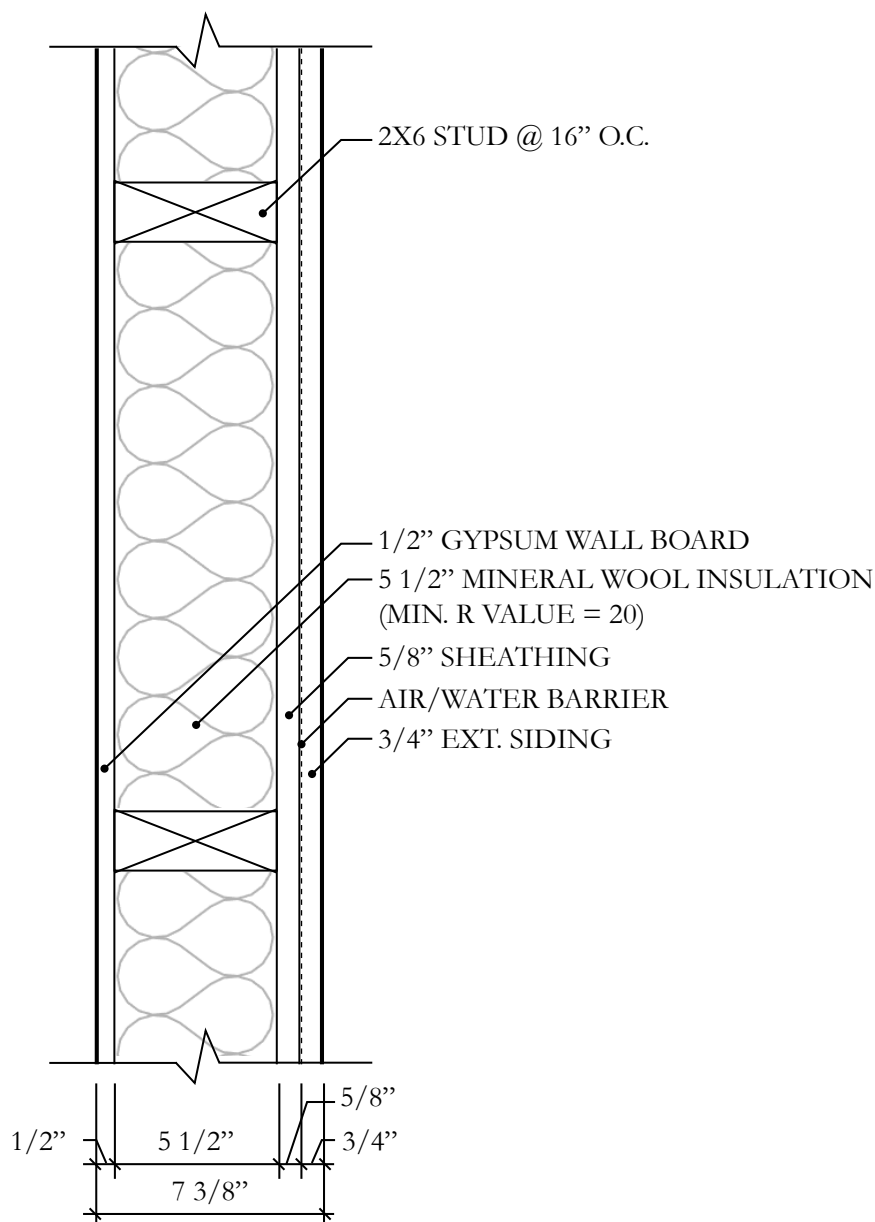
jmcswane@peconiclandtrust.org

631.283.3195 x130

3. Regulatory Analysis Of Minimum Dwelling Size

TABLE R402.1.2 INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT^a

CLIMATE ZONE	FENESTRATION U-FACTOR ^b	SKYLIGHT ^b U-FACTOR	GLAZED FENESTRATION SHGC ^{b, e}	CEILING R-VALUE	WOOD FRAME WALL R-VALUE	MASS WALL R-VALUE ⁱ	FLOOR R-VALUE	BASEMENT ^c WALL R-VALUE	SLAB ^d R-VALUE & DEPTH	CRAWL SPACE ^c WALL R-VALUE
1	NR	0.75	0.25	30	13	3/4	13	0	0	0
2	0.40	0.65	0.25	38	13	4/6	13	0	0	0
3	0.35	0.55	0.25	38	20 or 13+5 ^h	8/13	19	5/13 ^f	0	5/13
4 except Marine	0.35	0.55	0.40	49	20 or 13+5 ^h	8/13	19	10/13	10, 2 ft	10/13
5 and Marine 4	0.32	0.55	NR	49	20 or 13+5 ^h	13/17	30 ^g	15/19	10, 2 ft	15/19
6	0.32	0.55	NR	49	20+5 or 13+10 ^h	15/20	30 ^g	15/19	10, 4 ft	15/19
7 and 8	0.32	0.55	NR	49	20+5 or 13+10 ^h	19/21	38 ^g	15/19	10, 4 ft	15/19



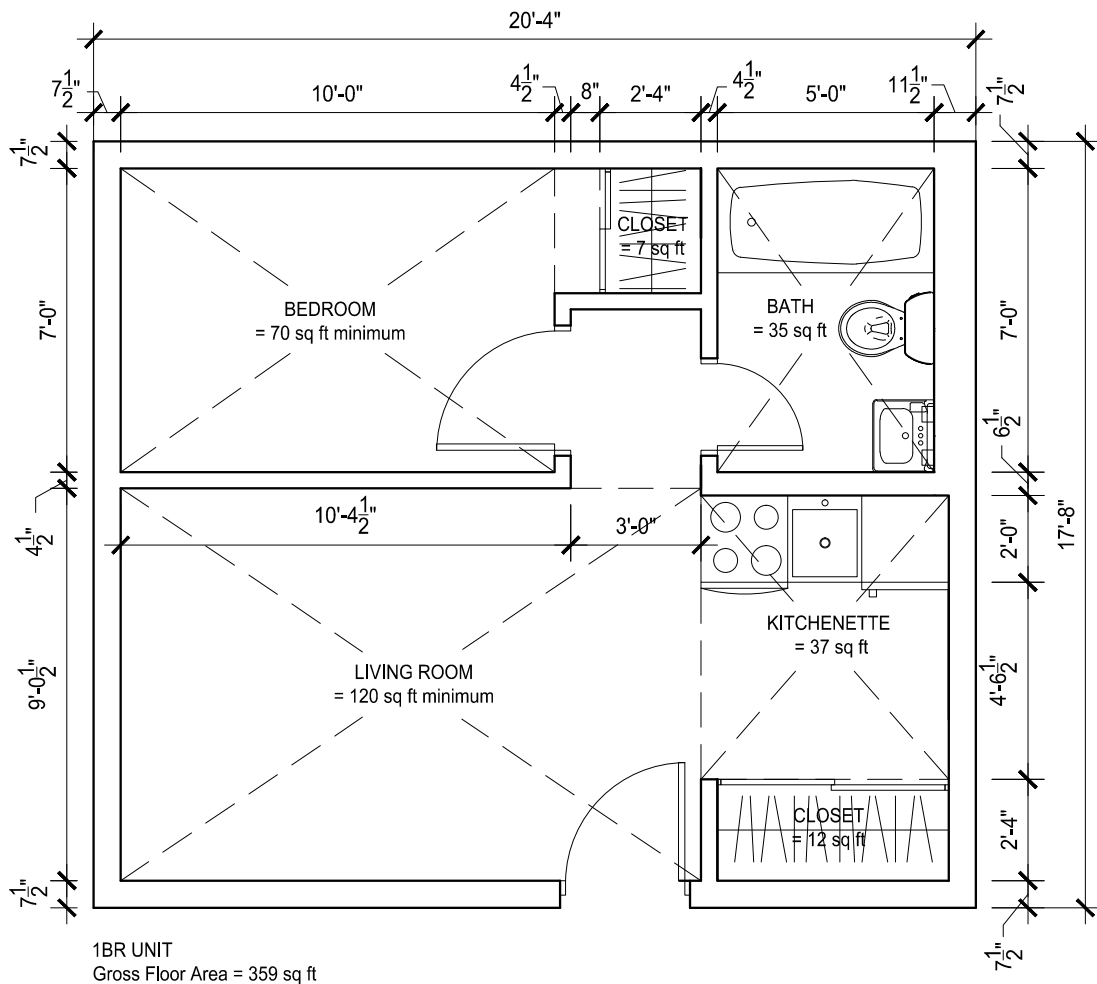
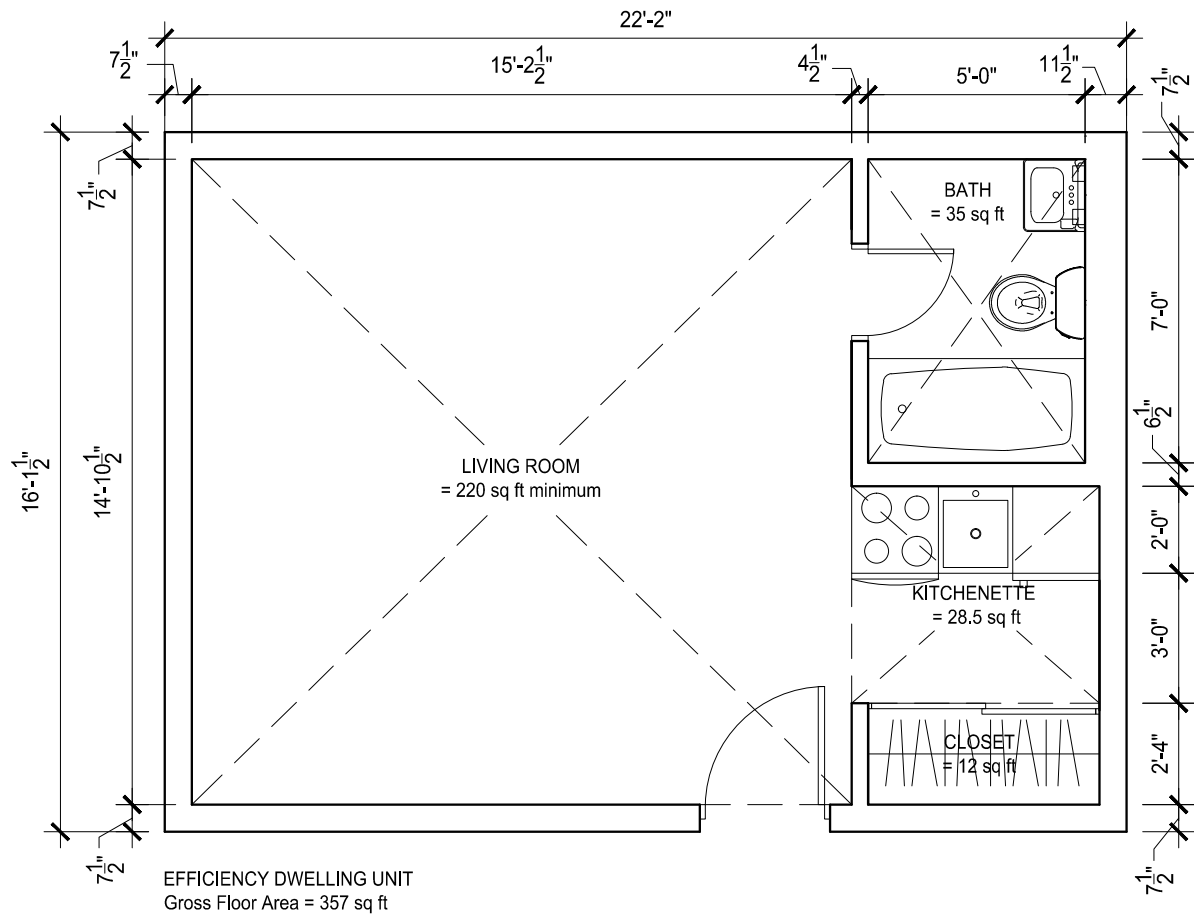
Typ. Wall Southold Wall Assembly

According to the New York State Energy Conservation Code, the minimum wall thickness for a compliant wall assembly in Southold is approximately 7 1/2 inches. Refer to the above table as well as the diagram to the left.

Per Appendix Q of the NYS Residential Code (see Appendix #9d), the maximum allowable size for a tiny house—excluding loft areas—is 400 square feet.

Based on the required wall assembly thickness and in compliance with applicable NYS codes and regulations, the minimum gross floor area for a tiny house is approximately 357 square feet. Refer to the following page for diagrams illustrating this calculation.

In summary, a tiny house / ADU should not be smaller than 357 square feet.



4. ZBA Code Interpretations

List of ZBA Interpretations, Page 1

INTERPRETATIONS - ZONING BOARD OF APPEALS (AS OF 4/28/2022)

File No.	Decision Date	Name	Address	Hamlet	Zoning District	SCTM No.	Current Code Section	Decision
5039	1/24/2002	Walz, Roger & Leslie	2505 Old Orchard Road	East Marion	R-40	37-6-5	280-122	Request to Overturn Zone Officer's DENIED; Second floor addition Increases Degree on nonconformity.
5003	6/6/2002	KACE LI, Inc.	County Road 48	Greenport	HD	40-3-1	280-23	Request to Overturn Zone Officer's Denial; Denied more than one two-family dwelling on one 17 acre lot; half acre zoning; applicant required to
5068	10/3/2002	Dawson, Christine & Glenn	150 Broadwaters Road	Cutchogue	R-40	104-10-8	280-121G	Nonconforming Use discontinued after two years non active; Cottage; granted as accessory to the single family dwelling; Temporary occupancy and sleeping permitted
5051	6/5/2003	Cliff & Phil's Lobsterhouse	50 North Sea Drive	Southold	R-40	54-5-22	280-123	Request reversal of Zoning Officer Denial; Denied addition to nonconforming business use-Restaurant. Minimal expansion and front yard setback approved.
5482	3/4/2004	Skrezec, Darrin	32900 CR 48	Peconic	Split: LB, RO	74-4-14.3	280-38; 280-41	Landscape business permitted to stockpile landscape material without a special exception. Determination in the negative, although a Special Exception was then granted.
5383	5/20/2004	Malon, Stanley	32845 Main Road	Cutchogue	General Business	97-5-4.5	280-49	Mixed Use, Per Bulk Schedule in B Zone. Whether each use or occupancy requires minimum lot area of 30,000 sq. ft. No. Each Use does not require minimum lot area of 30,000 sq. ft. in B Zone
5914	9/14/2006	Board of Trustees	Paradise Point	Southold			280-121A	The re-alignment of the Town's Basin Dock as required by the Trustees does not constitute a change that is prohibited by Section 280-121A
6143	5/8/2008	Garafalo/Geise	90 Sterling Road	Cutchogue	R-40	104-4-4.1	280-122	Whether alterations to SFD, front yard setback, increases a degree of nonconformity. According to #5039 Walz, an alteration increases the degree of nonconformity.
6685	11/7/2013	Planning Board	Wine Tasting Accessory Use	Cutchogue	A-C District		280-13	Wine Tasting Accessory Use: Intensity and frequency of activities not customarily accessory uses, and Sale of cigars-retail not an accessory use to wine tasting and wine sales.
6789	11/6/2014	Grella, William	1200 First Street	New Suffolk	R-40, MII	117-7-30	280-4, 280-56	Whether a pile structure non habitable ground level space constitutes as a first floor. Decision: not a finished floor and not considered a story.
6885	10/15/2015	Planning Board	Town Wide		B, LB	97-3-2	280-146D(1)	clarification as to whether the Stanley Malon Decision (ZBA File #5383) applies to only the General Business (B) Zoning District or was intended to apply in all Zoning Districts." Decision: only applies to B Zone
6892	11/19/2015	Paul Romanelli	50300 NYS Rte 25	Southold	RO	70-2-15	280-146D(1)	To make a determination that the applicant's alarm installation and maintenance business is not a conventional contractor's business, but is in fact the kind of small business use that is permitted in the RO zone. Decision: Business may operate and use variance not relevant.

6903	1/7/2016	Old North Road Barn	5195 Old North Road	Southold	A-C District	51-3-5	280-13(A)(4)(c) & 280-146(D)	Make a determination that Old North Road is not a major road and therefore the setback should be the one required for principal buildings located in the AC Zone district, rather than 100 ft. as required in Section 280-13(A)(4)(c). Decision: Winery structures, located on properties which do not adjoin a Major Road, shall be set back at the principal front yard setback as cited in the applicable bulk schedule.
6953	6/16/2016	Credit	560 Sound Road	Greenport	A-C District	35-1-14	280-4, 280-111	Make a Determination that the applicant's prior use of the subject real property for short term (less than 14 days) rental confers on the property a legal non-conforming use for short term rental, thereby making the provisions of Town Code §§280-4, 280-111(J) inapplicable to it for as long as the property is so used on a continuous basis. Decision: The subject property does not enjoy a legal non-conforming use for the short term rental of such property as contemplated by the provisions of Southold Town Code §280-121, et seq.
6976	12/1/2016	Planning Board	Sports East, 9300 NYS Route 25	Mattituck	R-40	122-7-9	§ 280-4 , 280-146 (D)(1)	Make a determination, pursuant to Article XXVI, § 280-146 (D)(1) of the Town Code, as to whether the use set forth in the Site Plan Application of Sports East, as applied for, meets the definition of a "Club, Membership, Country or Golf" as defined in § 280-4 Definitions of the Town Code or whether the proposed project meets the definition of a different use, such as a "Recreational Facility" or a "Commercial Recreational Facility". Decision: THE USE AS PROPOSED BY SPORTS EAST DOES NOT MEET THE DEFINITION OF A "CLUB, MEMBERSHIP OR COUNTRY OR GOLF" RATHER; THE PROPOSED USE MEETS THE DEFINITION OF A "RECREATIONAL FACILITY, COMMERCIAL."
7037	5/4/2017	Planning Board			A-C District	102-4-6.1	280-146D(1)	Determination, pursuant to Article XXVI, § 280-146 (D)(1) of the Town Code, as to whether the use set forth in the Site Plan Application of North Fork Viticultural Services, LLC is a commercial use or contractor's yard, as opposed to an agricultural use, given that the applicant intends to build a barn that is proposed to store agricultural equipment that is used in their local vineyard management and consulting business. Decision: the use as proposed is not an allowed use or accessory use, pursuant to sSection 280-13(a)(2) of the town code of the Town of Southold.
7060	12/7/2017	Ragona	350 Wood Lane	Greenport	R-40	43-4-30	280-10	Requests; 1) that Board make an interpretation that the subject lot is exempt from merger pursuant to section 280-10(C) of the Town; or, in the alternative 2) that the Board amend Appeal #3827 dated October 4, 1989 to remove the reference of "subdivision"; located at 350 Wood Lane, Greenport, New York. Decision: Deny both requests

Revised 4/28/2022 by K. Fuentes

7195	7/19/2018	Planning Board	County Road 48	Greenport	HD	40-3-1	280-146(D)	Seeking corroboration or correction as to their reading of the Density and Minimum Lot Size and the Bulk Schedule for Residential Districts; and an interpretation as to whether the residential site plan known as Vineyard View, as applied for, is a permitted use in the Hamlet Density (HD) zoning district. Decision: Density, Minimum Lot Size and Bulk Schedules in the Town Code as described above is consistent with the Zoning Code; and all of the proposed dwelling units comply with Density, Minimum Lot Size and Bulk Schedules in the Town Code.
7248	3/28/2019	Old Colonial Place	50 Pike Street	Mattituck	HB	140-2-21	280-46, 280-49	Interpret that the proposed construction of four retail stores in a single building is not permitted pursuant to Article X, 280-46 which states, According to Bulk Schedule 20,000 square feet of property is required for each principal use. There are four principal uses for retail space being proposed on this 22,809 square foot lot. Decision: Bulk schedule requirement of 20,000 square feet is to apply to each building rather than to each use or occupancy within building areas. Overturn NOD.
7276	6/6/2019	Fitzgerald, Shawn	495 Paddock Way	Mattituck	A-C District	107-4-2.10	280-13(A)(1)	The applicant is seeking an interpretation and/or appealing the Building Department's Notice of Disapproval that determined that the as built additions to the subject accessory structure constitutes a second dwelling and not a pool house. Decision: OVERTURN the NOD determining wrongly that the subject pool house constitutes a second
7295	7/3/2019	SV Greenport	59725 Route 48	Greenport	RR	44-2-23	280-4, 280-127	Town Code definition of "Hotel and Motel, Transient. Require Applicant to remove the existing kitchen facilities in the existing units, whether the Building Department improperly disapproved the Applicant's building permit application based on such definition; can the Building Department require applicant to comply with the restrictive definition of "Hotel and Motel, Transient" and remove kitchen facilities from its units to obtain a building permit of proposed renovation and other work on the subject property. Decision: Annul, reverse and set aside the subject "Notice of Disapproval.
7321	10/24/2019	Hans, Richard and Siobhan	2125 Pine Tree Road	Cutchogue	R-40	98-1-13	280-15	Whether "as-built" construction of finished space in an existing accessory garage a permitted accessory use. Decision: Since the structure is not being used for habitation, overturn the NOD.
7352	2/20/2020	Posillico, Vincenzo & Margherita	650 West Road & 719 Southern Cross Road	Cutchogue	R-40	110-5-42, 42	280-10	Re-application for a previously denied waiver of merger to determine whether the subject premises is exempt from the merger provision. Decision: DENY the request to retroactively apply the Merger by Death exemption, and to UPHOLD THE DENIAL.

