

Chapter 210

ZONING

- § 210-1. **Scope.**
- § 210-2. **Title.**
- § 210-3. **Definitions and word usage.**
- § 210-4. **Establishment of districts; Zoning Map.**
- § 210-5. **Application of regulations.**
- § 210-6. **R-1 Districts: One- and Two-Family Residences.**
- § 210-7. **R-2 Districts: More Than Two-Family Residences.**
- § 210-8. **B-1 Districts: Business Districts.**
- § 210-9. **F-1 Districts: General Industrial Districts.**
- § 210-10. **Supplementary regulations.**
- § 210-11. **Nonconforming buildings and uses.**
- § 210-12. **Administration and enforcement.**
- § 210-13. **Interpretation of chapter.**
- § 210-14. **Creation, appointment and organization of Board of Appeals.**
- § 210-15. **Amendments.**
- § 210-16. **Penalties for offenses.**
- § 210-17. **(Reserved)**
- § 210-18. **Wireless telecommunications facilities and telecommunications towers.**

[HISTORY: Adopted by the Board of Trustees of the Village of Barker 8-18-1958 by ordinance. Amendments noted where applicable.]

GENERAL REFERENCES

Unsafe buildings — See Ch. 91.
Environmental quality review — See Ch. 105.
Fire prevention and building construction — See Ch. 110.
Flood damage prevention — See Ch. 114.
Streets and sidewalks — See Ch. 176.

§ 210-1. Scope.

This shall be a chapter regulating and restricting the location, construction and use of buildings, structures and use of land of the Village of Barker and Town of Somerset, Niagara County, New York, and for said purposes dividing the Village of Barker into districts.¹

§ 210-2. Title.

This chapter shall be known as may be cited as the "Village of Barker, New York, Zoning Ordinance."

§ 210-3. Definitions and word usage.

For the purpose of this chapter, certain terms or words used herein shall be interpreted or defined as follows:

A. Word usage.

- (1) Words used in the present tense include the future tense. The singular includes the plural.
- (2) The word "person" includes a corporation as well as an individual.

1. **Editor's Note: Former Section 2, regarding enactment of this chapter, which immediately followed this section, was deleted 8-7-2000 by L.L. No. 2-2000.**

- (3) The word "lot" includes the word "plot" or "parcel."
- (4) The term "shall" is always mandatory.
- (5) The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied."

B. **Terms defined.** As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY USE — A use incidental to the principal use of a building. In buildings restricted to residence use, the office of a professional man, customary family occupations and workshops not conducted for compensation, shall be deemed accessory uses.

ALTERATIONS, STRUCTURAL — Any change in the supporting members of a building such as bearing walls, columns, beams or girders.

APARTMENT HOUSE — A building arranged, intended or designed to be occupied by three or more families living independently of each other.

AREA, BUILDING — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.

AREA, NET SITE — The total area within the property lines excluding external streets.

AUTO COURT — A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term "auto court" includes buildings designated as tourist courts, motor lodges, motels and similar appellations.

BASEMENT — A story partly below the ground level but having at least 2/3 of its height above the average land level immediately adjacent to the building.

BUILDING — Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattel.

BUILDING, ACCESSORY — A supplemental building, the use of which is incidental to that of a main or principal building and located on the same lot therewith.

BUILDING, DETACHED — A building surrounded by open space on the same lot.

BUILDING, FRONT LINE OF — The line of that face of the building nearest the front lines of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed, but does not include steps.

BUILDING, HEIGHT OF — The vertical distance measured from the average elevation of the proposed finished grade at the front of the buildings to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

BUILDING MAIN — A building in which is conducted the principal use of the lot on which it is located.

CAMP — One or more tents, vehicles, buildings, or structures, together with the tract of land appertaining thereto, established or maintained as living quarters for temporary occupancy by ten or more people. **[Amended 8-7-2000 by L.L. No. 2-2000]**

COVERAGE — That percentage of the plot or lot area covered by the building area.

DWELLING — A building designed or used as the living quarters for one or more families.