7420	12/3/2020	Kreger, Michael	985 Bay Shore Road	Greenport	R-40	53-3-13.1	280-13	The applicant maintains it is their right to have a 'finished' half-story in an attic of a 2 ½ story single-family residence. According to the applicant there is no definition describing what a 2 ½ story residence is in the Code under, 280 Zoning, Article I, 280-4, entitled Definitions. Decision: Construction constituted an impermissible third story is consistent with the Town Code and therefore the Building Department's determination should be sustained.
7454	2/4/2021	Ryckman	1405 Village Lane	Orient	R-40	25-3-1	280-13C	DETERMINED THAT the artist studio as applied for are uses are customary and incidental to the principal use; therefore, is a permitted accessory use in an accessory structure on the subject residential lots as long as it conforms to the conditions as outlined.
7457	2/4/2021	Nardolillo, Thomas	3850 Camp Mineola R	Mattituck	R-40	125-5-18	280-15	DETERMINED THAT the artist studio as applied for are uses are customary and incidental to the principal use; therefore, is a permitted accessory use in an accessory structure on the subject residential lots as long as it conforms to the conditions as outlined.

Revised 4/28/2022 by K. Fuentes

5. Regulatory Analysis of Accessibility Requirements

Accessible Unit Type Descriptions (Compliant With Icc A117.1)

Please see Reference #15 for [ICC A117 Standard](#)

Accessible Unit: Units that are fully accessible to individuals with physical disabilities, including those who use wheelchairs.

Routes & Clearances:

- 1002.3 Accessible routes into, within, and through the unit.
- 1002.3.2 All rooms served by an accessible route shall provide a 60" turning space
- 404.2.2 Doorways shall have a clear opening width of 32" minimum
- 404.2.3.2 Manual swinging doors should provide maneuvering clearances compliant with Fig. 404.2.3.2

Toilet & Bathing Facilities:

- 603.2.1 60" turning space
- 604.3 A 60" x 56" toilet clearance
- 604.5 Grab bars provided on the rear wall and side wall closest to the toilet
- 606.2 A clear floor space positioned for forward approach shall be provided at the sink
- 607 A compliant clearance for bathtubs, transfer-type showers, or roll in showers.
- 607.4 Grab bars provided for showers/ bathtubs

Kitchens & Kitchenettes:

- 804.2 Compliant clearances according to the kitchen layout (eg. 40" minimum clearance for pass-through kitchens)
- 804.5.1 A clear floor space, positioned for a parallel or forward approach provided at each kitchen appliance, cooktop, and work surface

Bedroom:

- 1002.15.1 Clear floor spaces for wheelchair maneuvering should be provided on both sides of at least 1 bed

Type A Unit: Units that are adaptable to accessibility needs, intended to be usable by people with mobility impairments with some minor modifications.

Routes & Clearances:

- Same as Accessible Unit

Toilet & Bathing Facilities:

- 603.2.1 60" turning space
- 604.3 A 60" x 56" toilet clearance
- 1003.11.2.2 Cabinetry may be permitted under the sink provided that the cabinetry can be removed without removing or replacing the sink
- 607 A compliant clearance for bathtubs, transfer-type showers, or roll in showers. 1003.11.2.5.1 Removable cabinetry is allowed to impede on this clearance
- 1003.11.1 Wall reinforcement for grab bars and shower seats should be provided for showers/ bathtubs/ toilets; grab bar installation is optional

Kitchens & Kitchenettes:

- 804.2 Compliant clearances according to the kitchen layout (eg. 40" minimum clearance for pass-through kitchens)
- 1003.12 Cabinetry may be installed under all appliances, work surfaces, and cooktop as long as it may be removed to provide a clear floor space with a forward approach in the future

Type B Unit: Units with the lowest level of accessibility, often called "basic accessible" units under the Fair Housing Act.

Routes & Clearances:

- 1004.3 Accessible routes into, within, and through the unit.
- 1004.5.2.1 Doorways shall have a clear opening width of 31 3/4" minimum
- 1004.5.1 Only primary entrance door should provide maneuvering clearances compliant with Fig. 404.2.3.2

Toilet & Bathing Facilities:

- 1004.11.1 Reinforcement for grab bars by toilets & showers must be provided; grab bar installation is optional
- 1004.11.3.1.1 Sink should be provided a clear floor space, positioned for a parallel approach
- 1004.11.3.1.1 Cabinetry may be permitted under the sink provided that the cabinetry can be removed without removing or replacing the sink
- 1004.11.3.1.2 A toilet clearance complying with Fig. 1004.11.3.1.2
- 1004.11.3.1.3.1 A clearance of 60" x 30" minimum for parallel approach in front of bathtubs. 60" x 48" minimum for forward approach

Kitchens & Kitchenettes:

- 804.2 Compliant clearances according to the kitchen layout (eg. 40" minimum clearance for pass-through kitchens)
- 1004.12.2 Clear floor space at all appliances and work surfaces should be provided for at least a parallel approach

RESIDENTIAL ACCESSIBILITY REQUIREMENTS, PER NYS BUILDING CODE 2020

R-1 OCCUPANCY GROUP (See Appendix #8b for R-1 occupancies)

Accessible/Type B Dwelling Units & Elevator Requirements

1. "Units" in this flow chart refer to "Dwelling Units", defined in Chapter 2 of the NYS Building Code 2020*

2. 1103.2.11 Buildings of Group R-1 containing not more than five sleeping units for rent or hire that are also occupied as the residence of the proprietor are not required to comply with this chapter.

3. BCNYS 1009.2.1 Elevators Required

In buildings where a required accessible floor is four or more stories above or below a level of exit discharge, not less than one required accessible means of egress shall be an elevator complying with Section 1009.4.

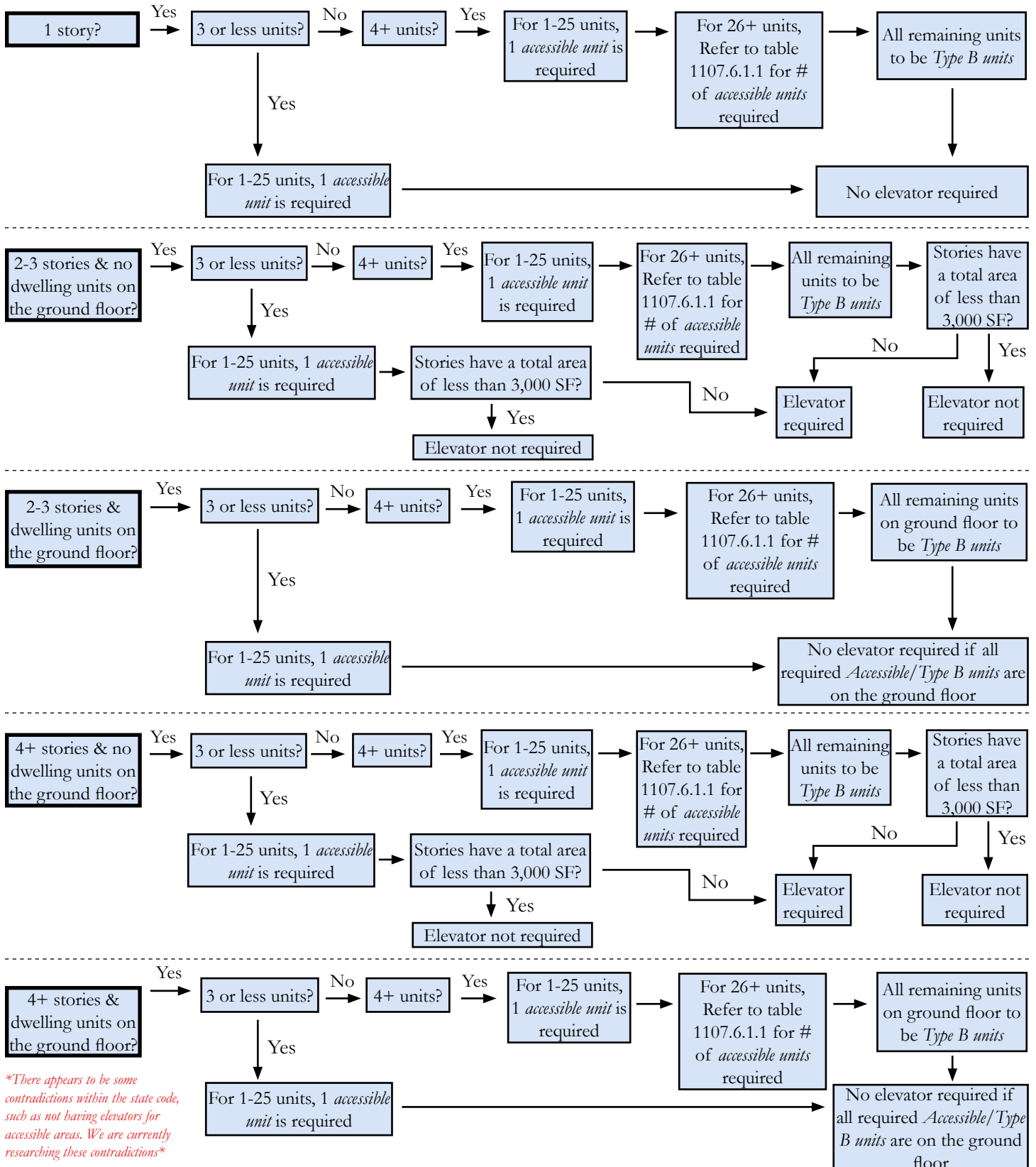


TABLE 1107.6.1.1**ACCESSIBLE DWELLING UNITS AND SLEEPING UNITS**

TOTAL NUMBER OF UNITS PROVIDED	MINIMUM REQUIRED NUMBER OF ACCESSIBLE UNITS WITHOUT ROLL-IN SHOWERS	MINIMUM REQUIRED NUMBER OF ACCESSIBLE UNITS WITH ROLL-IN SHOWERS	TOTAL NUMBER OF REQUIRED ACCESSIBLE UNITS
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1,000	2% of total	1% of total	3% of total
Over 1,000	20, plus 1 for each 100, or fraction thereof, over 1,000	10 plus 1 for each 100, or fraction thereof, over 1,000	30 plus 2 for each 100, or fraction thereof, over 1,000

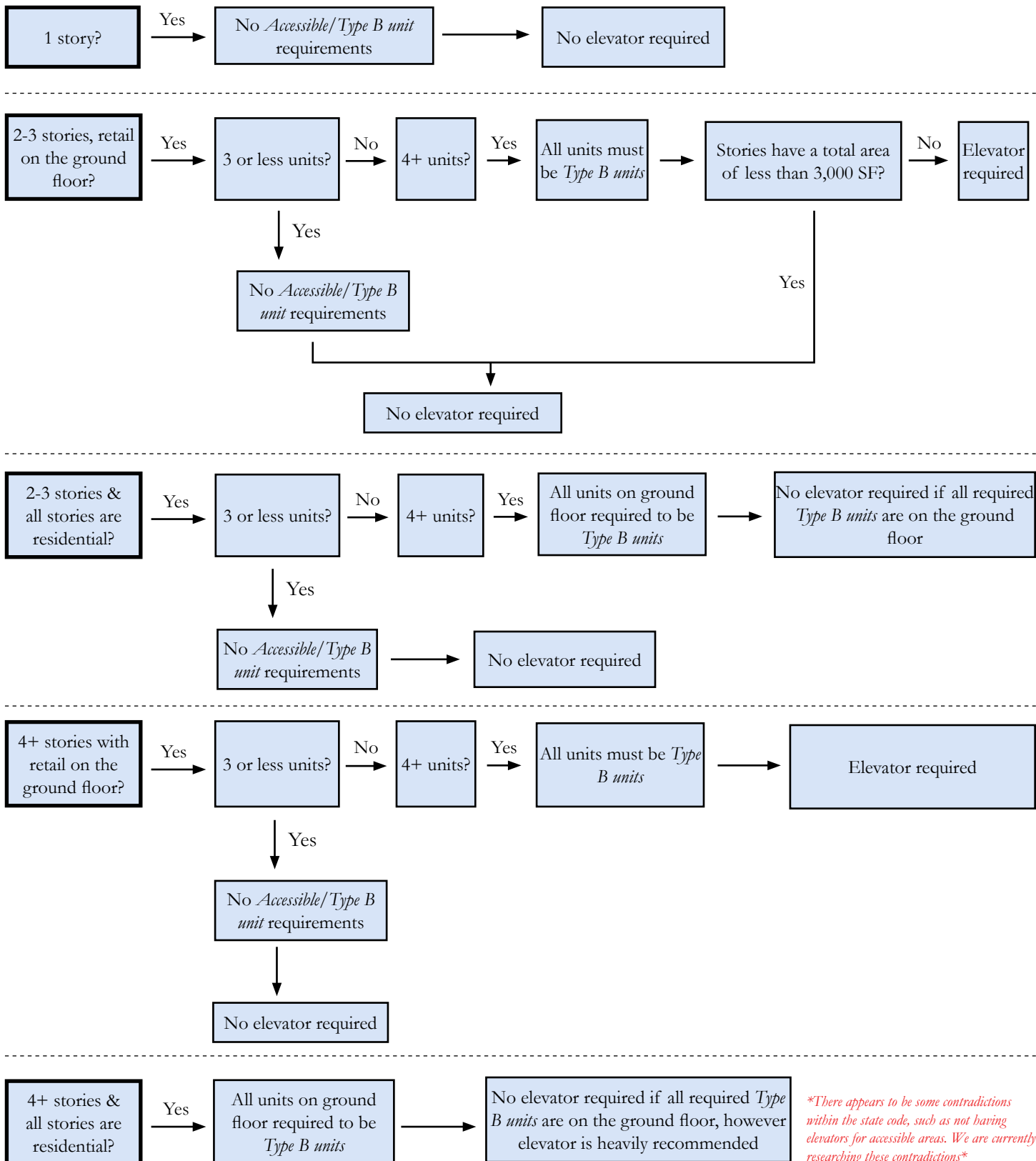
R-2 OCCUPANCY GROUP (See Appendix #8b for R-2 occupancies)

Accessible/Type B Dwelling Units & Elevator Requirements

1. "Units" in this flow chart refer to "Dwelling Units", defined in Chapter 2 of the NYS Building Code 2020 (See Appendix #8a)

2. BCNYS 1009.2.1 Elevators Required

In buildings where a required accessible floor is four or more stories above or below a level of exit discharge, not less than one required accessible means of egress shall be an elevator complying with Section 1009.4.



For the purposes of this exercise, R-3 occupancies will be excluded, as they are not subject to accessibility requirements. R-4 occupancies will also be omitted, as this classification is rarely used.

6. Flow Chart Analysis of Chapter 240 Subdivision of Land

Placeholder for Flow Chart

Placeholder for Flow Chart

Placeholder for Flow Chart

Placeholder for Flow Chart

Placeholder for Flow Chart

Placeholder for Flow Chart

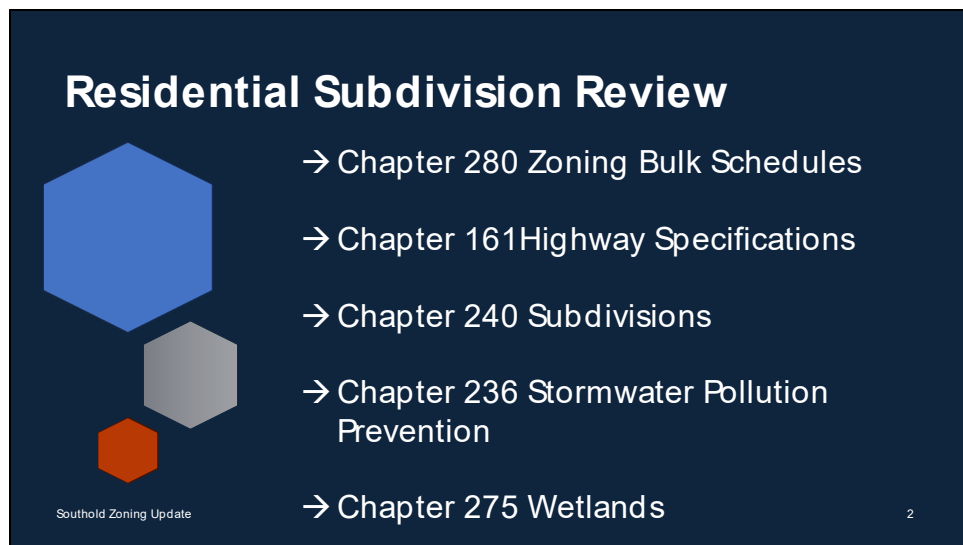
7. Smart Planning for Southold Presentation, by Heather Lanza

Slide 1



This Presentation was made to the Southold Town Zoning Update Advisory Committee on September 12, 2024.

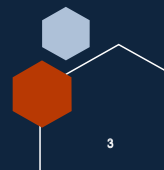
Slide 2



These are the chapters of the code the regulate and influence how subdivisions are created.

Chapter 280 Zoning: Bulk Schedules

- Minimum Lot Size
- Minimum Lot Width & Depth
- Setbacks (building envelope)



3

Southold Zoning Update

- Chapter 280 controls the density by assigning a minimum lot size to each zoning district, as well as dimensional requirements for minimum lot width and depth.

Minimum Lot Size



Zoning District	Square Ft. per Lot
Residential-40 (R40)	40,000
Residential-80 (R80)	80,000
Agricultural Conservation (AC)	80,000
Residential-120	120,000
Residential-200	200,000
Residential-400	400,000
Residential Office (RO)	40,000
Limited Business (LB)	80,000
General Business (B)	40,000
Hamlet Density (HD)	20,000

4


Southold Zoning Update

Each zoning district has a minimum lot size, which is used in subdivision to determine how many lots a parcel could generate.

Most of the subdividable land is in the R-80/AC and R-40 zoning districts.

R40 requires 40K or a little less than an acre per lot

R-80 and AC = 80K



Subdivision Types

- Standard
 - < 7 acres
 - ≤ 7 acres: Clustered
- Conservation
 - 80/60
80% preserved land/ 60 % density reduction
 - 75/75
75% preserved / 75% density reduction

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Chapter 240, which has all of our subdivision rules, describes two main types of subdivision

Standard Subdivision.

Less than seven acres


Usually as many lots as they can fit, not clustered

Parcels of 7 acres or more must be clustered

And Conservation Subdivisions (always clustered)

Standard Subdivision

- # lots determined by yield map
- Minimum Lot Size
- Minimum Lot Width & Dept
- Road specification



Southold Zoning Update

- In a standard subdivision, the maximum number of lots allowed is determined by a yield map.
- The yield map must show each lot as meeting the minimum lot size, width and depth
- The yield map must also show the required right of way width and turnaround
- In a standard subdivision of less than seven acres, this may also be the subdivision map.
- In a standard with 7 acres or more, the yield map is only conceptual to determine the number of lots allowed.

Standard Subdivision Clustered



- Beginning parcel = 7 acres or greater
- Yield Plan (conceptual to determine # of lots)
- Sketch Plan
 - Clusters the lots & new road onto 40% of the property
 - 60% of property preserved as open space or farmland
- Affordable Housing Required: 20% of lots

Southold Zoning Update

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Conservation Subdivision Clustered



- Yield calculated (no yield plan needed)
- Town or other entity (Suffolk County) buys the open space or development rights on preserved land
- Expedited Application Processing
- Lower fees than Standard Subdivision
- No affordable housing requirement

Southold Zoning Update

8

Most owners of large properties choose the conservation subdivision route.

Comprehensive Plan, Buildout & Updated Statistics



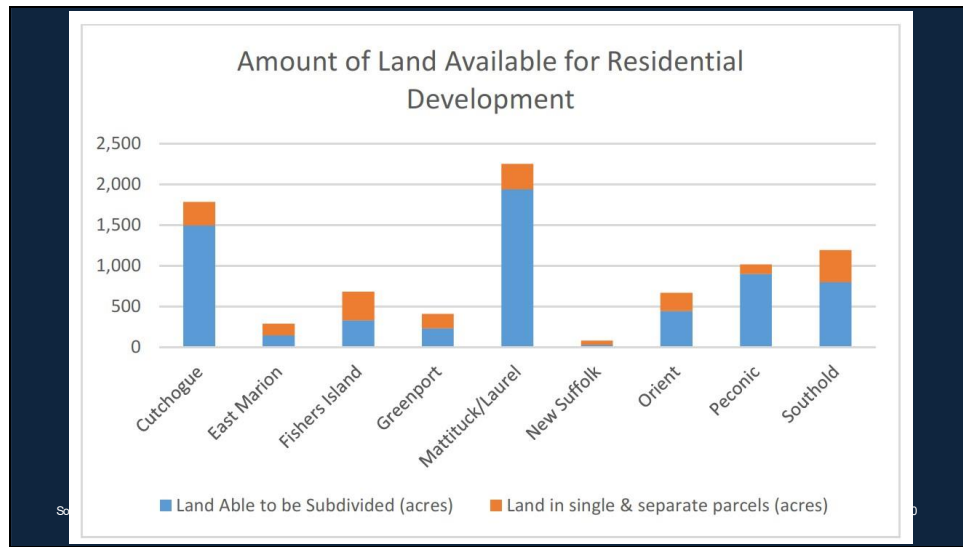
**SOUTHOLD TOWN
COMPREHENSIVE PLAN**

Volume 1 of 2 • February 2020

Southold Zoning Update

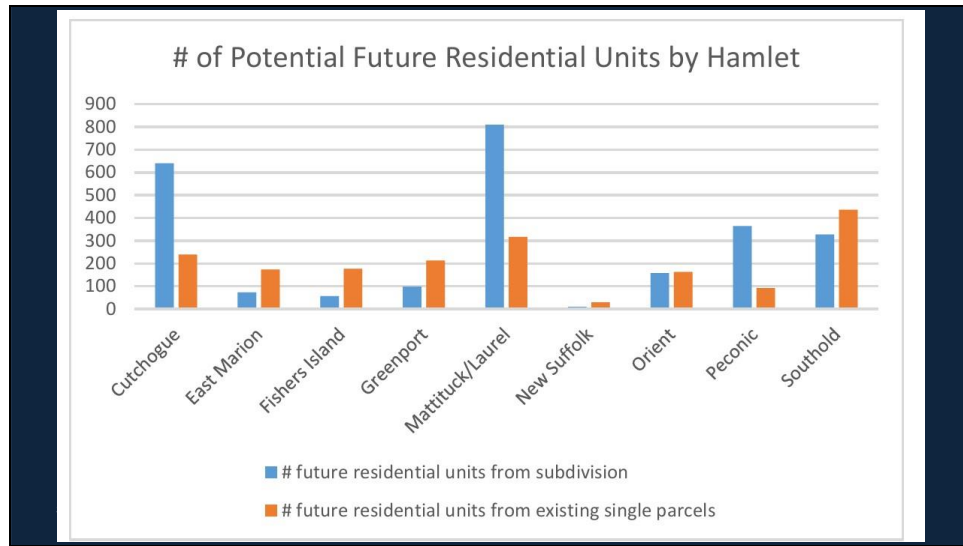
9

The Town Comprehensive Plan was adopted in 2020.
With regard to future buildout and subdivisions - There are some great graphics in the plan.



In the Town Comprehensive Plan there is a snapshot of land available for development. It identifies the potential for about 4300 new single-family homes on land zoned residentially. Of those, about 1870 would be on lots that already exist as single building lots. So a good number of the new homes possible here are on lots that already exist.

This chart above shows a comparison the land available for development – subdividable in blue as compared to land already divided into single and separate lots. Places with the most farmland, Cutchogue, Mattituck, Peconic, all have a much higher ratio of subdividable land to already existing single building lots.



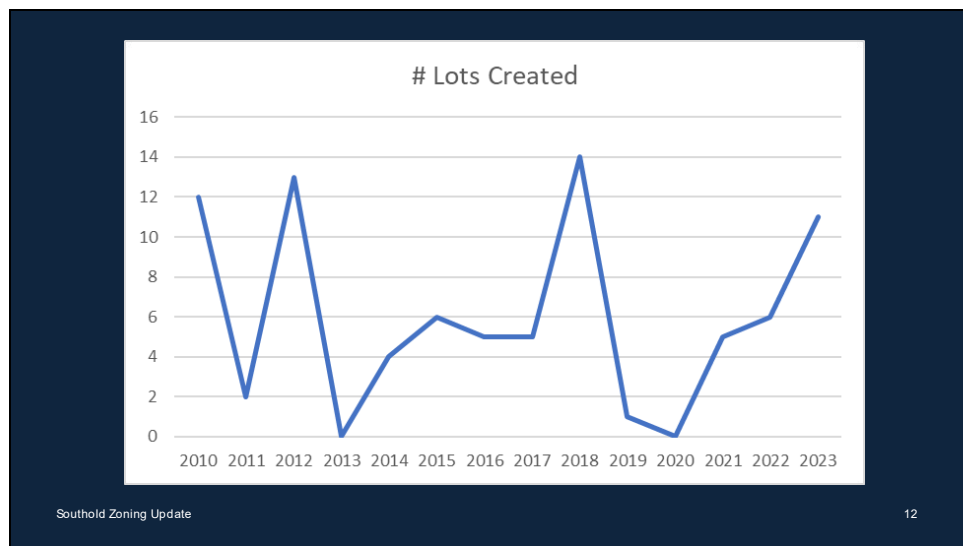
The chart above shows a comparison of the potential buildout from the land available for development, both from subdivision and from existing vacant lots.

In 2019 for the Comp Plan, Southold's residential buildout was estimated at about 4300 new single-family homes, of which 2500 were from new subdivided house lots, and 1,800 were from existing lots.

Since those numbers were compiled in 2019, another 356 houses were built, a good number of which were on those existing single lots.

Some were also on newly created subdivided lots.

The Town has about 13,750 housing units not including Village. This does include condo's and co-ops. This is according to our Town Assessor on August 26, 2024



This shows the number of new lots created by subdivision each year since 2010.

The number of new building lots created since the Town Comprehensive Plan was adopted is 23 new lots.

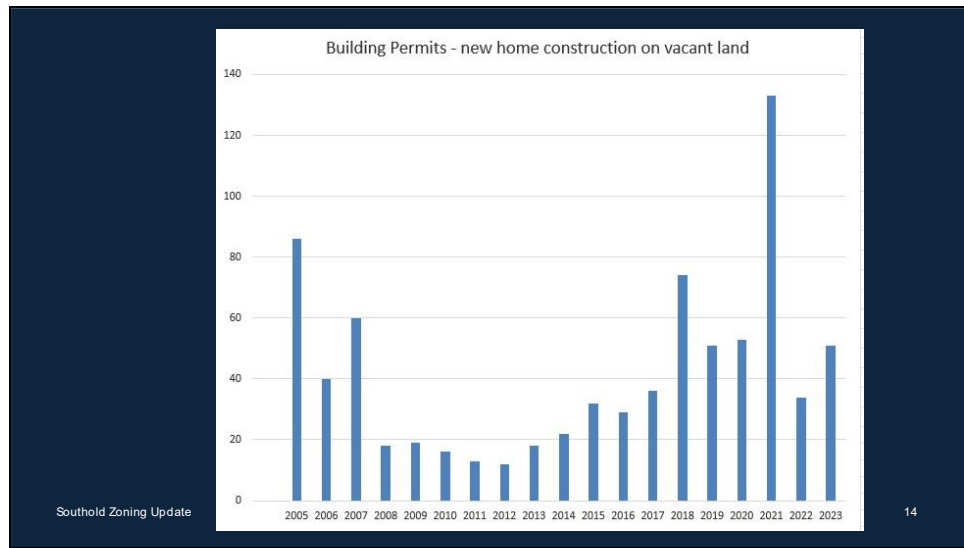
Year	# Lots Created
2010	12
2011	2
2012	13
2013	0
2014	4
2015	6
2016	5
2017	5
2018	14
2019	1
2020	0
2021	5
2022	6
2023	11

Southold Zoning Update 13

Here are those data by year in a table.

There are about 47 lots in pending subdivision applications right now in various stages of completion.

Those are in 16 different applications. The most numerous subdivision applications are 2 and 3-lots (simpler to accomplish, no clustering and no affordable housing requirement (only those creating 5 or more new lots have to comply with affordable requirements)).

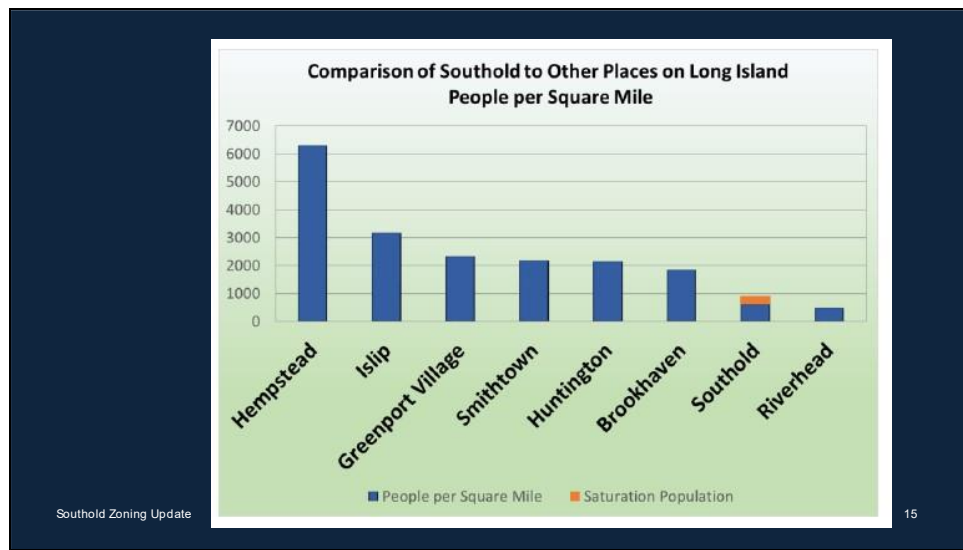


Another statistic we've updated since the Comp Plan is the number of building permits for new homes issued each year.

This shows the number of new building permits issued per year.

The spike in 2021 was Harvest Point condos. Each condo counts as one.

You can see that the number of new permits has not changed drastically over the years overall.



This last chart is also in the Town Comprehensive Plan. It gives a relative viewpoint of our density in terms of people per square mile as compared to other places on Long Island.

The blue is where we were in 2019, and the orange shows where we would be if all the residentially-zoned land were developed to its fullest potential.

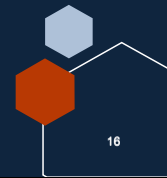
You can see we would not get anywhere near the density of other places west of here, which should be a relief! And that is worst-case scenario.

The fact is, and we make this point in the Plan, that we continue to preserve land, we continue to see landowners choose the conservation subdivision over the standard in most cases where the land area is large, and agriculture continues to keep land in farming use. Reaching full buildout as estimated is unlikely due to all of these factors.

Land Preservation Tracking Report

- 2004: Southold begins tracking rate of land preservation
- Target Acreage= Subdividable land in the R40, R80, AC zones
- Tracks land preservation rate & density reduction rate

Southold Zoning Update

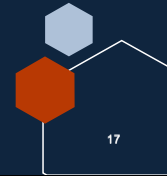


- We have one more data set that demonstrates these trends
- Since 2004, Southold has tracked its record on land preservation vs. land development (residential only).
- This followed the new subdivision rules that created the conservation subdivision, which had followed the failed attempt to rezone much of Southold to five-acre zoning.
- The idea was to track how well the conservation subdivision idea worked for preserving land and reducing housing density in our farmland areas.
- The “target acreage” tracked was all subdividable land in the R40, R80, and AC zoning districts (except Fishers Island)
- We have 20 years of data on this now.

Land Preservation Tracking Report

- Rate of Land Preservation = 94%
- Rate of Density Reduction = 92%
- New Parcels Created = 193
- Target Acreage Developed = 89 units on 126 ac.
- Target Acreage Preserved = 2,622 acres
- Non-target = 894 housing units on 6,883 ac.
- Non-target Preserved = 309 ac

Southold Zoning Update



- The results of after 20 years are shown above
- This illustrates the success of our policies, our land preservation program, our conservation subdivision program, and the continuation of farming as a business in Southold Town.
- There are also figures for the non-target acreage, which is all the other land not included in target (except Fishers Island since they don't have farmland and that was the main idea of this tracking)
- In non-target there were 894 new housing units built on 6,883 acres, and 309 acres preserved.
- This doesn't include commercial development, only residential development. So there was other land developed commercially not included in that figure
- The takeaway is that our programs are working very well when it comes to slowing, reducing and avoiding the subdivision and conversion of farmland.

REGULATORY

8. NYS Building Code 2020

a. Chapter 2 (Selected) Definitions

ACCESSIBLE. A site, building, facility or portion thereof that complies with Chapter 11.

ACCESSIBLE UNIT. A dwelling unit or sleeping unit that complies with this code and the provisions for Accessible units in ICC A117.1.

ACCESSIBLE MEANS OF EGRESS. A continuous and unobstructed way of egress travel from any accessible point in a building or facility to a public way.

ACCESSIBLE ROUTE. A continuous, unobstructed path that complies with Chapter 11.

BASE FLOOD. The *flood* having a 1-percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION. The elevation of the *base flood*, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the *Flood Insurance Rate Map (FIRM)*

BOARDING HOUSE. A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.

DESIGN FLOOD. The *flood* associated with the greater of the following two areas:

1. Area with a flood plain subject to a 1-percent or greater chance of *flooding* in any year.
2. Area designated as a *flood hazard area* on a community's flood hazard map, or otherwise legally designated.

DESIGN FLOOD ELEVATION. The elevation of the “*design flood*,” including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the *design flood elevation* shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where a depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet (610 mm).

DORMITORY. A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.

DWELLING. A building that contains one or two *dwelling units* used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD DAMAGE-RESISTANT MATERIALS. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic *repair*.

FLOOD, DESIGN. See “[Design flood](#).”

FLOOD ELEVATION, DESIGN. See “[Design flood elevation](#).”

FLOOD HAZARD AREA. The greater of the following two areas:

1. The area within a flood plain subject to a 1-percent or greater chance of *flooding* in any year.
2. The area designated as a flood hazard area on a community’s flood hazard map, or otherwise legally designated.

FLOOD HAZARD AREAS, SPECIAL. See “[Special flood hazard area](#).”

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the *special flood hazard areas* and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. The official report provided by the Federal Emergency Management Agency containing the Flood Insurance Rate Map (FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevation of the *base flood* and supporting technical data.

FLOODWAY. The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the *base flood* without cumulatively increasing the water surface elevation more than a designated height.

FLOOR AREA, GROSS. The floor area within the inside perimeter of the *exterior walls* of the building under consideration, exclusive of vent *shafts* and *courts*, without deduction for *corridors*, *stairways*, *ramps*, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding *exterior walls* shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include *shafts* with no openings or interior *courts*.

FLOOR AREA, NET. The actual occupied area not including unoccupied accessory areas such as *corridors*, *stairways*, *ramps*, toilet rooms, mechanical rooms and closets.

INTERIOR WALL AND CEILING FINISH. The exposed *interior surfaces* of buildings, including but not limited to: fixed or movable walls and partitions; toilet room privacy partitions; columns; ceilings; and interior wainscoting, paneling or other finish applied structurally or for decoration, acoustical correction, surface insulation, structural fire resistance or similar purposes, but not including *trim*.

LIVE/WORK UNIT. A dwelling unit or sleeping unit in which a significant portion of the space includes a nonresidential use that is operated by the tenant.

MULTISTORY UNIT. A *dwelling unit* or *sleeping unit* with *habitable space* located on more than one story.

SITE. A parcel of land bounded by a lot line or a designated portion of a public right-of-way.

SLEEPING UNIT. A single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any *repair*, reconstruction, rehabilitation, *alteration*, *addition* or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained *substantial damage*, any *repairs* are considered substantial improvement regardless of the actual *repair* work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the *building official* and that are the minimum necessary to assure safe living conditions.
2. Any *alteration* of a historic structure provided that the *alteration* will not preclude the structure’s continued designation

as a historic structure.

TYPE A UNIT. A dwelling unit or sleeping unit designed and constructed for accessibility in accordance with this code and the provisions for Type A units in ICC A117.1.

TYPE B UNIT. A dwelling unit or sleeping unit designed and constructed for accessibility in accordance with this code and the provisions for Type B units in ICC A117.1, consistent with the design and construction requirements of the federal Fair Housing Act.

TRANSIENT. Occupancy of a dwelling unit or sleeping unit for not more than 30 days.

8. NYS Building Code 2020

b. Chapter 3 Occupancy Classification and Use

SECTION 301

SCOPE

301.1 General.

The provisions of this chapter shall control the classification of all buildings and structures as to occupancy and use. Different classifications of occupancy and use represent varying levels of hazard and risk to building occupants and adjacent properties.

SECTION 302

OCCUPANCY CLASSIFICATION AND USE DESIGNATION

302.1 Occupancy classification.

Occupancy classification is the formal designation of the primary purpose of the building, structure or portion thereof. Structures shall be classified into one or more of the occupancy groups listed in this section based on the nature of the hazards and risks to building occupants generally associated with the intended purpose of the building or structure. An area, room or space that is intended to be occupied at different times for different purposes shall comply with all applicable requirements associated with such potential multipurpose. Structures containing multiple occupancy groups shall comply with [Section 508](#). Where a structure is proposed for a purpose that is not specifically listed in this section, such structure shall be classified in the occupancy it most nearly resembles based on the fire safety and relative hazard. Occupied roofs shall be classified in the group that the occupancy most nearly resembles, according to the fire safety and relative hazard, and shall comply with [Section 503.1.4](#).

Assembly (see [Section 303](#)): Groups A-1, A-2, A-3, A-4 and A-5.

Business (see [Section 304](#)): Group B.

Educational (see [Section 305](#)): Group E.

Factory and Industrial (see [Section 306](#)): Groups F-1 and F-2.

High Hazard (see [Section 307](#)): Groups H-1, H-2, H-3, H-4 and H-5.

Institutional (see [Section 308](#)): Groups I-1, I-2, I-3 and I-4.

Mercantile (see [Section 309](#)): Group M.

Residential (see [Section 310](#)): Groups R-1, R-2, R-3 and R-4.

Storage (see [Section 311](#)): Groups S-1 and S-2.

Utility and Miscellaneous (see [Section 312](#)): Group U.

302.2 Use designation.

Occupancy groups contain subordinate uses having similar hazards and risks to building occupants. Uses include, but are not limited to, those functional designations listed within the occupancy group descriptions in [Section 302.1](#). Certain uses require specific limitations and controls in accordance with the provisions of [Chapter 4](#) and elsewhere in this code.

SECTION 303

ASSEMBLY GROUP A

303.1 Assembly Group A.

Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption or awaiting transportation.

303.1.1 Small buildings and tenant spaces.

A building or tenant space used for assembly purposes with an *occupant load* of less than 50 persons shall be classified as a Group B occupancy.

303.1.2 Small assembly spaces.

The following rooms and spaces shall not be classified as Assembly occupancies:

1. A room or space used for assembly purposes with an *occupant load* of less than 50 persons and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.
2. A room or space used for assembly purposes that is less than 750 square feet (70 m²) in area and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.

303.1.3 Associated with Group E occupancies.

A room or space used for assembly purposes that is associated with a Group E occupancy is not considered a separate occupancy.

303.1.4 Accessory to places of religious worship.

Accessory religious educational rooms and religious auditoriums with *occupant loads* of less than 100 per room or space are not considered separate occupancies.

303.2 Assembly Group A-1.

Group A-1 occupancy includes assembly uses, usually with fixed seating, intended for the production and viewing of the performing arts or motion pictures including, but not limited to:

- Motion picture theaters
- Symphony and concert halls
- Television and radio studios admitting an audience
- Theaters

303.3 Assembly Group A-2.

Group A-2 occupancy includes assembly uses intended for food and/or drink consumption including, but not limited to:

- Banquet halls
- Casinos (gaming areas)
- Nightclubs
- Restaurants, cafeterias and similar dining facilities (including associated commercial kitchens)
- Taverns and bars

303.4 Assembly Group A-3.

Group A-3 occupancy includes assembly uses intended for worship, recreation or amusement and other assembly uses not classified elsewhere in Group A including, but not limited to:

- Amusement arcades
- Art galleries
- Bowling alleys
- Community halls
- Courtrooms
- Dance halls (not including food or drink consumption)
- Exhibition halls
- Funeral parlors
- Greenhouses for the conservation and exhibition of plants that provide public access.
- Gymnasiums (without spectator seating)
- Indoor *swimming pools* (without spectator seating)

- Indoor tennis courts (without spectator seating)
- Lecture halls
- Libraries
- Museums
- *Places of religious worship*
- Pool and billiard parlors
- Waiting areas in transportation terminals

303.5 Assembly Group A-4.

Group A-4 occupancy includes assembly uses intended for viewing of indoor sporting events and activities with spectator seating including, but not limited to:

- Arenas
- Skating rinks
- *Swimming pools*
- Tennis courts

303.6 Assembly Group A-5.

Group A-5 occupancy includes assembly uses intended for participation in or viewing outdoor activities including, but not limited to:

- Amusement park structures
- *Bleachers*
- *Grandstands*
- Stadiums

SECTION 304

BUSINESS GROUP B

304.1 Business Group B.

Business Group B occupancy includes, among others, the use of a building or structure, or a portion thereof, for office, professional or service-type transactions, including storage of records and accounts. Business occupancies shall include, but not be limited to, the following:

- Airport traffic control towers
- *Ambulatory care facilities*
- Animal hospitals, kennels and pounds
- Banks
- Barber and beauty shops
- Car wash
- Civic administration
- *Clinic, outpatient*
- Dry cleaning and laundries: pick-up and delivery stations and self-service
- Educational occupancies for students above the 12th grade
- Electronic data processing
- Food processing establishments and commercial kitchens not associated with restaurants, cafeterias and similar dining facilities not more than 2,500 square feet (232 m²) in area.
- Laboratories: testing and research
- Motor vehicle showrooms
- Post offices
- Print shops

- Professional services (architects, attorneys, dentists, physicians, engineers, etc.)
- Radio and television stations
- Telephone exchanges
- Training and skill development not in a school or academic program (this shall include, but not be limited to, tutoring centers, martial arts studios, gymnastics and similar uses regardless of the ages served, and where not classified as a Group A occupancy)

SECTION 305

EDUCATIONAL GROUP E

305.1 Educational Group E.

Educational Group E occupancy includes, among others, the use of a building or structure, or a portion thereof, by six or more persons at any one time for educational purposes through the 12th grade.

305.1.1 Accessory to places of religious worship.

Religious educational rooms and religious auditoriums, which are accessory to *places of religious worship* in accordance with [Section 303.1.4](#) and have *occupant loads* of less than 100 per room or space, shall be classified as Group A-3 occupancies.