DWELLING, MULTIPLE — A dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied, as the temporary or permanent residence or home of three or more families living independently of each other (Multiple Residence Law § 4).

DWELLING, ONE-FAMILY — A detached building designed for or occupied exclusively by one family.

DWELLING, TWO-FAMILY — A building designed for or occupied exclusively by two families living independently of each other.

FAMILY — One or more persons occupying the premises and living as a single housekeeping unit.

FILLING STATION — Buildings or premises or portion thereof arranged, intended or designed to be used for the retail sale of gasoline or other motor vehicle or motor boat fuel.

GARAGE — An accessory building intended or designed to be used for the storage of noncommercial motor vehicles.

GARAGE, PUBLIC — Any garage not a private garage, and which is used for storage, repair, rental, servicing or supplying of gasoline or oil to motor vehicles.

HOME OCCUPATION — An occupation for gain or support conducted only by members of a family residing on the premises and conducted entirely within the dwelling, provided that no article or services are sold or offered for sale except such as may be produced by members of the immediate family residing on the premises. For the purpose of this chapter, the operation of a mortuary is not a home occupation.

HOTEL — A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining

room are provided within the building or in an accessory building.

HOUSE TRAILER — Any portable or mobile vehicle used or designed to be used for living purposes and with its wheels, rollers or skids in place.

JUNKYARD — The use of more than 200 square feet of the area of any lot, whether inside or outside a building, or the use of any portion of that half of any lot that joins any street, for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

LAUNDERETTE — A business premises equipped with individual clothes-washing machines for the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment or apartment hotel.

LINE, STREET — The dividing line between the street and the lot.

LODGING HOUSE — A building in which three or more rooms are rented and in which no table board is furnished.

LOT — A parcel of land occupied or capable of being occupied by one building, and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this chapter.

LOT, CORNER — A parcel of land at the junction of and fronting on two or more intersecting streets.

LOT, DEPTH OF — A mean horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.

LOT, INTERIOR — A lot other than a corner lot.

LOT, WIDTH OF — The mean width measured at right angles to its depth.

NONCONFORMING USE — A structure or land at the time of the enactment of this chapter lawfully occupied by a use that does not conform to the regulations of the district in which it is situated.

NURSING OR CONVALESCENT HOME — Any dwelling with fewer than 15 sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

PARKING SPACE — An off-street space available for the parking of one motor vehicle and having an area of not less than 300 square feet inclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

PLAT — A map, plan or layout of a section or subdivision indicating the location and boundaries of individual properties.

QUARRY, SAND PIT, GRAVEL PIT, TOPSOIL STRIPPING — A lot or land or part thereof used for the purpose of extracting stone, sand, gravel or topsoil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made.

SANITARIUM or SANATORIUM — A private hospital, whether or not such facility is operated for profit.

SIGN — Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government or government agency, or of any civic, charitable, religious, patriotic, fraternal or similar organization.

SIGN, ADVERTISING — A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises and only incidentally on the premises if at all.

SIGN, BUSINESS — A sign which directs attention to a business or profession conducted on the premises. A "For Sale" sign or a "To Let" sign relating to the property on which it is displayed shall be deemed a business sign.

STORY — That portion of a building included between the surface of any floor and the surface of the floor next above it, or, if there be no floor above it, then the space between any floor and the ceiling next above it.

STORY, HALF — A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such story.

STORY, HEIGHT OF — The vertical distance from the top surface of the floor next above. The height of the topmost story is the distance from the top surface of the floor to the top surface of the ceiling joists.

STREET GRADE — The officially established grade of the street upon which a lot abuts, at the midpoint of the frontage of the lot thereon. If there is no officially established grade, the existing grade of the street at such midpoint shall be taken as the street grade.

STREET LINE — The line which is the boundary line between a lot and a street or highway. Where the street line is not readily determinable, computations to determine the street or highway line shall be made from the center of the existing pavement, which shall be deemed the center of the street or highway for purposes of this chapter.

STRUCTURE — A combination of materials other than a building to form a construction that is safe and stable and includes among other things stadiums, platforms, radio towers, sheds, storage bins, fences and display signs.