305.2 Group E, day care facilities.

This group includes buildings and structures or portions thereof occupied by more than five children older than 2¹/₂ years of age who receive educational, supervision or *personal care services* for fewer than 24 hours per day.

305.2.1 Within places of religious worship.

Rooms and spaces within *places of religious worship* providing such day care during religious functions shall be classified as part of the primary occupancy.

305.2.2 Five or fewer children.

A facility having five or fewer children receiving such day care shall be classified as part of the primary occupancy.

305.2.3 Five or fewer children in a dwelling unit.

A facility such as the above within a *dwelling unit* and having five or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the [Residential Code of New York State](#).

SECTION 306

FACTORY GROUP F

306.1 Factory Industrial Group F.

Factory Industrial Group F occupancy includes, among others, the use of a building or structure, or a portion thereof, for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair or processing operations that are not classified as a Group H hazardous or Group S storage occupancy.

306.2 Moderate-hazard factory industrial, Group F-1.

Factory industrial uses that are not classified as Factory Industrial F-2 Low Hazard shall be classified as F-1 Moderate Hazard and shall include, but not be limited to, the following:

- Aircraft (manufacturing, not to include repair)
- Appliances
- Athletic equipment
- Automobiles and other motor vehicles
- Bakeries
- Beverages: over 16-percent alcohol content
- Bicycles

- Boats
- Brooms or brushes
- Business machines
- Cameras and photo equipment
- Canvas or similar fabric
- Carpets and rugs (includes cleaning)
- Clothing
- Construction and agricultural machinery
- Disinfectants
- Dry cleaning and dyeing
- Electric generation plants
- Electronics
- Engines (including rebuilding)
- Food processing establishments and commercial kitchens not associated with restaurants, cafeterias and similar dining facilities more than 2,500 square feet (232 m²) in area.
- Furniture
- Hemp products
- Jute products
- Laundries
- Leather products
- Machinery
- Metals
- Millwork (sash and door)
- Motion pictures and television filming (without spectators)
- Musical instruments
- Optical goods
- Paper mills or products
- Photographic film
- Plastic products
- Printing or publishing
- Recreational vehicles
- Refuse incineration
- Shoes
- Soaps and detergents
- Textiles
- Tobacco
- Trailers
- Upholstering
- Wood; distillation
- Woodworking (cabinet)

306.3 Low-hazard factory industrial, Group F-2.

Factory industrial uses that involve the fabrication or manufacturing of noncombustible materials that during finishing, packing or processing do not involve a significant fire hazard shall be classified as F-2 occupancies and shall include, but not be limited to, the following:

- Beverages: up to and including 16-percent alcohol content

- Brick and masonry
- Ceramic products
- Foundries
- Glass products
- Gypsum
- Ice
- Metal products (fabrication and assembly)

SECTION 307

HIGH-HAZARD GROUP H

[F] 307.1 High-hazard Group H.

High-hazard Group H occupancy includes, among others, the use of a building or structure, or a portion thereof, that involves the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard in quantities in excess of those allowed in *control areas* complying with [Section 414](#), based on the maximum allowable quantity limits for *control areas* set forth in [Tables 307.1\(1\)](#) and [307.1\(2\)](#). Hazardous occupancies are classified in Groups H-1, H-2, H-3, H-4 and H-5 and shall be in accordance with this section, the requirements of [Section 415](#) and the [Fire Code of New York State](#). Hazardous materials stored, or used on top of roofs or canopies, shall be classified as outdoor storage or use and shall comply with the [Fire Code of New York State](#).

TABLE 307.1(1)

MAXIMUM ALLOWABLE QUANTITY PER CONTROL AREA OF HAZARDOUS MATERIALS POSING A PHYSICAL HAZARD^{a, j, m, n, p}

MATERIAL	CLASS	GROUP WHEN THE MAXIMUM ALLOWABLE QUANTITY IS EXCEEDED	STORAGE ^b			USE-CLOSED SYSTEMS ^b			USE-OPEN SYSTEMS ^b	
			Solid pounds (cubic feet)	Liquid gallons (pounds)	Gas cubic feet at NTP	Solid pounds (cubic feet)	Liquid gallons (pounds)	Gas cubic feet at NTP	Solid pounds (cubic feet)	Liquid gallon (pound)
Combustible dust	NA	H-2	See Note q	NA	NA	See Note q	NA	NA	See Note q	NA
Combustible fiber ^q	Loose	H-3	(100)	NA	NA	(100)	NA	NA	(20)	NA
	Baled ^o		(1,000)			(1,000)			(200)	
Combustible liquid ^{c, i}	II	H-2 or H-3	NA	120 ^{d, e}	NA	NA	120 ^d	NA	NA	30 ^d
	IIIA	H-2 or H-3		330 ^{d, e}			330 ^d			80 ^d
	IIIB	NA		13,200 ^{e, f}			13,200 ^f			3,300
Cryogenic flammable	NA	H-2	NA	45 ^d	NA	NA	45 ^d	NA	NA	10 ^d
Cryogenic inert	NA	NA	NA	NA	NL	NA	NA	NL	NA	NA
Cryogenic oxidizing	NA	H-3	NA	45 ^d	NA	NA	45 ^d	NA	NA	10 ^d
Explosives	Division 1.1	H-1	1 ^{e, g}	(1) ^{e, g}	NA	0.25 ^g	(0.25) ^g	NA	0.25 ^g	(0.25)
	Division 1.2	H-1	1 ^{e, g}	(1) ^{e, g}		0.25 ^g	(0.25) ^g		0.25 ^g	(0.25)
	Division 1.3	H-1 or H-2	5 ^{e, g}	(5) ^{e, g}		1 ^g	(1) ^g		1 ^g	(1) ^g
	Division 1.4	H-3	50 ^{e, g}	(50) ^{e, g}		50 ^g	(50) ^g		NA	NA
	Division 1.4G	H-3	125 ^{e, l}	NA		NA	NA		NA	NA

		Division 1.5	H-1	1 ^{e, g}	(1) ^{e, g}		0.25 ^g	(0.25) ^g		0.25 ^g	(0.25)
		Division 1.6	H-1	1 ^{e, g}	NA		NA	NA		NA	NA
	Flammable gas	Gaseous	H-2	NA	NA	1,000 ^{d, e}	NA	NA	1,000 ^{d, e}	NA	NA
		Liquefied		(150) ^{d, e}	NA	(150) ^{d, e}		NA			
	Flammable liquid ^c	IA	H-2 or H-3	NA	30 ^{d, e}	NA	NA	30 ^d	NA	NA	10 ^d
		IB and IC		120 ^{d, e}	120 ^d			30 ^d			
	Flammable liquid, combination (IA, IB, IC)	NA	H-2 or H-3	NA	120 ^{d, e, h}	NA	NA	120 ^{d, h}	NA	NA	30 ^{d, f}
	Flammable solid	NA	H-3	125 ^{d, e}	NA	NA	125 ^d	NA	NA	25 ^d	NA
	Inert gas	Gaseous	NA	NA	NA	NL	NA	NA	NL	NA	NA
		Liquefied	NA	NA	NA	NL	NA	NA	NL	NA	NA
	Organic peroxide	UD	H-1	1 ^{e, g}	(1) ^{e, g}	NA	0.25 ^g	(0.25) ^g	NA	0.25 ^g	(0.25)
		I	H-2	5 ^{d, e}	(5) ^{d, e}		1 ^d	(1) ^d		1 ^d	(1) ^d
		II	H-3	50 ^{d, e}	(50) ^{d, e}		50 ^d	(50) ^d		10 ^d	(10) ^d
		III	H-3	125 ^{d, e}	(125) ^{d, e}		125 ^d	(125) ^d		25 ^d	(25) ^d
		IV	NA	NL	NL		NL	NL		NL	NL
		V	NA	NL	NL		NL	NL		NL	NL
	Oxidizer	4	H-1	1 ^g	(1) ^{e, g}	NA	0.25 ^g	(0.25) ^g	NA	0.25 ^g	(0.25)
		3 ^k	H-2 or H-3	10 ^{d, e}	(10) ^{d, e}		2 ^d	(2) ^d		2 ^d	(2) ^d
		2	H-3	250 ^{d, e}	(250) ^{d, e}		250 ^d	(250) ^d		50 ^d	(50) ^d
		1	NA	4,000 ^{e, f}	(4,000) ^{e, f}		4,000 ^f	(4,000) ^f		1,000 ^f	(1,000)
	Oxidizing gas	Gaseous	H-3	NA	NA	1,500 ^{d, e}	NA	NA	1,500 ^{d, e}	NA	NA
		Liquefied		(150) ^{d, e}	NA	(150) ^{d, e}		NA			
	Pyrophoric	NA	H-2	4 ^{e, g}	(4) ^{e, g}	50 ^{e, g}	1 ^g	(1) ^g	10 ^{e, g}	0	0
	Unstable (reactive)	4	H-1	1 ^{e, g}	(1) ^{e, g}	10 ^{e, g}	0.25 ^g	(0.25) ^g	2 ^{e, g}	0.25 ^g	(0.25)
		3	H-1 or H-2	5 ^{d, e}	(5) ^{d, e}	50 ^{d, e}	1 ^d	(1) ^d	10 ^{d, e}	1 ^d	(1) ^d
		2	H-3	50 ^{d, e}	(50) ^{d, e}	750 ^{d, e}	50 ^d	(50) ^d	750 ^{d, e}	10 ^d	(10) ^d
		1	NA	NL	NL	NL	NL	NL	NL	NL	NL
	Water reactive	3	H-2	5 ^{d, e}	(5) ^{d, e}	NA	5 ^d	(5) ^d	NA	1 ^d	(1) ^d
		2	H-3	50 ^{d, e}	(50) ^{d, e}		50 ^d	(50) ^d		10 ^d	(10) ^d
		1	NA	NL	NL		NL	NL		NL	NL

For SI: 1 cubic foot = 0.028 m³, 1 pound = 0.454 kg, 1 gallon = 3.785 L.

NL = Not Limited; NA = Not Applicable; UD = Unclassified Detonable.

- a. For use of control areas, see Section 414.2.
- b. The aggregate quantity in use and storage shall not exceed the quantity listed for storage.
- c. The quantities of alcoholic beverages in retail and wholesale sales occupancies shall not be limited provided the liquids are packaged in individual containers not exceeding 1.3 gallons. In retail and wholesale sales occupancies, the quantities of medicines, foodstuffs or consumer products, and cosmetics containing not more than 50 percent by volume of water-miscible liquids with the remainder of the solutions not being flammable, shall not be limited, provided that such materials are packaged in individual containers not exceeding 1.3 gallons.
- d. Maximum allowable quantities shall be increased 100 percent in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1. Where Note e also applies, the increase for both notes shall be applied accumulatively.
- e. Maximum allowable quantities shall be increased 100 percent when stored in approved storage cabinets, day boxes, gas cabinets, gas rooms or exhausted enclosures or in listed safety cans in accordance with Section 5003.9.10 of the *Fire Code of New York State*. Where Note d also applies, the increase for both notes shall be applied accumulatively.
- f. Quantities shall not be limited in a building equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.
- g. Allowed only in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.
- h. Containing not more than the maximum allowable quantity per control area of Class IA, IB or IC flammable liquids.
- i. The maximum allowable quantity shall not apply to fuel oil storage complying with Section 603.3.2 of the *Fire Code of New York State*.
- j. Quantities in parentheses indicate quantity units in parentheses at the head of each column.
- k. A maximum quantity of 220 pounds of solid or 22 gallons of liquid Class 3 oxidizers is allowed when such materials are necessary for maintenance purposes, operation or sanitation of equipment when the storage containers and the manner of storage are approved.
- l. Net weight of the pyrotechnic composition of the fireworks. Where the net weight of the pyrotechnic composition of the fireworks is not known, 25 percent of the gross weight of the fireworks, including packaging, shall be used.
- m. For gallons of liquids, divide the amount in pounds by 10 in accordance with Section 5003.1.2 of the *Fire Code of New York State*.
- n. For storage and display quantities in Group M and storage quantities in Group S occupancies complying with Section 414.2.5, see Tables 414.2.5(1) and 414.2.5(2).
- o. Densely packed baled cotton that complies with the packing requirements of ISO 8115 shall not be included in this material class.
- p. The following shall not be included in determining the maximum allowable quantities:
 1. Liquid or gaseous fuel in fuel tanks on vehicles.
 2. Liquid or gaseous fuel in fuel tanks on motorized equipment operated in accordance with the *Fire Code of New York State*.
 3. Gaseous fuels in piping systems and fixed appliances regulated by the *Fuel Gas Code of New York State*.
 4. Liquid fuels in piping systems and fixed appliances regulated by the *Mechanical Code of New York State*.
 5. Alcohol-based hand rubs classified as Class I or II liquids in dispensers that are installed in accordance with Sections 5705.5 and 5705.5.1 of the *Fire Code of New York State*. The location of the alcohol-based hand rub (ABHR) dispensers shall be provided in the construction documents.
- q. Where manufactured, generated or used in such a manner that the concentration and conditions create a fire or explosion hazard based on information prepared in accordance with Section 414.1.3.

[F] TABLE 307.1(2)

MAXIMUM ALLOWABLE QUANTITY PER CONTROL AREA OF HAZARDOUS MATERIALS POSING A HEALTH HAZARD^{a, c, f, h, l}

MATERIAL	STORAGE ^b			USE-CLOSED SYSTEMS ^b			USE-OPEN SYSTEMS ^b	
	Solid pounds ^{d, e}	Liquid gallons (pounds) ^{d, e}	Gas cubic feet at NTP (pounds) ^d	Solid pounds ^d	Liquid gallons (pounds) ^d	Gas cubic feet at NTP (pounds) ^d	Solid pounds ^d	Liquid gallons (pounds) ^d
Corrosives	5,000	500	Gaseous 810 ^g Liquefied (150)	5,000	500	Gaseous 810 ^g Liquefied (150)	1,000	100
Highly Toxic	10	(10)	Gaseous 20 ^g Liquefied (4) ^g	10	(10)	Gaseous 20 ^g Liquefied (4) ^g	3	(3)
Toxic	500	(500)	Gaseous 810 ^g Liquefied (150) ^g	500	(500)	Gaseous 810 ^g Liquefied (150) ^g	125	(125)

For SI: 1 cubic foot = 0.028 m³, 1 pound = 0.454 kg, 1 gallon = 3.785 L.

- a. For use of control areas, see Section 414.2.
- b. The aggregate quantity in use and storage shall not exceed the quantity listed for storage.
- c. In retail and wholesale sales occupancies, the quantities of medicines, foodstuffs or consumer products, and cosmetics containing not more than 50 percent by volume of water-miscible liquids and with the remainder of the solutions not being flammable, shall not be limited, provided that such materials are packaged in individual containers not exceeding 1.3 gallons.
- d. Maximum allowable quantities shall be increased 100 percent in buildings equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1. Where Note e also applies, the increase for both notes shall be applied accumulatively.
- e. Maximum allowable quantities shall be increased 100 percent where stored in approved storage cabinets, gas cabinets or exhausted enclosures as specified in the *Fire Code of New York State*. Where Note d also applies, the increase for both notes shall be applied accumulatively.
- f. For storage and display quantities in Group M and storage quantities in Group S occupancies complying with Section 414.2.5, see Tables 414.2.5(1) and 414.2.5(2).
- g. Allowed only where stored in approved exhausted gas cabinets or exhausted enclosures as specified in the *Fire Code of New York State*.
- h. Quantities in parentheses indicate quantity units in parentheses at the head of each column.
- i. For gallons of liquids, divide the amount in pounds by 10 in accordance with Section 5003.1.2 of the *Fire Code of New York State*.

[F] 307.1.1 Uses other than Group H.

An occupancy that stores, uses or handles hazardous materials as described in one or more of the following items shall not be classified as Group H, but shall be classified as the occupancy that it most nearly resembles.

Buildings and structures occupied for the application of flammable finishes, provided that such buildings or areas conform to the requirements of [Section 416](#) and the [Fire Code of New York State](#).

Wholesale and retail sales and storage of flammable and combustible liquids in mercantile occupancies conforming to the [Fire Code of New York State](#).

Closed piping system containing flammable or combustible liquids or gases utilized for the operation of machinery or equipment.

Cleaning establishments that utilize combustible liquid solvents having a flash point of 140°F (60°C) or higher in closed systems employing equipment *listed* by an *approved* testing agency, provided that this occupancy is separated from all other areas of the building by 1-hour *fire barriers* constructed in accordance with [Section 707](#) or 1-hour *horizontal assemblies* constructed in accordance with [Section 711](#), or both.

Cleaning establishments that utilize a liquid solvent having a flash point at or above 200°F (93°C).

Liquor stores and distributors without bulk storage.

Refrigeration systems.

The storage or utilization of materials for agricultural purposes on the premises.

Stationary storage battery systems installed in accordance with the [Fire Code of New York State](#).

Corrosive personal or household products in their original packaging used in retail display.

Commonly used corrosive building materials.

Buildings and structures occupied for aerosol product storage shall be classified as Group S-1, provided that such buildings conform to the requirements of the [Fire Code of New York State](#).

Display and storage of nonflammable solid and nonflammable or noncombustible liquid hazardous materials in quantities not exceeding the maximum allowable quantity per *control area* in Group M or S occupancies complying with [Section 414.2.5](#).

The storage of black powder, smokeless propellant and small arms primers in Groups M and R-3 and special industrial explosive devices in Groups B, F, M and S, provided such storage conforms to the quantity limits and requirements prescribed in the [Fire Code of New York State](#).

Stationary fuel cell power systems installed in accordance with the [Fire Code of New York State](#).

Capacitor energy storage systems in accordance with the [Fire Code of New York State](#).

Group B higher education laboratory occupancies complying with [Section 428](#) and [Chapter 38](#) of the [Fire Code of New York State](#).

[F] 307.2 Hazardous materials.

Hazardous materials in any quantity shall conform to the requirements of this code, including [Section 414](#), and the [Fire Code of New York State](#).

[F] 307.3 High-hazard Group H-1.

Buildings and structures containing materials that pose a detonation hazard shall be classified as Group H-1. Such materials shall include, but not be limited to, the following:

- Detonable pyrophoric materials
- Explosives:
 - Division 1.1
 - Division 1.2
 - Division 1.3
 - Division 1.4
 - Division 1.5
 - Division 1.6

- Organic peroxides, unclassified detonable
- Oxidizers, Class 4
- Unstable (reactive) materials, Class 3 detonable and Class 4

[F] 307.3.1 Occupancies containing explosives not classified as H-1.

The following occupancies containing explosive materials shall be classified as follows:

1. Division 1.3 explosive materials that are used and maintained in a form where either confinement or configuration will not elevate the hazard from a mass fire to mass explosion hazard shall be allowed in H-2 occupancies.
2. Articles, including articles packaged for shipment, that are not regulated as a Division 1.4 explosive under Bureau of Alcohol, Tobacco, Firearms and Explosives regulations, or unpackaged articles used in process operations that do not propagate a detonation or deflagration between articles shall be allowed in H-3 occupancies.

[F] 307.4 High-hazard Group H-2.

Buildings and structures containing materials that pose a deflagration hazard or a hazard from accelerated burning shall be classified as Group H-2. Such materials shall include, but not be limited to, the following:

- Class I, II or IIIA flammable or combustible liquids that are used or stored in normally open containers or systems, or in closed containers or systems pressurized at more than 15 pounds per square inch gauge (103.4 kPa).

Combustible dusts where manufactured, generated or used in such a manner that the concentration and conditions create a fire or explosion hazard based on information prepared in accordance with [Section 414.1.3](#).

- Cryogenic fluids, flammable.
- Flammable gases.
- Organic peroxides, Class I.
- Oxidizers, Class 3, that are used or stored in normally open containers or systems, or in closed containers or systems pressurized at more than 15 pounds per square inch gauge (103 kPa).
- Pyrophoric liquids, solids and gases, nondetonable.
- Unstable (reactive) materials, Class 3, nondetonable.
- Water-reactive materials, Class 3.

[F] 307.5 High-hazard Group H-3.

Buildings and structures containing materials that readily support combustion or that pose a physical hazard shall be classified as Group H-3. Such materials shall include, but not be limited to, the following:

- Class I, II or IIIA flammable or combustible liquids that are used or stored in normally closed containers or systems pressurized at 15 pounds per square inch gauge (103.4 kPa) or less.

Combustible fibers, other than densely packed baled cotton, where manufactured, generated or used in such a manner that the concentration and conditions create a fire or explosion hazard based on information prepared in accordance with [Section 414.1.3](#).

- Consumer fireworks, 1.4G (Class C, Common)
- Cryogenic fluids, oxidizing
- Flammable solids
- Organic peroxides, Class II and III
- Oxidizers, Class 2
- Oxidizers, Class 3, that are used or stored in normally closed containers or systems pressurized at 15 pounds per square inch gauge (103 kPa) or less
- Oxidizing gases
- Unstable (reactive) materials, Class 2

- Water-reactive materials, Class 2

[F] 307.6 High-hazard Group H-4.

Buildings and structures containing materials that are health hazards shall be classified as Group H-4. Such materials shall include, but not be limited to, the following:

- Corrosives
- Highly toxic materials
- Toxic materials

[F] 307.7 High-hazard Group H-5.

Semiconductor fabrication facilities and comparable research and development areas in which hazardous production materials (HPM) are used and the aggregate quantity of materials is in excess of those listed in [Tables 307.1\(1\)](#) and [307.1\(2\)](#) shall be classified as Group H-5. Such facilities and areas shall be designed and constructed in accordance with [Section 415.11](#).