THEATER, MOVING-PICTURE — A building or part of a building devoted to the showing of moving pictures on a paid admission basis.

THEATER, OUTDOOR DRIVE-IN — An open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures or theatrical productions, on a paid admission basis, to patrons seated in automobiles or on outdoor seats.

TOURIST CABINS — A group of buildings including either separate cabins or a row of cabins which:

- (1) Contain living and sleeping accommodations for transient occupancy; and
- (2) Have individual entrances.

TOURIST HOME — A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

TRAILER — A vehicle:

- (1) Used for living or sleeping purposes; and
- (2) Standing on wheels or on rigid supports.

TRAILER CAMPS — A land or floor area occupied or designed for occupancy by two or more trailers or camp cars in use for living purposes.

USE — The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any conforming use.

WAY — A street or alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

YARD — An unoccupied space open to the sky, on the same lot with a building or structure.

§ 210-4. Establishment of districts; Zoning Map.

- A. For the purpose of promoting the public health, safety, morals and general welfare of the community, the Village of Barker is hereby divided into the following types of districts:
- (1) R-1 Districts: One- and Two-Family Residential Districts.
 - (2) R-2 Districts: More than Two Family Residential Districts.
 - (3) B-1 Districts: Business Districts.
 - (4) F-1 Districts: Factory or Industrial Districts.
- B. Said districts are defined as shown on a map entitled the "Zoning Map of the Village of Barker, Niagara County, New York," prepared for the Village of Barker by the Niagara County Department of Planning, Development and Tourism dated May 1999, which map is incorporated herein in its entirety, and is adopted as the Zoning Map of the Village of Barker, and said map, as certified to by the Village Clerk of the Village of Barker, is hereby made a part of this chapter.² **[Amended 1-3-2000 by L.L. No. 1-2000]**
- C. Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, and if no distance is given on said map, such dimension shall be determined by the use of the scale shown on said Zoning Map.

2. **Editor's Note: The current Zoning Map is on file in the office of the Village Clerk-Treasurer.**

§ 210-5. Application of regulations. [Amended 8-7-2000 by L.L. No. 2-2000]

After the date when this chapter becomes effective, no building or premises, or any part thereof, shall be used or maintained for any purposes other than the uses permitted therefor by this chapter, no building or part of a building shall be erected, enlarged, altered, or maintained except in conformity with the provisions of this chapter and no building or part of a building shall be used or maintained if erected, enlarged or altered other than in conformity with the provisions of this chapter, the New York State Uniform Fire Prevention and Building Code, and Plumbing Standards.

§ 210-6. R-1 Districts: One- and Two-Family Residences.

The following regulations shall apply to all R-1 Districts:

A. Uses permitted.

- (1) One- and two-family dwellings.
- (2) Churches or similar places of worship; parish house; convents.
- (3) Public parks, public playgrounds and recreational areas operated by membership organizations for the benefit of their members and not for gain.
- (4) Schools and institutions of higher education, libraries and municipal buildings.
- (5) Customary agricultural operations; provided, however, that no storage of manure or odor- or dust-producing substance or use shall be permitted within 100 feet of any property line.
- (6) Customary home occupations, provided that there shall be no external evidence of such occupations except a small announcement or professional sign not over two square feet in area.

- (7) Other customary accessory uses and buildings, provided that such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building and shall not be used for residence purposes.
- B. Building height limit. No building shall be erected to a height in excess of 35 feet.
- C. Width and area of lot. The minimum width of a lot shall be 75 feet and the minimum area 7,500 square feet, the depth of the lot for making such computation to begin at the street line adjacent to the lot.
- D. Percentage of lot coverage. All buildings including accessory buildings shall not cover more than 30% of the area of the lot.
- E. Yards required. Each lot shall have front, side and rear yards not less than the depth or width following:
- (1) Front yard depth: 35 feet from the street line.
 - (2) Side yard depth: one side yard shall have not less than six feet and the sum of the widths of both side yards shall not be less than 16 feet.
 - (3) Rear yard: not less than 30 feet.
- F. For each permitted use there shall be provided sufficient space for off-street parking of motor vehicles to accommodate the normal number of such vehicles which shall congregate as a result of the use of such buildings or premises.
- G. Any one- or two-family dwelling existing at the time of the enactment of this chapter on a lot having a width of not less than 60 feet may be converted to a multiple residence for nontransient use and the provisions of the Multiple Residential District (R-2 Districts) shall apply.