[F] 307.8 Multiple hazards.

Buildings and structures containing a material or materials representing hazards that are classified in one or more of Groups H-1, H-2, H-3 and H-4 shall conform to the code requirements for each of the occupancies so classified.

SECTION 308

INSTITUTIONAL GROUP I

308.1 Institutional Group I.

Institutional Group I occupancy includes, among others, the use of a building or structure, or a portion thereof, in which care or supervision is provided to persons who are or are not capable of self-preservation without physical assistance or in which persons are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Institutional occupancies shall be classified as Group I-1, I-2, I-3 or I-4.

308.2 Institutional Group I-1.

Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1 shall be classified as one of the occupancy conditions specified in [Section 308.2.1](#) or [308.2.2](#). This group shall include, but not be limited to, the following:

- Alcohol and drug centers
- Assisted living facilities
- Congregate care facilities
- *Group homes*
- Halfway houses
- Residential board and care facilities
- Social rehabilitation facilities

308.2.1 Condition 1.

This occupancy condition shall include buildings in which all persons receiving custodial care who, without any assistance, are capable of responding to an emergency situation to complete building evacuation.

308.2.2 Condition 2.

This occupancy condition shall include buildings in which there are any persons receiving custodial care who require limited verbal or physical assistance while responding to an emergency situation to complete building evacuation.

308.2.3 Six to 16 persons receiving custodial care.

A facility housing not fewer than six and not more than 16 persons receiving custodial care shall be classified as Group

308.2.4 Five or fewer persons receiving custodial care.

A facility with five or fewer persons receiving custodial care shall be classified as Group R-3 or shall comply with the [Residential Code of New York State](#) provided an *automatic sprinkler system* is installed in accordance with [Section 903.3.1.3](#) or [Section P2904](#) of the *Residential Code of New York State*.

308.3 Institutional Group I-2.

Institutional Group I-2 occupancy shall include buildings and structures used for *medical care* on a 24-hour basis for more than five persons who are *incapable of self-preservation*. This group shall include, but not be limited to, the following:

- *Foster care facilities*
- *Detoxification facilities*
- *Hospitals*
- *Nursing homes*
- *Psychiatric hospitals*

308.3.1 Occupancy conditions.

Buildings of Group I-2 shall be classified as one of the occupancy conditions specified in [Section 308.3.1.1](#) or [308.3.1.2](#).

308.3.1.1 Condition 1.

This occupancy condition shall include facilities that provide nursing and medical care but do not provide emergency care, surgery, obstetrics or in-patient stabilization units for psychiatric or detoxification, including but not limited to nursing homes and foster care facilities.

308.3.1.2 Condition 2.

This occupancy condition shall include facilities that provide nursing and medical care and could provide emergency care, surgery, obstetrics or in-patient stabilization units for psychiatric or detoxification, including but not limited to hospitals.

308.3.2 Five or fewer persons receiving medical care.

A facility with five or fewer persons receiving medical care shall be classified as Group R-3 or shall comply with the [Residential Code of New York State](#) provided an *automatic sprinkler system* is installed in accordance with [Section 903.3.1.3](#) or [Section P2904](#) of the *Residential Code of New York State*.

308.4 Institutional Group I-3.

Institutional Group I-3 occupancy shall include buildings and structures that are inhabited by more than five persons who are under restraint or security. A Group I-3 facility is occupied by persons who are generally *incapable of self-preservation* due to security measures not under the occupants' control. This group shall include, but not be limited to, the following:

- Correctional centers
- Detention centers
- Jails
- Prerelease centers
- Prisons
- Reformatories

Buildings of Group I-3 shall be classified as one of the occupancy conditions specified in [Sections 308.4.1](#) through [308.4.5](#) (see [Section 408.1](#)).

308.4.1 Condition 1.

This occupancy condition shall include buildings in which free movement is allowed from sleeping areas, and other spaces where access or occupancy is permitted, to the exterior via *means of egress* without restraint. A Condition 1 facility is permitted to be constructed as Group R.

308.4.2 Condition 2.

This occupancy condition shall include buildings in which free movement is allowed from sleeping areas and any other occupied *smoke compartment* to one or more other *smoke compartments*. Egress to the exterior is impeded by locked *exits*.

308.4.3 Condition 3.

This occupancy condition shall include buildings in which free movement is allowed within individual *smoke compartments*, such as within a residential unit comprised of individual *sleeping units* and group activity spaces, where egress is impeded by remotecontrolled release of *means of egress* from such a *smoke compartment* to another *smoke compartment*.

308.4.4 Condition 4.

This occupancy condition shall include buildings in which free movement is restricted from an occupied space. Remote-controlled release is provided to permit movement from *sleeping units*, activity spaces and other occupied areas within the *smoke compartment* to other *smoke compartments*.

308.4.5 Condition 5.

This occupancy condition shall include buildings in which free movement is restricted from an occupied space. Staff-controlled manual release is provided to permit movement from *sleeping units*, activity spaces and other occupied areas within the *smoke compartment* to other *smoke compartments*.

308.5 Institutional Group I-4, day care facilities.

Institutional Group I-4 occupancy shall include buildings and structures occupied by more than five persons of any age who receive *custodial care* for fewer than 24 hours per day by persons other than parents or guardians, relatives by blood, marriage or adoption, and in a place other than the home of the person cared for. This group shall include, but not be limited to, the following:

- Adult day care
- Child day care

308.5.1 Classification as Group E.

A child day care facility that provides care for more than five but not more than 100 children 2¹/₂ years or less of age, where the rooms in which the children are cared for are located on a *level of exit discharge* serving such rooms and each of these child care rooms has an *exit* door directly to the exterior, shall be classified as Group E.

308.5.2 Within a place of religious worship.

Rooms and spaces within *places of religious worship* providing such care during religious functions shall be classified as part of the primary occupancy.

308.5.3 Five or fewer persons receiving care.

A facility having five or fewer persons receiving *custodial care* shall be classified as part of the primary occupancy.

308.5.4 Five or fewer persons receiving care in a dwelling unit.

A facility such as the above within a *dwelling unit* and having five or fewer persons receiving *custodial care* shall be classified as a Group R-3 occupancy or shall comply with the [*Residential Code of New York State*](#).

SECTION 309

MERCANTILE GROUP M

309.1 Mercantile Group M.

Mercantile Group M occupancy includes, among others, the use of a building or structure or a portion thereof for the display and sale of merchandise, and involves stocks of goods, wares or merchandise incidental to such purposes and accessible to the public. Mercantile occupancies shall include, but not be limited to, the following:

- Department stores
- Drug stores
- Markets
- Greenhouses for display and sale of plants that provide public access.
- Motor fuel-dispensing facilities

- Retail or wholesale stores
- Sales rooms

309.2 Quantity of hazardous materials.

The aggregate quantity of nonflammable solid and nonflammable or noncombustible liquid hazardous materials stored or displayed in a single *control area* of a Group M occupancy shall not exceed the quantities in [Table 414.2.5\(1\)](#).

SECTION 310

RESIDENTIAL GROUP R

310.1 Residential Group R.

Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the [Residential Code of New York State](#).

310.2 Residential Group R-1.

Residential Group R-1 occupancies containing *sleeping units* where the occupants are primarily *transient* in nature, including:

- *Boarding houses (transient)* with more than 10 occupants
- *Congregate living facilities (transient)* with more than 10 occupants
- Hotels (*transient*)
- Motels (*transient*)

310.3 Residential Group R-2.

Residential Group R-2 occupancies containing *sleeping units* or more than two *dwelling units* where the occupants are primarily permanent in nature, including:

- Apartment houses
- *Congregate living facilities* (nontransient) with more than 16 occupants
 - *Boarding houses (nontransient)*
 - Convents
 - *Dormitories*
 - Fraternities and sororities
 - Monasteries
- Hotels (nontransient)
- *Live/work units*
- Motels (nontransient)
- Vacation timeshare properties

310.4 Residential Group R-3.

Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:

- Buildings that do not contain more than two *dwelling units*
- Care facilities that provide accommodations for five or fewer persons receiving care
- *Congregate living facilities* (nontransient) with 16 or fewer occupants
 - *Boarding houses (nontransient)*
 - Convents
 - *Dormitories*
 - Fraternities and sororities
 - Monasteries
- *Congregate living facilities (transient)* with 10 or fewer occupants

- *Boarding houses (transient)*
- *Lodging houses (transient)* with five or fewer *guest rooms* and 10 or fewer occupants

310.4.1 Care facilities within a dwelling.

Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the [Residential Code of New York State](#) provided an *automatic sprinkler system* is installed in accordance with [Section 903.3.1.3](#) or [Section P2904](#) of the *Residential Code of New York State*.

310.4.2 Lodging houses.

Owner-occupied *lodging houses* with five or fewer *guest rooms* and 10 or fewer total occupants shall be permitted to be constructed in accordance with the [Residential Code of New York State](#).

310.5 Residential Group R-4.

Residential Group R-4 occupancy shall include buildings, structures or portions thereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised residential environment and receive *custodial care*. Buildings of Group R-4 shall be classified as one of the occupancy conditions specified in [Section 310.5.1](#) or [310.5.2](#). This group shall include, but not be limited to, the following:

- Alcohol and drug centers
- Assisted living facilities
- Congregate care facilities
- *Group homes*
- Halfway houses
- Residential board and care facilities
- Social rehabilitation facilities

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code.

310.5.1 Condition 1.

This occupancy condition shall include buildings in which all persons receiving custodial care, without any assistance, are capable of responding to an emergency situation to complete building evacuation.

310.5.2 Condition 2.

This occupancy condition shall include buildings in which there are any persons receiving custodial care who require limited verbal or physical assistance while responding to an emergency situation to complete building evacuation.

SECTION 311

STORAGE GROUP S

311.1 Storage Group S.

Storage Group S occupancy includes, among others, the use of a building or structure, or a portion thereof, for storage that is not classified as a hazardous occupancy.

311.1.1 Accessory storage spaces.

A room or space used for storage purposes that is accessory to another occupancy shall be classified as part of that occupancy.

311.2 Moderate-hazard storage, Group S-1.

Storage Group S-1 occupancies are buildings occupied for storage uses that are not classified as Group S-2, including, but not limited to, storage of the following:

- Aerosol products, Levels 2 and 3
- Aircraft hangar (storage and repair)
- Bags: cloth, burlap and paper
- Bamboos and rattan

- Baskets
- Belting: canvas and leather
- Books and paper in rolls or packs
- Boots and shoes
- Buttons, including cloth covered, pearl or bone
- Cardboard and cardboard boxes
- Clothing, woolen wearing apparel
- Cordage
- Dry boat storage (indoor)
- Furniture
- Furs
- Glues, mucilage, pastes and size
- Grains
- Horns and combs, other than celluloid
- Leather
- Linoleum
- Lumber

Motor vehicle repair garages complying with the maximum allowable quantities of hazardous materials listed in [Table 307.1\(1\)](#) (see [Section 406.8](#))

- Photo engravings
- Resilient flooring
- Self-service storage facility (mini-storage)
- Silks
- Soaps
- Sugar
- Tires, bulk storage of
- Tobacco, cigars, cigarettes and snuff
- Upholstery and mattresses
- Wax candles

311.3 Low-hazard storage, Group S-2.

Storage Group S-2 occupancies include, among others, buildings used for the storage of noncombustible materials such as products on wood pallets or in paper cartons with or without single thickness divisions; or in paper wrappings. Such products are permitted to have a negligible amount of plastic *trim*, such as knobs, handles or film wrapping. Group S-2 storage uses shall include, but not be limited to, storage of the following:

- Asbestos
- Beverages up to and including 16-percent alcohol in metal, glass or ceramic containers
- Cement in bags
- Chalk and crayons
- Dairy products in nonwaxed coated paper containers
- Dry cell batteries
- Electrical coils
- Electrical motors
- Empty cans
- Food products
- Foods in noncombustible containers
- Fresh fruits and vegetables in nonplastic trays or containers

- Frozen foods
- Glass
- Glass bottles, empty or filled with noncombustible liquids
- Gypsum board
- Inert pigments
- Ivory
- Meats
- Metal cabinets
- Metal desks with plastic tops and *trim*
- Metal parts
- Metals
- Mirrors
- Oil-filled and other types of distribution transformers
- Parking garages, open or enclosed
- Porcelain and pottery
- Stoves
- Talc and soapstones
- Washers and dryers

SECTION 312

UTILITY AND MISCELLANEOUS GROUP U

[NY] 312.1 General.

Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy. Group U shall include, but not be limited to, the following:

- Agricultural buildings

Aircraft hangars, accessory to a one- or two-family residence (see [Section 412.4](#))

- Barns
- Carports
- Communication equipment structures with a *gross floor area* of less than 1,500 square feet (139 m²)
- Fences more than 6 feet (1829 mm) in height
- Grain silos, accessory to a residential occupancy

- *Live fire training facilities*
- Livestock shelters
- Private garages
- Retaining walls
- Sheds
- Stables
- Tanks
- Towers

312.1.1 Greenhouses.

Greenhouses not classified as another occupancy shall be classified as Use Group U.

8. NYS Building Code 2020

c. Chapter 11 Accessibility

TABLE 1107.6.1.1

ACCESSIBLE DWELLING UNITS AND SLEEPING UNITS

TOTAL NUMBER OF UNITS PROVIDED	MINIMUM REQUIRED NUMBER OF ACCESSIBLE UNITS WITHOUT ROLL-IN SHOWERS	MINIMUM REQUIRED NUMBER OF ACCESSIBLE UNITS WITH ROLL-IN SHOWERS	TOTAL NUMBER OF REQUIRED ACCESSIBLE UNITS
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1,000	2% of total	1% of total	3% of total
Over 1,000	20, plus 1 for each 100, or fraction thereof, over 1,000	10 plus 1 for each 100, or fraction thereof, over 1,000	30 plus 2 for each 100, or fraction thereof, over 1,000

1107.7 General Exceptions

Where specifically permitted by Section 1107.5 or 1107.6, the required number of Type A units and Type B units is permitted to be reduced in accordance with Sections 1107.7.1 through 1107.7.5.

1107.7.1 Structures Without Elevator Service

Where elevator service is not provided in a structure, only the dwelling units and sleeping units that are located on stories indicated in Sections 1107.7.1.1 and 1107.7.1.2 are required to be Type A units and Type B units, respectively. The number of Type A units shall be determined in accordance with Section 1107.6.2.2.1.

1107.7.1.1 One Story With Type B Units Required

At least one story containing dwelling units or sleeping units intended to be occupied as a residence shall be provided with an accessible entrance from the exterior of the structure and all units intended to be occupied as a residence on that story shall be Type B units.

1107.7.1.2 Additional Stories With Type B Units

Where stories have entrances not included in determining compliance with Section 1107.7.1.1, and such entrances are proximate to arrival points intended to serve units on that story, as indicated in Items 1 and 2, all dwelling units and sleeping units intended to be occupied as a residence served by that entrance on that story shall be Type B units. Where the slopes of the undisturbed site measured between the planned entrance and all vehicular or pedestrian arrival points within 50 feet (15 240 mm) of the planned entrance are 10 percent or less. Where the slopes of the planned finished grade measured between the entrance and all vehicular or pedestrian arrival points within 50 feet (15 240 mm) of the planned entrance are 10 percent or less. Where arrival points are not within 50 feet (15 240 mm) of the entrance, the closest arrival point shall be used to determine access unless that arrival point serves the story required by Section 1107.7.1.1.

1107.7.2 Multistory Units

A multistory dwelling unit or sleeping unit that is not provided with elevator service is not required to be a Type B unit. Where a multistory unit is provided with external elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B unit and, where provided within the unit, a living area, a kitchen and a toilet facility shall be provided on that floor.

1107.7.3 Elevator Service to the Lowest Story With Units

Where elevator service in the building provides an accessible route only to the lowest story containing dwelling units or sleeping units intended to be occupied as a residence, only the units on that story that are intended to be occupied as a residence are required to be Type B units.

1107.7.4 Site Impracticability

On a site with multiple nonelevator buildings, the number of units required by Section 1107.7.1 to be Type B units is permitted to be reduced to a percentage that is equal to the percentage of the entire site having grades, prior to development, that are less than 10 percent, provided that all of the following conditions are met: Not less than 20 percent of the units required by Section 1107.7.1 on the site are Type B units. Units required by Section 1107.7.1, where the slope between the building entrance serving the units on that story and a pedestrian or vehicular arrival point is not greater than 8.33 percent, are Type B units. Units required by Section 1107.7.1, where an elevated walkway is planned between a building entrance serving the units on that story and a pedestrian or vehicular arrival point and the slope between them is 10 percent or less, are Type B units. Units served by an elevator in accordance with Section 1107.7.3 are Type B units.

1107.7.5 Design Flood Elevation

The required number of Type A units and Type B units shall not apply to a site where the required elevation of the lowest floor or the lowest horizontal structural building members of nonelevator buildings are at or above the design flood elevation resulting in all of the following: A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding

30 inches (762 mm).A slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm).Where such arrival points are not within 50 feet (15 240 mm) of the primary entrances, the closest arrival points shall be used.

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d. Chapter 12 Interior Environment

1207.1 Minimum Room Widths

Habitable spaces, other than a kitchen, shall be not less than 7 feet (2134 mm) in any plan dimension. Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.

1207.2 Minimum Ceiling Heights

Occupiable spaces, habitable spaces and corridors shall have a ceiling height of not less than 7 feet 6 inches (2286 mm) above the finished floor. Bathrooms, toilet rooms, kitchens, storage rooms and laundry rooms shall have a ceiling height of not less than 7 feet (2134 mm) above the finished floor.

Exceptions:

1. In one- and two-family dwellings, beams or girders spaced not less than 4 feet (1219 mm) on center shall be permitted to project not more than 6 inches (152 mm) below the required ceiling height.
2. If any room in a building has a sloped ceiling, the prescribed ceiling height for the room is required in one-half the area thereof. Any portion of the room measuring less than 5 feet (1524 mm) from the finished floor to the ceiling shall not be included in any computation of the minimum area thereof.
3. The height of mezzanines and spaces below mezzanines shall be in accordance with Section 505.2.
4. Corridors contained within a dwelling unit or sleeping unit in a Group R occupancy shall have a ceiling height of not less than 7 feet (2134 mm) above the finished floor.

1207.2.1 Furred Ceiling

Any room with a furred ceiling shall be required to have the minimum ceiling height in two-thirds of the area thereof, but in no case shall the height of the furred ceiling be less than 7 feet (2134 mm).

NY BC 1207.3 Room Area ('20)

Every dwelling unit shall have not less than one room that shall have not less than 120 square feet (11.2 m²) of net floor area. Other habitable rooms shall have a net floor area of not less than 70 square feet (6.5 m²).

Exception: Kitchens are not required to be of a minimum floor area.

NY BC 1207.4

An efficiency living unit shall conform to the requirements of the code except as modified herein:

1. The unit shall have a living room of not less than 220 square feet (20.4 m²) of floor area. An additional 100 square feet (9.3 m²) of floor area shall be provided for each occupant of such unit in excess of two.
2. The unit shall be provided with a separate closet.
3. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches (762 mm) in front. Light and ventilation conforming to this code shall be provided.
4. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

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e. Chapter 16 Structural Design

SECTION 1612 FLOOD LOADS

1612.1 General.

Within *flood hazard areas* as established in [Section 1612.3](#), all new construction of buildings, structures and portions of buildings and structures, including substantial improvement and restoration of substantial damage to buildings and structures, shall be designed and constructed to resist the effects of flood hazards and flood loads. For buildings that are located in more than one *flood hazard area*, the provisions associated with the most restrictive *flood hazard area* shall apply.

1612.2 Design and construction.

The design and construction of buildings and structures located in *flood hazard areas*, including *coastal high hazard areas* and *coastal A zones*, shall be in accordance with Chapter 5 of [ASCE 7](#) and [ASCE 24](#).

ASCE 7 and [ASCE 24](#) .” data-bookmark= “” class=”section-action-wrapper v-card v-sheet theme--light v-card--flat pa-3 my-2 border border-transparent rounded-lg”>

1612.2.1 [ASCE 7](#) and [ASCE 24](#).

The design flood elevation (DFE) specified in [ASCE 7](#) and [ASCE 24](#) shall be the design flood elevation determined in accordance with [Sections 1612.3](#) through [1612.3.1.1](#).

1612.3 Establishment of flood hazard areas.

To establish flood hazard areas, each community regulated under Title 19, Part 1203 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at a minimum, the special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Study for the community, as amended or revised with:

1. The accompanying Flood Insurance Rate Map (FIRM),
2. The Flood Boundary and Floodway Map (FBFM), and
3. Related supporting data along with any revisions thereto.

The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

1612.3.1 Design flood elevations.

Where design flood elevations are not included in the *flood hazard areas* established in [Section 1612.3](#), or where floodways are not designated, the *building official* is authorized to require the applicant to do one of the following:

1. Obtain and reasonably utilize any design flood elevation (DFE) and floodway data available from a federal, state or other source.
2. Determine the design flood elevation or floodway in accordance with accepted hydrologic and hydraulic

engineering practices used to define special flood hazard areas. Determinations shall be undertaken by a *registered design professional* who shall document that the technical methods used reflect currently accepted engineering practice.

Exception: Where it is not possible to obtain a design flood elevation in accordance with [Section 1612.3.1](#), Items 1 and 2, the design flood elevation shall be 3 feet (914 mm) above the highest adjacent grade, where the highest adjacent grade is the natural ground elevation within the perimeter of the proposed building prior to construction.