- H. Where existing construction, has established a different setback on any street, not less than the average setback of buildings already in existence shall be used.

§ 210-7. R-2 Districts: More Than Two-Family Residences.

The following regulations shall apply to all R-2 Districts:

- A. Uses permitted.
- (1) All uses permitted in R-1 Districts.
 - (2) Multiple residences for nontransients, subject to the regulations and provisions of the New York State Multiple Residence Law. One- and two-family dwellings in existence at the time of the enactment of this chapter may be altered or enlarged for multiple dwelling use, except that existing conforming yards shall not be reduced to a width or depth less than required by this section, and nonconforming yards shall not be further reduced in width or depth, and provided further that there shall be not less than 1,500 square feet of lot area for each family occupying such dwelling.
- B. Building height limit: three stories but not exceeding 40 feet.
- C. Required lot area. No dwelling shall be established on a lot having an area or width less than specified for one-family residences in the R-1 Residential Districts.
- D. Percentage of lot coverage. All buildings including accessory buildings shall not cover more than 40% of the area of the lot.
- E. Yards required. Yards of the following minimum depth shall be required:

- (1) Front yard: 35 feet.
 - (2) Side yard: each 1/2 the height of the building.
 - (3) Rear yard: depth equal to the height of the building.
- F. Automobile storage or parking space. In connection with every multiple-family dwelling there shall be provided automobile storage or parking space equal to not less than 300 square feet for each family unit in such dwelling; provided, however, that no front yard shall be used for the open-air parking or storage of any motor vehicle.

§ 210-8. B-1 Districts: Business Districts.

The following regulations shall apply to all B-1 Districts:

A. Uses permitted.

- (1) All uses permitted in any residential district subject to all the provisions specified for such residential districts.
- (2) Any use which is or has been used for commercial purposes may not be used for residential purposes on the first floor thereof. **[Amended 4-11-2011 by L.L. No. 1-2011]**
- (3) Personal service shops, including hand laundries.
- (4) Banks, offices, studios.
- (5) Shops for custom work; shops for making articles or products to be sold at retail on the premises.
- (6) Restaurants, cafes, tearooms, and similar establishments.
- (7) Theaters, assembly halls, billiard or pool parlors, bowling alley, and any public recreation use.
- (8) Lodging house, motels, hotels and tourist homes.

- (9) Motor vehicle sales and service.
 - (10) Garage or filling station.
 - (11) Undertaking establishment.
 - (12) Bus passenger station, telegraph office, express office, electric substation, printing plant.
 - (13) Wholesale business; storage in bulk of, or warehouse for, such material as building material, contractor's equipment, clothing, cotton, drugs, dry goods, feed, food, furniture, hardware, ice, machinery metals, oil and petroleum in quantities less than tank car lots, paint and paint supplies, pipe, rubber, shop supplies, tobacco or wood.
 - (14) Accessory buildings and accessory uses.
- B. Building height limit. No building shall be erected to a height in excess of 35 feet.
- C. Required lot area. Any building used for residence purposes shall have a lot area and lot width equal to that required in the least-restricted residence district for the same type of dwelling.
- D. Percentage of lot coverage. Any building used for residential purposes including accessory building shall not cover more than 40% of the area of the lot.
- E. Yards required:
- (1) Front yard: none required.
 - (2) Side yards: Any building used for residence purposes shall have side yards as specified for such dwellings in the R-1 Residence District.
 - (3) Rear yard: not less than 30 feet.

§ 210-9. F-1 Districts: General Industrial Districts.

The following regulations shall apply to all F-1 Districts:

- A. Uses permitted; uses prohibited.
- (1) Wholesale trades and businesses and the processing of food products; factories, mills and similar uses for the processing, preparation for use, and/or fabrication of wood, metal, concrete and similar materials, warehousing of commodities; junk industry or motor vehicle wrecking operations and similar uses when conducted within a structure and under license when provided by Village ordinance; any industrial use or trade which is not by reason of emission of noise, dirt, odors or vibrations noxious or dangerous to health, safety, or general welfare when authorized by the Board of Appeals as a variance, after public hearing, and subject to such conditions, restrictions, and safeguards as may be deemed necessary by said Board of Appeals for the purpose of protecting the health, safety, morals or the general welfare of the residents of the Village, except that such authorization, by the Board of Appeals, shall not be required for the expansion or extension of present industrial uses within the Industrial District in accord with the Industrial District requirements; agricultural operations; public utilities and services; transportation terminals and storage facilities; motor vehicle fabrications, servicing and storing.
 - (2) (Reserved)³

3. Editor's Note: Former Subsection A(2) was repealed 4-11-2011 by L.L. No. 1-2011.

- (3) Uses prohibited. All other uses are prohibited.
[Amended 5-19-2004 by L.L. No. 3-2004]
- B. Building height limit: no restriction.
- C. Yards required.
- (1) Each lot shall have a front yard of not less than 25 feet in depth.
 - (2) There shall be a side yard along the side of every lot in an F-1 District of not less than 10 feet; provided, however, that if the lot bordering a residence district on a side yard shall have side yard of a width not less than the minimum width required in and adjacent residence district.
 - (3) There shall be a rear yard on every lot of an F-1 District of not less than 25 feet.
 - (4) Every building or portion thereof which is designed, intended to be used for, or is used for dwelling purposes shall comply with the front, side and rear yard requirements of the R-2 Districts.
- D. Lot area and percentage of lot coverage for dwellings. All regulations as to required lot area and percentage of lot coverage which are prescribed for R-2 Residential Districts shall apply to all dwellings hereafter erected in any F-1 District.

§ 210-10. Supplementary regulations.

The provisions of this chapter shall be subject to such exceptions, additions or modifications as herein provided by the following supplementary regulations:

A. Uses.

- (1) Accessory uses. No part of an accessory structure in a side yard shall be in front of the front building line

of the principal building, and said accessory structure shall have a side yard not less than required for the principal building. An accessory structure in the rear yard to the rear of the rear line of the principal building shall not be closer to the side or the rear property line than three feet, except for a lot in the R-2 District existing at the time of the enactment of this chapter, where it appears to be a practical difficulty to erect and use an accessory structure not closer to the side or rear property line than three feet, the Building Inspector may vary the location of such accessory building so as to permit the erection of such accessory building not closer than one foot to a side or rear property line.

- (2) Reduction of lot size. No lot on which a structure existed at the date of the enactment of this chapter shall be reduced in width or area so that any required open space will be less than prescribed in the regulations pertaining to the district in which said lot is located. The limitations imposed by this chapter, however, shall not prohibit the issuance of a permit for the erection of buildings or structures on any lot having at the time of the enactment of the chapter a width or area smaller than required under this chapter. When the requirements for width or depth of yards are not met and undue hardship is imposed by regulations applicable to such existing lots, the Board of Appeals shall vary the application to conform the case as nearly as practicable to the intent and purposes of the chapter. For the purpose of this chapter, when two or more lots vacant are in a single ownership, they shall be construed as being a single lot.
- (3) Waste disposal. Dumping of refuse, waste material, or other substances is prohibited in all districts within the Village, except for the purpose of filling in to establish grades, for which a permit must be obtained by the owner from the Zoning Enforcement

Officer, the permit to require the immediate leveling of all material deposited, and when fill is completed, to be immediately covered with at least four inches of clean earth.