1612.3.1.1 Freeboard.

The design flood elevation for the design and construction of buildings and structures shall be determined in accordance with [Sections 1612.3](#) through [1612.3.1](#), as applicable, plus a freeboard of 2 feet (610 mm).

Exception: Freeboard is not required when the exception to [1612.3.1](#) is applied.

1612.3.2 Determination of impacts.

In riverine *flood hazard areas* where design flood elevations are specified but floodways have not been designated, the applicant shall provide a floodway analysis that demonstrates that the proposed work will not increase the design flood elevation more than 1 foot (305 mm) at any point within the jurisdiction of the applicable governing authority. For the purpose of applying this section, the design flood elevation shall be the elevation established in accordance with [Sections 1612.3](#) through [1612.3.1](#) and shall not include the application of freeboard.

1612.4 Flood hazard documentation.

The following documentation shall be prepared and sealed by a *registered design professional* and submitted to the *building official*:

1. 1. For construction in *flood hazard areas* other than *coastal high hazard areas* or *coastal A zones*:
 - 1.1. The elevation of the lowest floor, including the basement, as required in [Section 106.2.6.2](#).
 - 1.2. For fully enclosed areas below the design flood elevation where provisions to allow for the automatic entry and exit of floodwaters do not meet the minimum requirements in Section 2.7.2.1 of [ASCE 24](#), *construction documents* shall include a statement that the design will provide for equalization of hydrostatic flood forces in accordance with Section 2.7.2.2 of [ASCE 24](#).
 - 1.3. For dry floodproofed nonresidential buildings, *construction documents* shall include a statement that the dry floodproofing is designed in accordance with [ASCE 24](#).
2. 2. For construction in *coastal high hazard areas* and *coastal A zones*:
 - 2.1. The elevation of the bottom of the lowest horizontal structural member as required in [Section 106.2.6.2](#).
 - 2.2. *Construction documents* shall include a statement that the building is designed in accordance with [ASCE 24](#), including that the pile or column foundation and building or structure to be attached thereto is designed to be anchored to resist flotation, collapse and lateral movement due to the effects of wind and flood loads acting simultaneously on all building components, and other load requirements of [Chapter 16](#).
 - 2.3. For breakaway walls designed to have a resistance of more than 20 psf (0.96 kN/m²) determined using allowable stress design, *construction documents* shall include a statement that the breakaway wall is designed in accordance with [ASCE 24](#).

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f. Appendix G Flood-Resistant Construction

SECTION G101

ADMINISTRATION

G101.1 Purpose.

The purpose of this appendix is to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific *flood hazard areas* through the establishment of comprehensive regulations for management of *flood hazard areas* designed to:

1. Prevent unnecessary disruption of commerce, access and public service during times of flooding.
2. Manage the alteration of natural flood plains, stream channels and shorelines.
3. Manage filling, grading, dredging and other development that may increase flood damage or erosion potential.
4. Prevent or regulate the construction of flood barriers that will divert floodwaters or that can increase flood hazards.
5. Contribute to improved construction techniques in the flood plain.

G101.2 Objectives.

The objectives of this appendix are to protect human life, minimize the expenditure of public money for flood control projects, minimize the need for rescue and relief efforts associated with flooding, minimize prolonged business interruption, minimize damage to public facilities and utilities, help maintain a stable tax base by providing for the sound use and development of flood-prone areas, contribute to improved construction techniques in the flood plain and ensure that potential owners and occupants are notified that property is within *flood hazard areas*.

G101.3 Scope.

The provisions of this appendix shall apply to all proposed development in a *flood hazard area* established in [Section 1612](#) of this code, including certain building work exempt from permit under [Section 105.2](#).

G101.4 Violations.

Any violation of a provision of this appendix, or failure to comply with a *permit* or variance issued pursuant to this appendix or any requirement of this appendix, shall be handled in accordance with Section 114.

SECTION G102

APPLICABILITY

G102.1 General.

This appendix, in conjunction with this code, provides minimum requirements for development located in flood hazard areas, including:

1. The subdivision of land.
2. Site improvements and installation of utilities.
3. Placement and replacement of manufactured homes.
4. Placement of recreational vehicles.
5. New construction and repair, reconstruction, rehabilitation or additions to new construction.
6. Substantial improvement of existing buildings and structures, including restoration after damage.
7. Installation of tanks.
8. Temporary structures.
9. Temporary or permanent storage, utility and miscellaneous Group U buildings and structures.

10. Certain building work exempt from permit under [Section 105.2](#) and other buildings and development activities.

G102.2 Establishment of flood hazard areas.

Flood hazard areas are established in [Section 1612.3](#) of this code, adopted by the applicable governing authority on [INSERT DATE].

SECTION G103

POWERS AND DUTIES

G103.1 Permit applications.

All applications for permits must comply with the following:

1. The *building official* shall review all *permit* applications to determine whether proposed development is located in *flood hazard areas* established in [Section G102.2](#).
2. Where a proposed development site is in a *flood hazard area*, all development to which this appendix is applicable as specified in [Section G102.1](#) shall be designed and constructed with methods, practices and materials that minimize *flood* damage and that are in accordance with this code and [ASCE](#) 24.

G103.2 Other permits.

It shall be the responsibility of the *building official* to ensure that approval of a proposed development shall not be given until proof that necessary permits have been granted by federal or state agencies having jurisdiction over such development.

G103.3 Determination of design flood elevations.

If design flood elevations are not specified, the *building official* is authorized to require the applicant to meet one of the following:

1. Obtain, review and reasonably utilize data available from a federal, state or other source.
2. Determine the design flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques. Such analyses shall be performed and sealed by a *registered design professional*. Studies, analyses and computations shall be submitted in sufficient detail to allow review and approval by the *building official*. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

G103.4 Activities in riverine flood hazard areas.

In riverine *flood hazard areas* where design flood elevations are specified but *floodways* have not been designated, the *building official* shall not permit any new construction, substantial improvement or other development, including fill, unless the applicant submits an engineering analysis prepared by a *registered design professional*, demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated *flood hazard area* encroachment, will not increase the design flood elevation more than 1 foot (305 mm) at any point within the community.

G103.5 Floodway encroachment.

Prior to issuing a *permit* for any *floodway* encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the *building official* shall require submission of a certification, prepared by a *registered design professional*, along with supporting technical data, demonstrating that such development will not cause any increase of the base flood level.

G103.5.1 Floodway revisions.

A *floodway* encroachment that increases the level of the base flood is authorized if the applicant has applied for a conditional Flood Insurance Rate Map (FIRM) revision and has received the approval of the Federal Emergency Management Agency (FEMA).

G103.6 Watercourse alteration.

Prior to issuing a *permit* for any alteration or relocation of any watercourse, the *building official* shall require the applicant to provide notification of the proposal to the appropriate authorities of all adjacent government jurisdictions, as well as appropriate state agencies. A copy of the notification shall be maintained in the permit records and submitted to FEMA.

G103.6.1 Engineering analysis.

The *building official* shall require submission of an engineering analysis, prepared by a *registered design professional*, demonstrating that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased. Such watercourses shall be maintained in a manner that preserves the channel's flood-carrying capacity.

G103.7 Alterations in coastal areas.

Prior to issuing a *permit* for any alteration of sand dunes and mangrove stands in coastal high-hazard areas and coastal A zones, the *building official* shall require submission of an engineering analysis, prepared by a *registered design professional*, demonstrating that the proposed alteration will not increase the potential for flood damage.

G103.8 Records.

The *building official* shall maintain a permanent record of all *permits* issued in *flood hazard areas*, including supporting certifications and documentation required by this appendix and copies of inspection reports, design certifications and documentation of elevations required in [Section 1612](#) of this code and [Section R322](#) of the Residential Code of New York State.

G103.9 Inspections.

Development for which a *permit* under this appendix is required shall be subject to inspection. The *building official* or the *building official's* designee shall make, or cause to be made, inspections of all development in *flood hazard areas* authorized by issuance of a *permit* under this appendix.

SECTION G104 PERMITS

G104.1 Required.

Any person, owner or owner's authorized agent who intends to conduct any development in a *flood hazard area* shall first make application to the *building official* and shall obtain the required *permit*.

G104.2 Application for permit.

The applicant shall file an application in writing on a form furnished by the *building official*. Such application shall:

1. 1. Identify and describe the development to be covered by the *permit*.
2. 2. Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitely locate the site.
3. 3. Include a site plan showing the delineation of *flood hazard areas*, *floodway* boundaries, flood zones, design flood elevations, ground elevations, proposed fill and excavation and drainage patterns and facilities.
4. Include in subdivision proposals and other proposed developments with more than 50 lots or larger than 5 acres (20 234 m²), base flood elevation data in accordance with [Section 1612.3.1](#) if such data are not identified for the *flood hazard areas* established in [Section G102.2](#).
5. Indicate the use and occupancy for which the proposed development is intended.
6. Be accompanied by construction documents, grading and filling plans and other information deemed appropriate by the *building official*.
7. State the valuation of the proposed work.
4. 8. Be signed by the applicant or the applicant's authorized agent.

G104.3 Validity of permit.

The issuance of a *permit* under this appendix shall not be construed to be a *permit* for, or approval of, any violation of this appendix or any other ordinance of the jurisdiction. The issuance of a *permit* based on submitted documents and information shall not prevent the *building official* from requiring the correction of errors. The *building official* is authorized to prevent occupancy or use of a structure or site that is in violation of this appendix or other ordinances of this jurisdiction.

G104.4 Expiration.

A *permit* shall become invalid if the proposed development is not commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions shall

be requested in writing and justifiable cause demonstrated. The *building official* is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each.

G104.5 Suspension or revocation.

The *building official* is authorized to suspend or revoke a *permit* issued under this appendix wherever the *permit* is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or code of this jurisdiction.

SECTION G105 VARIANCES

G105.1 General.

The *board of appeals* established pursuant to Section 113 shall hear and decide requests for variances. The *board of appeals* shall base its determination on technical justifications, and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of this appendix and [Section 1612](#).

G105.2 Records.

The *building official* shall maintain a permanent record of all variance actions, including justification for their issuance.

G105.3 Historic structures.

A variance is authorized to be issued for the repair or rehabilitation of a historic structure upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.

Exception: Within *flood hazard areas*, *historic structures* that do not meet one or more of the following designations:

1. 1.Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places.
2. 2.Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district.
3. 3.Designated as *historic* under a state or local historic preservation program that is approved by the Department of Interior.

G105.4 Functionally dependent facilities.

A variance is authorized to be issued for the construction or substantial improvement of a functionally dependent facility provided that the criteria in [Section 1612.1](#) are met and the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to methods and materials that minimize flood damages during the design flood and do not create additional threats to public safety.

G105.5 Restrictions.

The *board of appeals* shall not issue a variance for any proposed development in a floodway if any increase in flood levels would result during the base flood discharge.

G105.6 Considerations.

In reviewing applications for variances, the *board of appeals* shall consider all technical evaluations, all relevant factors, all other portions of this appendix and the following:

1. 1.The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
2. 2.The danger to life and property due to flooding or erosion damage.
3. 3.The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
4. 4.The importance of the services provided by the proposed development to the community.
5. 5.The availability of alternate locations for the proposed development that are not subject to flooding or erosion.
6. 6.The compatibility of the proposed development with existing and anticipated development.
7. 7.The relationship of the proposed development to the comprehensive plan and flood plain management program for that area.

8. 8.The safety of access to the property in times of flood for ordinary and emergency vehicles.
9. 9.The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
10. 10.The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

G105.7 Conditions for issuance.

Variances shall only be issued by the *board of appeals* where all of the following criteria are met:

1. 1.A technical showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site renders the elevation standards inappropriate.
2. 2.A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.
3. 3.A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
4. 4.A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. 5.Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and that such construction below the base flood level increases risks to life and property.

SECTION G201 DEFINITIONS

G201.1 General.

The following words and terms shall, for the purposes of this appendix, have the meanings shown herein. Refer to [Chapter 2](#) of this code for general definitions.

G201.2 Definitions.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, operations and other land-disturbing activities.

FUNCTIONALLY DEPENDENT FACILITY. A facility that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading or unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

MANUFACTURED HOME. A structure that is transportable in one or more sections, built on a permanent chassis, designed for use with or without a permanent foundation when attached to the required utilities, and constructed to the Federal Mobile Home Construction and Safety Standards and rules and regulations promulgated by the U.S. Department of Housing and Urban Development. The term also includes mobile homes, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

RECREATIONAL VEHICLE. A vehicle that is built on a single chassis, 400 square feet (37.16 m²) or less when measured at the largest horizontal projection, designed to be selfpropelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect-type utilities and security devices and has no permanently attached additions.

VARIANCE. A grant of relief from the requirements of this section that permits construction in a manner otherwise prohibited by this section where specific enforcement would result in unnecessary hardship.

VIOLATION. A development that is not fully compliant with this appendix or [Section 1612](#), as applicable.

SECTION G301 SUBDIVISIONS

G301.1 General.

Any subdivision proposal, including proposals for manufactured home parks and subdivisions, or other proposed new development in a flood hazard area shall be reviewed to verify all of the following:

1. Such proposals are consistent with the need to minimize flood damage.
2. Public utilities and facilities, such as sewer, gas, electric and water systems, are located and constructed to minimize or eliminate flood damage.
3. Adequate drainage is provided to reduce exposure to flood hazards.

G301.2 Subdivision requirements.

The following requirements shall apply in the case of any proposed subdivision, including proposals for manufactured home parks and subdivisions, any portion of which lies within a *flood hazard area*:

1. The *flood hazard area*, including *floodways*, coastal high-hazard areas and coastal A zones, as appropriate, shall be delineated on tentative and final subdivision plats.
2. Design flood elevations shall be shown on tentative and final subdivision plats.
3. Residential building lots shall be provided with adequate buildable area outside the *floodway*.
4. The design criteria for utilities and facilities set forth in this appendix and appropriate International Codes shall be met.

SECTION G401 SITE IMPROVEMENT

G401.1 Development in floodways.

Development or land-disturbing activity shall not be authorized in the *floodway* unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice, and prepared by a *registered design professional*, that the proposed encroachment will not result in any increase in the base flood level.

G401.2 Coastal high-hazard areas and coastal A zones.

In coastal high-hazard areas and coastal A zones:

1. New buildings and buildings that are substantially improved shall only be authorized landward of the reach of mean high tide.
2. The use of fill for structural support of buildings is prohibited.

G401.3 Sewer facilities.

All new or replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with Chapter 7, [ASCE 24](#), to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into floodwaters, or impairment of the facilities and systems.

G401.4 Water facilities.

All new or replacement water facilities shall be designed in accordance with the provisions of Chapter 7, [ASCE 24](#), to minimize or eliminate infiltration of floodwaters into the systems.

G401.5 Storm drainage.

Storm drainage shall be designed to convey the flow of surface waters to minimize or eliminate damage to persons or property.

G401.6 Streets and sidewalks.

Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels.

SECTION G501

MANUFACTURED HOMES

G501.1 Elevation.

All new and replacement manufactured homes to be placed or substantially improved in a *flood hazard area* shall be elevated such that the lowest floor of the manufactured home is elevated to or above the design flood elevation.

G501.2 Foundations.

All new and replacement manufactured homes, including substantial improvement of existing manufactured homes, shall be placed on a permanent, reinforced foundation that is designed in accordance with [Section R322](#) of the *International Residential Code*.

G501.3 Anchoring.

All new and replacement manufactured homes to be placed or substantially improved in a *flood hazard area* shall be installed using methods and practices that minimize flood damage. Manufactured homes shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring are authorized to include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

G501.4 Protection of mechanical equipment and outside appliances.

Mechanical equipment and outside appliances shall be elevated to or above the *design flood elevation*.

Exception: Where such equipment and appliances are designed and installed to prevent water from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding up to the elevation required by [Section R322](#) of the *International Residential Code*, the systems and equipment shall be permitted to be located below the elevation required by [Section R322](#) of the *International Residential Code*. Electrical wiring systems shall be permitted below the *design flood elevation* provided that they conform to the provisions of [NFPA 70](#).

G501.5 Enclosures.

Fully enclosed areas below elevated manufactured homes shall comply with the requirements of [Section R322](#) of the *International Residential Code*.

SECTION G601

RECREATIONAL VEHICLES

G601.1 Placement prohibited.

The placement of recreational vehicles shall not be authorized in coastal high-hazard areas and in *floodways*.

G601.2 Temporary placement.

Recreational vehicles in *flood hazard areas* shall be fully licensed and ready for highway use, or shall be placed on a site for less than 180 consecutive days.

G601.3 Permanent placement.

Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of [Section G501](#) for manufactured homes.

SECTION G701

TANKS

G701.1 Tanks.

Underground and above-ground tanks shall be designed, constructed, installed and anchored in accordance with [ASCE 24](#).

SECTION G801

OTHER BUILDING WORK

G801.1 Garages and accessory structures.

Garages and accessory structures shall be designed and constructed in accordance with [ASCE 24](#).

G801.2 Fences.

Fences in floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the requirement of [Section G103.5](#).

G801.3 Oil derricks.

Oil derricks located in *flood hazard areas* shall be designed in conformance with the flood loads in [Sections 1603.1.7](#) and [1612](#).

G801.4 Retaining walls, sidewalks and driveways.

Retaining walls, sidewalks and driveways shall meet the requirements of [Section 1804.5](#).

G801.5 Swimming pools.

Swimming pools shall be designed and constructed in accordance with [ASCE 24](#). Above-ground swimming pools, on-ground swimming pools and in-ground swimming pools that involve placement of fill in *floodways* shall also meet the requirements of [Section G103.5](#).

G801.6 Decks, porches, and patios.

Decks, porches and patios shall be designed and constructed in accordance with [ASCE 24](#).

G801.7 Nonstructural concrete slabs in coastal high-hazard areas and coastal A zones.

In coastal high-hazard areas and coastal A zones, nonstructural concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided that the concrete slabs shall be constructed in accordance with [ASCE 24](#).

G801.8 Roads and watercourse crossings in regulated floodways.

Roads and watercourse crossings that encroach into regulated *floodways*, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other, shall meet the requirement of [Section G103.5](#).

SECTION G901

TEMPORARY STRUCTURES AND

TEMPORARY STORAGE

G901.1 Temporary structures.

Temporary structures shall be erected for a period of less than 180 days. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood. Fully enclosed temporary structures shall have flood openings that are in accordance with [ASCE 24](#) to allow for the automatic entry and exit of floodwaters.

G901.2 Temporary storage.

Temporary storage includes storage of goods and materials for a period of less than 180 days. Stored materials shall not include hazardous materials.

G901.3 Floodway encroachment.

Temporary structures and temporary storage in floodways shall meet the requirements of [G103.5](#).

SECTION G1001

UTILITY AND MISCELLANEOUS GROUP U

G1001.1 Utility and miscellaneous Group U.

Utility and miscellaneous Group U includes buildings that are accessory in character and miscellaneous structures not classified in any specific occupancy in this code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, fences more than 6 feet (1829 mm) high, grain silos (accessory to a residential occupancy), greenhouses, livestock shelters, private garages, retaining walls, sheds, stables

and towers.

G1001.2 Flood loads.

Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions of the design flood.

G1001.3 Elevation.

Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be elevated such that the lowest floor, including basement, is elevated to or above the design flood elevation in accordance with [Section 1612](#) of this code.

G1001.4 Enclosures below design flood elevation.

Fully enclosed areas below the design flood elevation shall be constructed in accordance with [ASCE 24](#).

G1001.5 Flood-damage-resistant materials.

Flood-damage-resistant materials shall be used below the design flood elevation.

G1001.6 Protection of mechanical, plumbing and electrical systems.

Mechanical, plumbing and electrical systems, including plumbing fixtures, shall be elevated to or above the design flood elevation.

Exception: Electrical systems, equipment and components; heating, ventilating, air conditioning and plumbing appliances; plumbing fixtures, duct systems and other service equipment shall be permitted to be located below the design flood elevation provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the design flood elevation in compliance with the flood-resistant construction requirements of this code. Electrical wiring systems shall be permitted to be located below the design flood elevation provided that they conform to the provisions of [NEPA 70](#).

**SECTION G1101
REFERENCED STANDARDS**

ASCE 24—13	Flood Resistant Design and Construction	G103.1 , G401.3 , G401.4 , G701.1 , G801.1 , G801.5 , G801.6 , G801.7 , G901.1 , G1001.4
HUD 24 CFR Part 3280 (2008)	Manufactured Home Construction and Safety Standards	G201
IBC—18	International Building Code	G102.2 , G1001.1 , G1001.3
IRC—18	International Residential Code	G501.2 , G501.4 , G501.5
NEPA 70—17	National Electrical Code	G501.4 , G1001.6

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a. Chapter 2 (Selected) Definitions

ACCESSORY STRUCTURE. A structure that is accessory to and incidental to that of the *dwelling(s)* and that is located on the same *lot*.

ADDITION. An extension or increase in floor area, number of stories or height of a building or structure. For the definition applicable in Chapter 11, see Section N1101.6.

ATTIC. The unfinished space between the ceiling assembly and the roof assembly.

HABITABLE SPACE. A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered *habitable spaces*.

BATHROOM GROUP. A group of fixtures, including or excluding a bidet, consisting of a water closet, lavatory, and bathtub or shower. Such fixtures are located together on the same floor level.

BUILDING. Any one- or two-family dwelling or portion thereof, including *townhouses*, used or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, or any *accessory structure*. For the definition applicable in Chapter 11, see Section N1101.6.