- (4) Advertising signs. No billboards or advertising signs of any description shall be erected at any place in the Village unless a special permit therefor has been obtained from the Zoning Enforcement Officer, except that a billboard or advertising sign may be erected by the owner or occupant of premises on such premises for the sale of his property or the product raised on his property, without a permit therefor, provided that such signs shall not be larger than 25 feet of display surface.
- (5) Sewer disposal. Septic tanks and sewage disposals shall not be permitted to discharge directly into any road, ditch, public ditch, stream or lake.
- (6) Hazardous properties. Any structure or excavation in the Village of Barker that in the unanimous opinion of the quorum of the Board of Appeals is a source of danger, or which constitutes a nuisance, or for which a temporary permit has expired, shall be repaired, removed, demolished, or filled, as directed by the Board of Appeals.
- (7) Topsoil removal.
 - (a) Before any excavation is commenced to remove from the ground topsoil, earth, sand, gravel, rock or other substance, the owner or lessee of the premises or agent of either shall obtain a written permit therefor from the Board of Appeals.
 - (b) Before issuing such a permit, the Board of Appeals may require the submission of a property plan drawn to scale giving location and dimensions of the premises upon which it

is proposed to excavate, including location of existing buildings, also the sworn consent in writing of the owner of the premises including his address and mortgages if any; also proof of the existence of new tax liens against the property.

- (c) The Board of Appeals may also require the submission of a plan for the future care or restoration of the area to be excavated including the preparation of seed bedding, liming, fertilization and seed. Nothing contained in this chapter shall require a person to obtain a permit or prevent a person from removing topsoil from one part of lands to another part of same premises or other premises owned by him in this township when removal is necessary as an accessory use or is made for the purpose of improving said property.
- (8) Public utility corporations. Public utility corporations and common carriers under the jurisdiction of the Public Service Commission of the State of New York shall be permitted to erect, maintain and operate permanent or temporary works, structures or buildings, subject, however, to such reasonable restrictions as to location and in other respects as the Town Board shall determine in each case; provided, however, that any such temporary buildings or structures shall be removed as soon as their original purpose shall have been served.
- (9) Dedication and construction. Sewers, water mains, roads or improvements thereto, or walks may be constructed by any owner of lands, being subdivided under supervision of the Zoning Board of Appeals, after a permit therefor has been duly issued, the cost of such construction to be borne by the owner of the

lands. The cost of inspection during such construction shall be paid to the Village of Barker by such owner.

- (10) Residences, minimum area. No dwelling shall be constructed or occupied in any district having less than 1,000 square feet of living area, exclusive of any basement or attic. **[Added 1-4-1993 by L.L. No. 1-1993]**

§ 210-11. Nonconforming buildings and uses.

The lawful use of any building or land existing at the time of the enactment of this chapter may be continued although such use does not conform with the provisions of this chapter.

- A. Restoration. No building damaged by fire or other causes to the extent of more than 75% of its full value, computed on the last preceding Village assessment roll, shall be repaired or rebuilt except in conformity with the regulations of this chapter.
- B. Cessation. Notwithstanding any other provisions of this chapter, any automobile wrecking yard or other junkyard in existence in any residential district at the date of enactment of the chapter shall at the expiration of two years from such date become a prohibited and unlawful use and shall be discontinued.
- C. Changes. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to a use of the same or higher classification, and when so changed to a higher classification, such use thereafter shall not be changed to a lower classification.
- D. Extension. A nonconforming use shall not be extended, but the extension of a lawful use to any portion of the nonconforming building which existed prior to the

enactment of this chapter shall not be deemed the extension of such nonconforming use.

- E. Alterations. A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding an aggregate cost 40% of the assessed value of the building unless said building is changed to a conforming use.
- F. Dismantled vehicles. When two or more abandoned or dismantled vehicles are allowed to remain on a premises for a period of 30 days, such act shall be considered a use of said premises for industrial purposes and a violation of this chapter, except when said vehicles are located in an industrial district and the provisions pertaining to industrial uses are complied with.
- G. House trailers, house cars or similar vehicles. The use of house trailers, house cars or other similar vehicles for residence purposes are prohibited in all use districts, except as provided for in the F-1 Industrial District.
- H. Size of rooms. A permit shall not be issued for the construction or placing of a building or structure to be used for residence purposes unless said building or structure shall have at least one living room which shall have at least 132 square feet of floor space. Such living room shall be at least eight feet in its horizontal dimension.
- I. Cellars. It shall be unlawful to occupy all or any part of a cellar for sleeping purposes.
- J. Any nonconforming use which shall be discontinued or abandoned or not used for the use which causes the nonconformance for a period of six consecutive months shall not thereafter be used or occupied except in conformity with the regulations of the district in which it is located. **[Added 5-19-2004 by L.L. No. 3-2004]**

§ 210-12. Administration and enforcement.