DWELLING. Any building that contains one or two *dwelling units* used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units include, but are not limited to, one-family dwellings, each unit in a two-family dwelling, each unit in a multiple single-family dwelling (townhouse), bed and breakfast dwellings, and lodging houses.

KITCHEN. Kitchen shall mean an area used, or designated to be used, for the preparation of food.

RESIDENTIAL BUILDING. For the definition applicable in Chapter 11, see Section N1101.6.

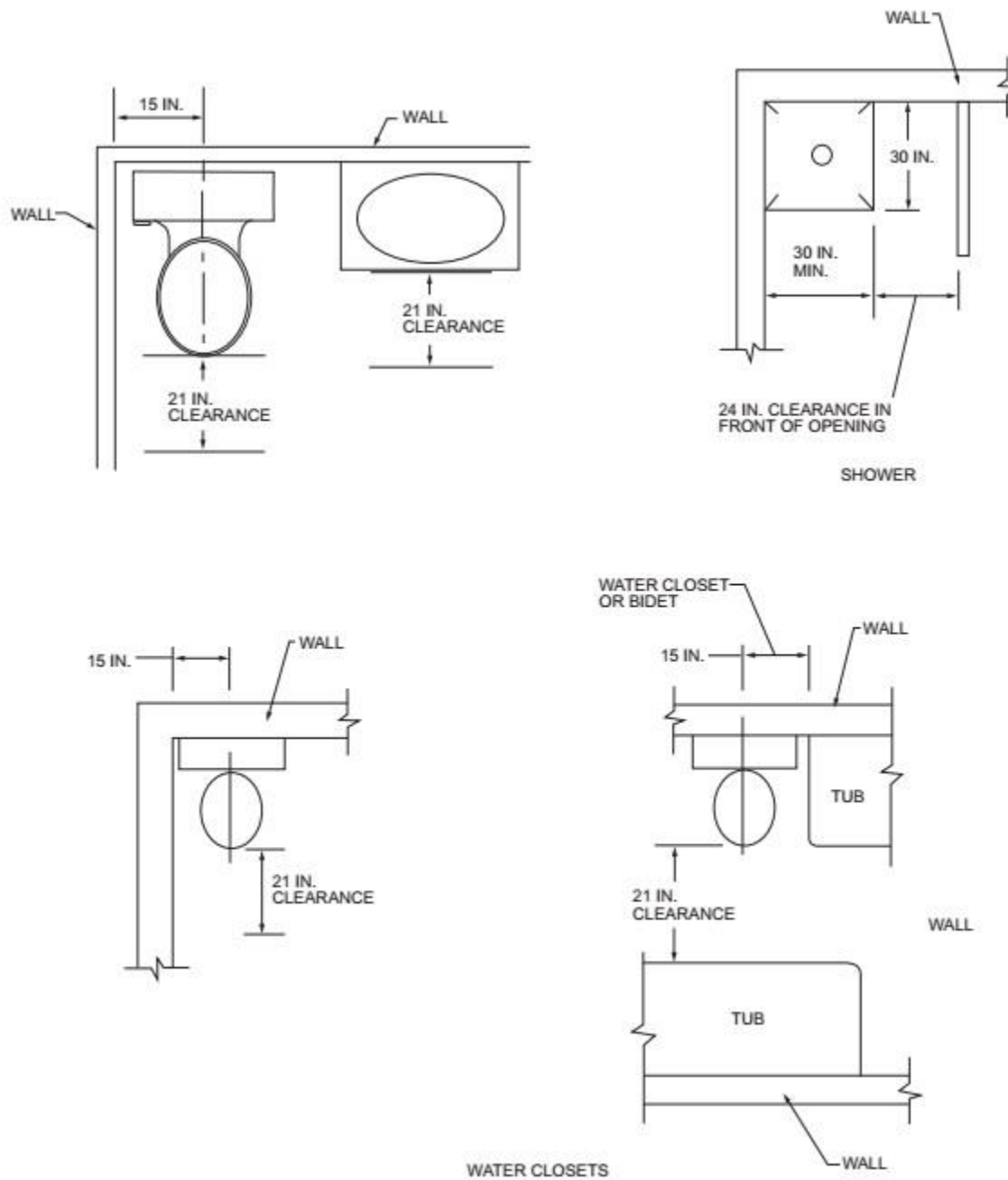
9. NYS Residential Code 2020

b. Chapter 3 Building Planning

R307 Toilet, Bath, and Shower Spaces

R307.1 Space Required

Fixtures shall be spaced in accordance with Figure R307.1, and in accordance with the requirements of [Section P2705.1](#).

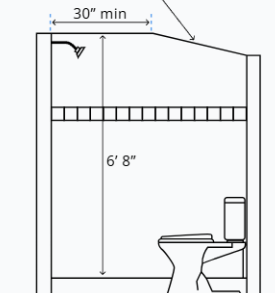


SI: 1 inch = 25.4 mm.

For

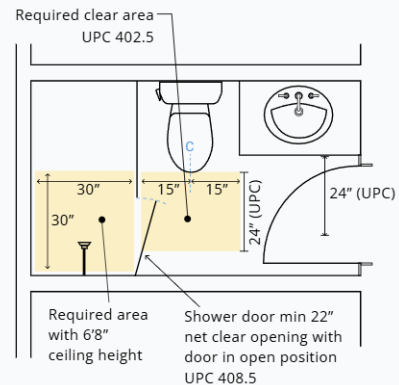
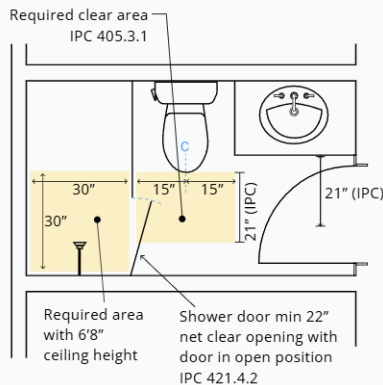
FIGURE R307.1
MINIMUM FIXTURE CLEARANCES

RC R305.1 Exception 2 allows sloped ceilings over bathroom fixtures (except req 30" x 30" area at showers) below 6' 8" provided the fixture is capable of being used for its intended purpose



RC R305.1 allows bathrooms, toilet rooms, and laundry rooms to have a min ceiling height of 6' 8".

Min 6' 8" ceiling height must be maintained above in 30" x 30" area at shower head.



Upcode Diagram

R307.2 Bathtub and Shower Spaces

Bathtub and shower floors and [walls](#) above bathtubs with installed shower heads and in shower compartments shall be finished with a nonabsorbent surface. Such wall surfaces shall extend to a [height](#) of not less than 6 feet (1829 mm) above the floor.

R304.1 Minimum Area

Habitable rooms shall have a floor area of not less than 70 square feet (6.5 m2).

Exception: Kitchens.

R304.2 Minimum Dimensions

Habitable rooms shall be not less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens.

R304.3 Height Affect on Room Area

Portions of a room with a sloping ceiling measuring less than 5 feet (1524 mm) or a furred ceiling measuring less than 7 feet (2134 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required habitable area for that room.

Exceptions:

1. For rooms with sloped ceilings, the required floor area of the room shall have a [ceiling height](#) of not less than 5 feet (1524 mm) and not less than 50 percent of the required floor area shall have a [ceiling height](#) of not less than 7 feet (2134 mm).
2. The [ceiling height](#) above bathroom and toilet room fixtures shall be such that the fixture is capable of being used for its intended purpose. A shower or tub equipped with a showerhead shall have a [ceiling height](#) of not less than 6 feet 8 inches (2032 mm) above an area of not less than 30 inches (762 mm) by 30 inches (762 mm) at the showerhead.
3. Beams, girders, ducts or other obstructions in [basements](#) containing [habitable space](#) shall be permitted to project to within 6 feet 4 inches (1931 mm) of the finished floor.

SECTION R322

FLOOD-RESISTANT CONSTRUCTION

R322.1 General.

Buildings and structures constructed in whole or in part in flood hazard areas, including A or V Zones and Coastal A Zones, as established in [Table R301.2\(1\)](#), and substantial improvement and repair of substantial damage of buildings and structures in flood hazard areas, shall be designed and constructed in accordance with the provisions contained in this section. Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area. Buildings and structures located in whole or in part in identified floodways shall be designed and constructed in accordance with [ASCE 24](#).

[NY] R322.1.1 Alternative provisions.

As an alternative to the requirements in [Section R322](#), [ASCE 24](#) is permitted subject to the limitations of this code and the limitations therein. When [ASCE 24](#) is used as an alternative to the requirements of [Section R322](#), all construction requirements and building elevation requirements based on the Design Flood Elevation (DFE) shall be interpreted to mean the DFE plus a freeboard of 2 feet (610 mm).

[NY] R322.1.1.1 Application of the design flood elevation.

The design flood elevation (DFE) determined in accordance with [Sections R322.1.4](#) and [R322.1.4.1](#) shall be used when applying [ASCE 24](#) and when determining the building design and construction requirements of this code.

R322.1.2 Structural systems.

Structural systems of buildings and structures shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses from flooding equal to the design flood elevation.

R322.1.3 Flood-resistant construction.

Buildings and structures erected in areas prone to flooding shall be constructed by methods and practices that minimize flood damage.

[NY] R322.1.4 Establishing the design flood elevation.

At a minimum, the design flood elevation shall be the higher of the following:

1. The base flood elevation at the depth of peak elevation of flooding, including wave height, that has a 1-percent (100-year flood) or greater chance of being equaled or exceeded in any given year plus 2 feet (610 mm) of freeboard.
2. The elevation of the design flood associated with the area designated on a flood hazard map adopted by the community, or otherwise legally designated, plus 2 feet (610 mm) of freeboard.

[NY] R322.1.4.1 Determination of design flood elevations.

If design flood elevations are not specified, the *building official* is authorized to require the applicant to comply with either of the following:

1. Obtain and reasonably use data available from a federal, state or other source and add 2 feet (610 mm) of freeboard.
2. Determine the design flood elevation in accordance with accepted hydrologic and hydraulic engineering practices used to define special flood hazard areas and add 2 feet (610 mm) of freeboard. Determinations shall be undertaken by a registered *design professional* who shall document that the technical methods used reflect currently accepted engineering practice. Studies, analyses and computations shall be submitted in sufficient detail to allow thorough review and *approval*.

[NY] R322.1.4.2 Determination of impacts.

In riverine flood hazard areas where design flood elevations are specified but floodways have not been designated, the applicant shall demonstrate that the effect of the proposed buildings and structures on design flood elevations, including fill, when combined with other existing and anticipated flood hazard area encroachments, will not increase the design flood elevation more than 1 foot (305 mm) at any point within the *jurisdiction*. For the purpose of applying this section, the design flood elevation shall be the elevation established in accordance with [Sections](#)

[R322.1.4](#) and [R322.1.4.1](#) but shall not include the application of freeboard.

R322.1.5 Lowest floor.

The lowest floor shall be the lowest floor of the lowest enclosed area, including *basement*, and excluding any unfinished flood-resistant enclosure that is useable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the building or structure in violation of this section.

R322.1.6 Protection of mechanical, plumbing and electrical systems.

Electrical systems, *equipment* and components; heating, ventilating, air-conditioning; plumbing *appliances* and plumbing fixtures; *duct systems*; and other service *equipment* shall be located at or above the elevation required in [Section R322.2](#) or [R322.3](#). If replaced as part of a substantial improvement, electrical systems, *equipment* and components; heating, ventilating, air-conditioning and plumbing *appliances* and plumbing fixtures; *duct systems*; and other service *equipment* shall meet the requirements of this section. Systems, fixtures, and *equipment* and components shall not be mounted on or penetrate through walls intended to break away under flood loads.

Exception: Locating electrical systems, *equipment* and components; heating, ventilating, air-conditioning; plumbing *appliances* and plumbing fixtures; *duct systems*; and other service *equipment* is permitted below the elevation required in [Section R322.2](#) or [R322.3](#) provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the design flood elevation in accordance with [ASCE 24](#). Electrical wiring systems are permitted to be located below the required elevation provided that they conform to the provisions of the electrical part of this code for wet locations.

[NY] R322.1.7 Protection of water supply and sanitary sewage systems.

New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems in accordance with the plumbing provisions of this code. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters in accordance with the plumbing provisions of this code.

R322.1.8 Flood-resistant materials.

Building materials and installation methods used for flooring and interior and exterior walls and wall coverings below the elevation required in [Section R322.2](#) or [R322.3](#) shall be flood damage-resistant materials that conform to the provisions of [FEMA TB-2](#).

R322.1.9 Manufactured homes.

The bottom of the frame of new and replacement *manufactured homes* on foundations that conform to the requirements of [Section R322.2](#) or [R322.3](#), as applicable, shall be elevated to or above the elevations specified in [Section R322.2](#) (flood hazard areas including A Zones) or [R322.3](#) in coastal high-hazard areas (V Zones and Coastal A Zones). The anchor and tie-down requirements of the applicable state or federal requirements shall apply. The foundation and anchorage of *manufactured homes* to be located in identified floodways shall be designed and constructed in accordance with [ASCE 24](#).

R322.1.10 As-built elevation documentation.

A registered *design professional* shall prepare and seal documentation of the elevations specified in [Section R322.2](#) or [R322.3](#).

[NY] R322.2 Flood hazard areas (including A Zones).

Areas that have been determined to be prone to flooding and that are not subject to high-velocity wave action shall be designated as flood hazard areas. Flood hazard areas that have been delineated as subject to wave heights between 1½ feet (457 mm) and 3 feet (914 mm) or otherwise designated by the jurisdiction shall be designated as Coastal A Zones and are subject to the requirements of [Section R322.3](#). Buildings and structures constructed in whole or in part in flood hazard areas shall be designed and constructed in accordance with [Sections R322.2.1](#) through [R322.2.3](#).

[NY] R322.2.1 Elevation requirements.

Buildings and structures in flood hazard areas, including flood hazard areas designated as Coastal A Zones, shall have the lowest floors elevated to or above the base flood elevation plus 2 feet (610 mm), or the design flood

elevation determined in accordance with [Sections R322.1.4](#) through [R322.1.4.1](#) whichever is higher. In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including *basement*) elevated to a height above the highest adjacent *grade* of not less than the depth number specified in feet (mm) on the FIRM plus 1 foot (305 mm), or not less than 3 feet (915 mm) if a depth number is not specified. Basement floors that are below *grade* on all sides shall be elevated to or above base flood elevation plus 2 feet (610 mm), or the design flood elevation determined in accordance with [Sections R322.1.4](#) through [R322.1.4.1](#), whichever is higher.

Exception: Enclosed areas below the design flood elevation, including *basements* with floors that are not below *grade* on all sides, shall meet the requirements of [Section R322.2.2](#).

R322.2.2 Enclosed area below design flood elevation.

Enclosed areas, including crawl spaces, that are below the design flood elevation shall:

1. Be used solely for parking of vehicles, building access or storage.

Be provided with flood openings that meet the following criteria and are installed in accordance with [Section R322.2.2.1](#):

2.1. The total net area of nonengineered openings shall be not less than 1 square inch (645 mm²) for each square foot (0.093 m²) of enclosed area where the enclosed area is measured on the exterior of the enclosure walls, or the openings shall be designed as engineered openings and the *construction documents* shall include a statement by a registered *design professional* that the design of the openings will provide for equalization of hydrostatic flood forces on *exterior walls* by allowing for the automatic entry and exit of floodwaters as specified in Section 2.7.2.2 of [ASCE 24](#).

2.2. Openings shall be not less than 3 inches (76 mm) in any direction in the plane of the wall.

2.3. The presence of louvers, blades, screens and faceplates or other covers and devices shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area.

R322.2.2.1 Installation of openings.

The walls of enclosed areas shall have openings installed such that:

1. There shall be not less than two openings on different sides of each enclosed area; if a building has more than one enclosed area below the design flood elevation, each area shall have openings.
2. The bottom of each opening shall be not more than 1 foot (305 mm) above the higher of the final interior grade or floor and the finished exterior grade immediately under each opening.
3. Openings shall be permitted to be installed in doors and windows; doors and windows without installed openings do not meet the requirements of this section.

R322.2.3 Foundation design and construction.

Foundation walls for buildings and structures erected in flood hazard areas shall meet the requirements of [Chapter 4](#).

Exception: Unless designed in accordance with [Section R404](#):

1. The unsupported height of 6-inch (152 mm) plain masonry walls shall be not more than 3 feet (914 mm).
2. The unsupported height of 8-inch (203 mm) plain masonry walls shall be not more than 4 feet (1219 mm).
3. The unsupported height of 8-inch (203 mm) reinforced masonry walls shall be not more than 8 feet (2438 mm).

For the purpose of this exception, unsupported height is the distance from the finished *grade* of the under-floor space to the top of the wall.

R322.2.4 Tanks.

Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood. Above-ground tanks shall be installed at or above the elevation required in [Section R322.2.1](#) or shall be

anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.

R322.3 Coastal high-hazard areas (including V Zones and Coastal A Zones, where designated).

Areas that have been determined to be subject to wave heights in excess of 3 feet (914 mm) or subject to high-velocity wave action or wave-induced erosion shall be designated as coastal high-hazard areas. Flood hazard areas that have been designated as subject to wave heights between 1½ feet (457 mm) and 3 feet (914 mm) or otherwise designated by the jurisdiction shall be designated as Coastal A Zones. Buildings and structures constructed in whole or in part in coastal high-hazard areas and Coastal A Zones, where designated, shall be designed and constructed in accordance with [Sections R322.3.1](#) through [R322.3.10](#).

R322.3.1 Location and site preparation.

New buildings and buildings that are determined to be substantially improved pursuant to [Section R105.2.2.1](#) shall be located landward of the reach of mean high tide.

1. For any alteration of sand dunes and mangrove stands, the *building official* shall require submission of an engineering analysis that demonstrates that the proposed *alteration* will not increase the potential for flood damage.

[NY] R322.3.2 Elevation requirements.

Buildings and structures erected within coastal high-hazard areas and Coastal A Zones, shall be elevated so that the bottom of the lowest horizontal structural members supporting the lowest floor, with the exception of piling, pile caps, columns, grade beams and bracing, is elevated to or above the base flood elevation plus 2 feet (610 mm) or the design flood elevation, as determined in accordance with [Section R322.1.4](#) through [R322.1.4.1](#), whichever is higher. Basement floors that are below *grade* on all sides are prohibited.

The use of fill for structural support is prohibited.

Minor grading, and the placement of minor quantities of fill, shall be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.

Walls and partitions enclosing areas below the design flood elevation shall meet the requirements of [Sections R322.3.5](#) and [R322.3.6](#).

R322.3.3 Foundations.

Buildings and structures erected in coastal high-hazard areas and Coastal A Zones shall be supported on pilings or columns and shall be adequately anchored to such pilings or columns. The space below the elevated building shall be either free of obstruction or, if enclosed with walls, the walls shall meet the requirements of [Section R322.3.5](#). Pilings shall have adequate soil penetrations to resist the combined wave and wind loads (lateral and uplift). Water-loading values used shall be those associated with the design flood. Wind-loading values shall be those required by this code. Pile embedment shall include consideration of decreased resistance capacity caused by scour of soil strata surrounding the piling. Pile systems design and installation shall be certified in accordance with [Section R322.3.9](#). Spread footing, mat, raft or other foundations that support columns shall not be permitted where soil investigations that are required in accordance with [Section R401.4](#) indicate that soil material under the spread footing, mat, raft or other foundation is subject to scour or erosion from wave-velocity flow conditions. If permitted, spread footing, mat, raft or other foundations that support columns shall be designed in accordance with [ASCE 24](#).

Exception: In Coastal A Zones, stem wall foundations supporting a floor system above and backfilled with soil or gravel to the underside of the floor system shall be permitted provided that the foundations are designed to account for wave action, debris impact, erosion and local scour. Where soils are susceptible to erosion and local scour, stem wall foundations shall have deep footings to account for the loss of soil.

R322.3.4 Concrete slabs.

Concrete slabs used for parking, floors of enclosures, landings, decks, walkways, patios and similar uses that are located beneath structures, or slabs that are located such that if undermined or displaced during base flood conditions could cause structural damage to the building foundation, shall be designed and constructed in accordance with one of the following:

1. To be structurally independent of the foundation system of the structure, to not transfer flood loads to the

main structure, and to be frangible and break away under flood conditions prior to base flood conditions. Slabs shall be a maximum of 4 inches (102 mm) thick, shall not have turned-down edges, shall not contain reinforcing, shall have isolation joints at pilings and columns, and shall have control or construction joints in both directions spaced not more than 4 feet (1219 mm) apart.

2. To be self-supporting, structural slabs capable of remaining intact and functional under base flood conditions, including erosion and local scour, and the main structure shall be capable of resisting any added flood loads and effects of local scour caused by the presence of the slabs.

R322.3.5 Walls below design flood elevation.

Walls and partitions are permitted below the elevated floor, provided that such walls and partitions are not part of the structural support of the building or structure and:

1. Electrical, mechanical and plumbing system components are not to be mounted on or penetrate through walls that are designed to break away under flood loads; and
2. Are constructed with insect screening or open lattice; or
3. Are designed to break away or collapse without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Such walls, framing and connections shall have a resistance of not less than 10 (479 Pa) and not more than 20 pounds per square foot (958 Pa) as determined using allowable stress design; or
4. Where wind loading values of this code exceed 20 pounds per square foot (958 Pa), as determined using allowable stress design, the *construction documents* shall include documentation prepared and sealed by a registered *design professional* that:

4.1. The walls and partitions below the design flood elevation have been designed to collapse from a water load less than that which would occur during the base flood.

4.2. The elevated portion of the building and supporting foundation system have been designed to withstand the effects of wind and flood loads acting simultaneously on structural and nonstructural building components. Water-loading values used shall be those associated with the design flood. Wind-loading values shall be those required by this code.

5. Walls intended to break away under flood loads as specified in Item 3 or 4 have flood openings that meet the criteria in [Section R322.2.2](#), Item 2.

R322.3.6 Enclosed areas below design flood elevation.

Enclosed areas below the design flood elevation shall be used solely for parking of vehicles, building access or storage.

R322.3.6.1 Protection of building envelope.

An exterior door that meets the requirements of [Section R609](#) shall be installed at the top of stairs that provide access to the building and that are enclosed with walls designed to break away in accordance with [Section R322.3.5](#).

R322.3.7 Stairways and ramps.

Stairways and ramps that are located below the lowest floor elevations specified in [Section R322.3.2](#) shall comply with one or more of the following:

1. Be designed and constructed with open or partially open risers and guards.
2. Stairways and ramps not part of the required means of egress shall be designed and constructed to break away during design flood conditions without causing damage to the building or structure, including foundation.
3. Be retractable, or able to be raised to or above the lowest floor elevation, provided that the ability to be retracted or raised prior to the onset of flooding is not contrary to the means of egress requirements of the code.
4. Be designed and constructed to resist flood loads and minimize transfer of flood loads to the building or structure, including foundation.

Areas below stairways and ramps shall not be enclosed with walls below the design flood elevation unless such walls are constructed in accordance with [Section R322.3.5](#).

R322.3.8 Decks and porches.

Attached decks and porches shall meet the elevation requirements of [Section R322.3.2](#) and shall either meet the foundation requirements of this section or shall be cantilevered from or knee braced to the building or structure.

Self-supporting decks and porches that are below the elevation required in [Section R322.3.2](#) shall not be enclosed by solid, rigid walls, including walls designed to break away. Self-supporting decks and porches shall be designed and constructed to remain in place during base flood conditions or shall be frangible and break away under base flood conditions.

R322.3.9 Construction documents.

The *construction documents* shall include documentation that is prepared and sealed by a registered *design professional* that the design and methods of construction to be used meet the applicable criteria of this section.

R322.3.10 Tanks.

Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood. Above-ground tanks shall be installed at or above the elevation required in [Section R322.3.2](#). Where elevated on platforms, the platforms shall be cantilevered from or knee braced to the building or shall be supported on foundations that conform to the requirements of [Section R322.3](#).

9. NYS Residential Code 2020

c. Chapter 27 Plumbing Fixtures

P2705 Installation

The installation of fixtures shall conform to the following:

1. Floor-outlet or floor-mounted fixtures shall be secured to the drainage connection and to the floor, where so designed, by screws, bolts, washers, nuts and similar fasteners of copper, copper alloy or other corrosion-resistant material.
2. Wall-hung fixtures shall be rigidly supported so that strain is not transmitted to the plumbing system.
3. Where fixtures come in contact with walls and floors, the contact area shall be watertight.
4. Plumbing fixtures shall be usable.
5. Water closets, lavatories and bidets. A water closet, lavatory or bidet shall not be set closer than 15 inches (381 mm) from its center to any side wall, partition or vanity or closer than 30 inches (762 mm) center-to-center between adjacent fixtures. There shall be a clearance of not less than 21 inches (533 mm) in front of a water closet, lavatory or bidet to any wall, fixture or door.
6. The location of piping, fixtures or equipment shall not interfere with the operation of windows or doors.
7. In flood hazard areas as established by Table R301.2(1), plumbing fixtures shall be located or installed in accordance with Section R322.1.6.
8. Integral fixture-fitting mounting surfaces on manufactured plumbing fixtures or plumbing fixtures constructed on site, shall meet the design requirements of ASME A112.19.2/CSA B45.1 or ASME A112.19.3/CSA B45.4.

P2708 Showers

P2708.1 General

Shower compartments shall have not less than 900 square inches (0.6 m²) of interior cross-sectional area. Shower compartments shall be not less than 30 inches (762 mm) in minimum dimension measured from the finished interior dimension of the shower compartment, exclusive of fixture valves, shower heads, soap dishes, and safety grab bars or rails. The minimum required area and dimension shall be measured from the finished interior dimension at a [height](#) equal to the top of the threshold and at a point tangent to its centerline and shall be continued to a height of not less than 70 inches (1778 mm) above the shower [drain](#) outlet. Hinged shower doors shall open outward. The wall area above built-in tubs having installed shower heads and in shower compartments shall be constructed in accordance with [Section R702.4](#). Such [walls](#) shall form a water-tight joint with each other and with either the tub, [receptor](#) or shower floor.

Exceptions:

1. Fold-down seats shall be permitted in the shower, provided that the required 900-square-inch (0.6 m²) dimension is maintained when the seat is in the folded-up position.

2. Shower compartments having not less than 25 inches (635 mm) in minimum dimension measured from the finished interior dimension of the compartment provided that the shower compartment has a cross-sectional area of not less than 1,300 square inches (0.838 m²).

P2714 Sinks

P2714 Sink Waste Outlets

Sinks shall be provided with waste outlets not less than 1½ inches (38 mm) in diameter. A strainer, crossbar or other device shall be provided to restrict the clear opening of the waste outlet.

P2723 Macerating Toilet Systems

P2723.2 Drain

The size of the drain from the macerating toilet system shall be not less than ¾ inch (19 mm) in diameter.

9. NYS Residential Code 2020

d. Appendix Q Tiny Houses

Section AQ102.1 General ('20)

TINY HOUSE. A [dwelling](#) that is 400 square feet (37 m²) or less in floor area excluding *lofts*.

LOFT. A floor level located more than 30 inches (762 mm) above the [main](#) floor, open to the [main](#) floor on one or more sides with a [ceiling height](#) of less than 6 feet 8 inches (2032 mm) and used as a living or sleeping space.

Section AQ103.1 Minimum Ceiling Height

[Habitable space](#) and hallways in *tiny houses* shall have a [ceiling height](#) of not less than 6 feet 8 inches (2032 mm). Bathrooms, toilet rooms and [kitchens](#) shall have a [ceiling height](#) of not less than 6 feet 4 inches (1930 mm). Obstructions including, but not limited to, beams, girders, ducts and lighting, shall not extend below these minimum [ceiling heights](#).

Exception: [Ceiling heights](#) in *lofts* are permitted to be less than 6 feet 8 inches (2032 mm).

Section AQ04 Lofts

AQ104.1 Minimum Loft Area and Dimensions

Lofts used as a sleeping or [living space](#) shall meet the minimum area and dimension requirements of Sections AQ104.1.1 through AQ104.1.3.

AQ104.1.1 Minimum Area

Lofts shall have a floor area of not less than 35 square feet (3.25 m²).

AQ104.1.2 Minimum Dimensions

Lofts shall be not less than 5 feet (1524 mm) in any horizontal dimension.

AQ104.1.3 Height Effect on Loft Area

Portions of a *loft* with a sloped ceiling measuring less than 3 feet (914 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft.

Exception: Under gable roofs with a minimum [slope](#) of 6 units vertical in 12 units horizontal (50-percent [slope](#)), portions of a *loft* with a sloped ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the *loft*.

10. NYS Existing Building Code 2020: Chapter 2 (Selected) Definitions

SECTION 202 GENERAL DEFINITIONS

[BS] SUBSTANTIAL DAMAGE. For the purpose of determining compliance with the flood provisions of this code, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

[BS] SUBSTANTIAL IMPROVEMENT. For the purpose of determining compliance with the flood provisions of this code, any *repair*, *alteration*, *addition*, or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure, before the improvement or *repair* is started. If the structure has sustained *substantial damage*, any *repairs* are considered *substantial improvement* regardless of the actual *repair* work performed. The term does not, however, include either of the following:

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the *building official* and that is the minimum necessary to ensure safe living conditions.
2. Any *alteration* of a historic structure, provided that the *alteration* will not preclude the structure's continued designation as a historic structure.

[BS] SUBSTANTIAL STRUCTURAL ALTERATION. An alteration in which the gravity load-carrying structural elements altered within a 5-year period support more than 30 percent of the total floor and roof area of the building or structure. The areas to be counted toward the 30 percent shall include mezzanines, penthouses, and in-filled courts and shafts tributary to the altered structural elements.

[BS] SUBSTANTIAL STRUCTURAL DAMAGE. A condition where any of the following apply:

1. The vertical elements of the lateral force-resisting system have suffered damage such that the lateral load-carrying capacity of any story in any horizontal direction has been reduced by more than 33 percent from its predamage condition.
2. The capacity of any vertical component carrying gravity load, or any group of such components, that has a tributary area more than 30 percent of the total area of the structure's floor(s) and roof(s) has been reduced more than 20 percent from its predamage condition, and the remaining capacity of such affected elements, with respect to all dead and live loads, is less than 75 percent of that required by the [Building Code of New York State](#) for new buildings of similar structure, purpose and location.
3. The capacity of any structural component carrying snow load, or any group of such components, that supports more than 30 percent of the roof area of similar construction has been reduced more than 20 percent from its predamage condition, and the remaining capacity with respect to dead, live and snow loads is less than 75 percent of that required by the [Building Code of New York State](#) for new buildings of similar structure, purpose and location.

11. NYS Multiple Dwelling Law Selections

* This chapter applies to all cities with a population of 325,000 or more. Any city, town, or village can choose to adopt the rules in this chapter

§4. Definitions.

7. A "multiple dwelling" is a dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other. On and after July first, nineteen hundred fifty-five, a "multiple dwelling" shall also include residential quarters for members or personnel of any hospital staff which are not located in any building used primarily for hospital use provided, however, that any building which was erected, altered or converted prior to July first, nineteen hundred fifty-five, to be occupied by such members or personnel or is so occupied on such date shall not be subject to the requirements of this chapter only so long as it continues to be so occupied provided there are local laws applicable to such building and such building is in compliance with such local laws. A "multiple dwelling" shall not be deemed to include a hospital, convent, monastery, asylum or public institution, or a fireproof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families. For the purposes of this chapter "multiple dwellings" are divided into two classes: "class A" and "class B."

8. a. A "class A" multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings. A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this definition, "permanent residence purposes" shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more and a person or family so occupying a dwelling unit shall be referred to herein as the permanent occupants of such dwelling unit. The following uses of a dwelling unit by the permanent occupants thereof shall not be deemed to be inconsistent with the occupancy of such dwelling unit for permanent residence purposes:

(1)

(A) occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons living within the household of the permanent occupant such as house guests or lawful boarders, roomers or lodgers; or

(B) incidental and occasional occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons when the permanent occupants are temporarily absent for personal reasons such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy.

(2) In a class A multiple dwelling owned by an accredited not-for-profit college or university or leased by such a college or university under a net lease for a term of forty-nine years or more, the use of designated dwelling units for occupancy for fewer than thirty consecutive days shall not be inconsistent with the occupancy of such multiple dwelling for permanent residence purposes if:

(A) No more than five percent of the dwelling units in such multiple dwelling but not less than one dwelling unit, are designated for such use and the designation of a unit once made may not be changed to another unit;

(B) A list of the designated dwelling units certified by an authorized representative of the college or university is kept on the premises by the owner or net lessee and made available upon request for inspection by the department or the fire department of such city;

(C) Only designated dwelling units on the certified list are used for occupancy for fewer than thirty consecutive days and only by

(i) natural persons, other than persons whose only relationship with the college or university is as a student, for whom the college or university has undertaken to provide housing accommodations such as visiting professors and academics, graduate students with research or teaching fellowships, researchers and persons presenting academic papers, interviewing for positions of employment or having other similar business with the college or university, or

(ii) natural persons for whom a hospital affiliated with such college or university has undertaken to provide housing accommodations such as patients, patients' families and/or accompanying escorts, medical professionals and healthcare consultants or persons having other similar business with such hospital. A log shall be maintained on the premises of the names and addresses of such persons and the duration and reason for their stay. Such log shall be accessible upon request for inspection by the department and the fire department of such municipality;

(D) No rent or other payment is collected for such occupancy; and

(E) The fire department of such city shall require the filing of a fire safety plan or other appropriate fire safety procedure.

§31. Size of rooms

1. The provisions of this section, except subdivision six, shall apply only to multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, and shall apply to all such dwellings unless otherwise expressly limited.

2. Except as in this section and in section thirty-three otherwise expressly provided, rooms, except kitchens, water-closet compartments and bathrooms, shall meet the following minimum requirements as to size:

a. In each apartment in a class A multiple dwelling there shall be at least one living room containing at least one hundred thirty-two square feet of floor area.

b. Every living room, except as provided in paragraph e, shall contain at least eighty square feet of floor space.

c. Every room shall be at least eight feet high, the measurements to be taken from the finished floor to the finished underside of the ceiling beams except that as many as four beams crossing the ceiling of any basement room may be disregarded if none of them exceeds twelve inches in width or extends below the ceiling more than six inches.

d. Every living room shall be at least eight feet in its least horizontal dimension, except as provided in paragraph e and except that any number of bedrooms up to one-half of the total number in any apartment containing three or more bedrooms may have a least horizontal dimension of seven feet or more.

e. A one-room apartment in a class B multiple dwelling may be as small as sixty square feet in its floor area and six feet in its least dimension.

3. The requirements of this section with respect to the least horizontal dimension and the minimum area of rooms shall not be applicable to any room in a fireproof class B multiple dwelling occupied as a lodging house in which every apartment, other than one apartment occupied exclusively by a person or persons engaged in the maintenance or supervision of such multiple dwelling, consists of one room and in which every such room opens directly upon a public hall.

4. Dining bays with a floor area of fifty-five square feet or less shall not be considered as rooms or alcoves and shall not be required to comply with the provisions of section thirty-two. Every such dining bay shall be equipped with such appropriate permanent fittings as may be required by the department and shall be provided with at least one window opening directly upon a street or upon a lawful yard, court or space above a setback. Such window shall have an area of at least one-eighth of the floor area of such dining bay.

5. A portion of any apartment used as an entrance hall to such apartment may be designated as a foyer. Such a foyer shall not be considered a room if the department shall so permit and if either

a. Its floor area does not exceed ten per centum of the total floor area of such apartment, or

b. Every room in such apartment exceeds in area the minimum required area of such room by more than twenty per centum and the floor area of such foyer does not exceed twenty per centum of the floor area of such apartment.

6. a. Except in class B dwellings and dormitories, no room shall be occupied for sleeping purposes by more than two adults, considering children of twelve years of age or more as adults and two children between the ages of two and eleven years inclusive as the equivalent of one adult. Children under two years of age need not be considered as occupants. No room shall have sleeping accommodations for more persons than can be accommodated in conformity with the provisions of this subdivision.

b. Every room in every dwelling, whenever erected, shall have at least four hundred cubic feet of air for each adult, and two hundred cubic feet of air for each child occupying such room. Except in class B dwellings, dormitories and except as otherwise provided in subdivision two of section thirty-one or in section thirty-four for dwellings erected after April eighteenth, nineteen hundred twenty-nine, and in sections one hundred seventy-four, two hundred fourteen and two hundred sixteen, every living room shall

(1) contain sixty square feet or more of floor space,

(2) be at least six feet wide at its narrowest part,

(3) if a sleeping room, contain seventy-five square feet or more of floor space and

(4) if less than seventy-five square feet in floor area, shall not be occupied by more than one adult.

§33. Cooking Spaces

1. Every space which is intended, arranged or designed for cooking or warming of food shall be either a kitchen or kitchenette. The term "kitchen" shall mean such a space eighty square feet or more in floor area. The term "kitchenette" shall mean such a space which is less than eighty square feet in floor area.

2. Every cooking space shall be deemed to be in compliance with this section if such space was accepted or approved by the department on or before June thirtieth, nineteen hundred ninety-five, and is maintained in accordance with such acceptance or approval.

3. Except as provided in sections sixty-one and sixty-seven and subdivision two of this section, a kitchen or kitchenette shall be unlawful unless it is constructed, arranged and maintained in compliance with the following applicable provisions:

a. The ceiling and walls, exclusive of doors, of all kitchenettes shall be fire-retarded or in lieu thereof such space shall be equipped with one or more sprinkler heads to fuse at a temperature not higher than two hundred twelve degrees Fahrenheit. Such heads shall be connected to the water supply through a pipe of at least one-half inch inside diameter.

b. In every kitchen and kitchenette, all combustible material immediately underneath or within one foot of any apparatus used for cooking or warming of food shall be fire-retarded or covered with asbestos at least three-sixteenths of an inch in thickness and twenty-six gauge metal or with fire-resistive material of equivalent rating, except where such apparatus is installed in accordance with requirements established by the department in conformity with generally accepted safety standards for such apparatus. There shall always be at least two feet of clear space above any exposed cooking surface of such apparatus.

c. Every kitchenette constructed after July first, nineteen hundred forty-nine, shall be provided with a window opening upon a street or upon a yard, court, shaft, or upon any space above a setback. Such window shall be at least one foot wide, have a total area of at least three square feet and be at least ten per centum of the superficial floor area of such kitchenette. In lieu of such window, such kitchenette may be provided with mechanical ventilation to provide at least six changes per hour of the air volume of such kitchenette or, when such kitchenette is on the top story, may have a skylight at least one foot wide with a total area of at least four square feet or one-eighth of the area of the kitchenette, whichever is greater, and shall have ventilating openings of at least one-half of the area of the skylight.

d. Every kitchenette constructed after July first, nineteen hundred forty-nine, may be equipped with a door or doors, provided the lower portion of each such door has a metal grille containing at least forty-eight square inches of clear openings or, in lieu of such a grille, there are two clear open spaces, each of at least twenty-four square inches, one between the bottom of the door and the floor, and the other between the top of each such door and the head jamb.

e. Every kitchen and kitchenette shall be provided with gas or electricity or both, and shall be equipped for artificial lighting.

VIII) REFERENCES

1. [Town of Southold Comprehensive Plan](#)

This Plan is an official public document to be used to guide the development of our community. It provides the basis for the zoning and other land use regulations found in the Town Code and is designed to help shape the future Town policy decisions.

2. [NYS DOT's Scenic Byways Corridor Management Plan](#)

The New York State Scenic Byways program was created in 1992 by the State Legislature. The program encourages both economic development and resource conservation, recognizing that each of these aspects of a byway must be fostered to ensure the success of the other. Suffolk County's North Fork Trail carries visitors from Southold to Orient Point, through a series of charming hamlets, past renowned wineries, expansive farms and wild wetlands. This all mingles with intermittent glimpses of the ocean, beaches and maritime life, finishing with an uninterrupted view of the Atlantic Ocean stretching into the horizon.

3. [NYS Worksheet for SI/SD calculations](#)

New York State provides a worksheet at the following web address to allow property owners and regulatory bodies to accurately calculate substantial improvements / substantial damages to determine regulatory obligations.

4. [RPA Plan for Affordable Housing Guide for Connecticut](#)

The Regional Plan Association (RPA) has created a Plan for Affordable Housing Guide for Connecticut that may be a useful tool for Southold Town.

5. [Averting Crisis - Zoning to Create Resilient Homes for All](#)

The RPA has also recently released this additional report that identifies anticipated loss of housing due to flood hazards and identifies existing "zoning deficits" where existing zoning does not take into account anticipated loss of housing units due to flood hazards and dilapidation, and anticipated demand.

6. [National Zoning Atlas](#)

This is a non-profit online zoning analytical tool report was produced in partnership with the National Zoning Atlas.

7. [Adopt Real Property Tax Law Section 421-p](#)

Tax law section 421-p provides an exemption of increased real estate taxes due to the construction of an ADU. It is effective only if adopted by the town & applies to newly constructed or converted buildings of at least 10 units that are at least 25% income restricted.

8. [NYS Building Code 2020](#)

The Building Code of New York State is a code that provides minimum requirements to safeguard the public health, safety and general welfare of the occupants of new and existing buildings and structures.

9. [NYS Residential Code 2020](#)

The Residential Code of New York State is a comprehensive code regulating the construction of single-family houses, two-family houses (duplexes) and buildings consisting of three or more townhouse units.

10. [NYS Existing Building Code 2020](#)

The Existing Building Code of New York State establishes minimum requirements for existing buildings using prescriptive and performance-related provisions. It aims to encourage the use and reuse of existing buildings while requiring reasonable upgrades and improvements.

11. [NYS tax real estate tax exemption statute](#)

NYS tax real estate tax exemption statute called 421-pp applies to newly constructed or converted buildings of at least ten units that are 100% income restricted.

12. [NYS Multiple Dwelling Law](#)

Establishes minimum standards for health, safety, fire protection, light, air, occupancy, egress (exits), and building maintenance in multiple dwellings (buildings with three or more residential units).

13. [Physically Based Flood Model](#)

The First Street Flood Model (FSF-FM) is a nationwide model that allows us to determine the potential flood risk from rain, streamflow, sea level rise, tide, and storm surge for any location.

14. [Community Risk And Resiliency Act \(CRRA\) - NYSDEC](#)

The Community Risk and Resiliency Act (CRRA) requires New York State agencies and applicants for certain permits or funding to consider future climate risks like sea-level rise, storm surge, and flooding in their decisions. It also mandates the development of sea-level rise projections, resilience guidance, and model local laws to help communities prepare for climate impacts.

15. [ICC A117 Standard](#)

The ICC A117.1 standard outlines the technical accessibility requirements for buildings and facilities to ensure they are usable by individuals with physical disabilities.