This chapter shall be enforced by the Village Clerk, or such appropriate officer as the Village Board may from time to time appoint, who shall perform such duty in addition to her present duties without additional compensation. No building permit or certificate of occupancy shall be issued by him or her except where the provisions of this chapter have been complied with.

A. Building permits.

- (1) No building or structure shall be erected, added to or structurally altered until a permit therefor has been issued by the Village Clerk, or such other enforcement officer as the Board of Trustees may hereafter designate. Except upon written order of the Board of Appeals, no such building permit, or certificate of occupancy, shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any of the provisions of this chapter.
 - (a) In the event that a building or structure for which a building permit has been issued in accordance with Subsection A(1) is not completed within a period of one year from the issuance of said permit, said permit shall automatically expire and no further construction shall be completed on said structure or building until another permit therefor has been issued. **[Added 2-6-1984 by L.L. No. 2-1984]**
- (2) There shall be submitted with all applications for building permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory building to be erected, and such other information as may be necessary to determine and provide the enforcement of this chapter.

- (3) One copy of such layout or plot plan shall be returned when approved by the said enforcement officer together with such permit to the applicant upon the payment of a fee of \$2.

B. Certificate of occupancy.

- (1) No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Zoning Enforcement Officer, stating that the building or proposed use thereof complies with the provisions of this chapter.
- (2) No nonconforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the said enforcement officer.
- (3) All certificates of occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within ten days after the erection or alteration shall have been approved as complying with the provisions of this chapter.
- (4) The enforcement officer shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building effected.
- (5) Subject to such conditions as the Board of Appeals may deem advisable to impose, a temporary certificate of occupancy for not more than six months for a part of building may be issued by the enforcement officer with the approval of the Board of Appeals.

§ 210-13. Interpretation of chapter.

Interpretation, conflict with other laws. In their interpretation and application, the provisions of this chapter shall be held to

be minimum requirements, adopted for the promotion of the public health, morals, safety or the general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive, or those imposing the higher standards, shall govern.

§ 210-14. Creation, appointment and organization of Board of Appeals.

- A. A Board of Appeals is hereby created. Said Board shall consist of three members, and said members shall be appointed by the Board of Trustees in accordance with the provisions of the Village Law. The Board shall elect a Chairman from its membership, shall appoint a Secretary, shall prescribe rules for the conduct of its affairs consistent with the provisions of the Village Law, and shall have powers and duties as granted to Boards of Appeal in the Village Law of the State of New York, and as specified in this chapter.
- B. Persons applying to the Board of Appeals for a change of classification or variance or to the Village Board for an amendment of this chapter, or persons initiating any other application or proceeding affecting this chapter, shall pay to the Village Clerk a fee of ~~*15~~ to cover the cost of publishing notices of a public hearing and other expenses incidental thereto.

§ 210-15. Amendments.

All amendments to this chapter shall be in accordance with the provisions of the Village Law applicable thereto. Any proposed amendment shall be submitted to the Board of Appeals for report and recommendation prior to any action thereon by the Board of Trustees. If the Board of Appeals recommends against the enactment of any proposed amendment, it shall become effective only by a favorable vote of all the members of the Board of Trustees.

§ 210-16. Penalties for offenses.

A violation of this chapter is a misdemeanor punishable by a fine not exceeding \$100,³ and each day that such violation continues after notice thereof shall be considered a separate offense.

§ 210-17. (Reserved) ⁴**§ 210-18. Wireless telecommunications facilities and telecommunications towers. [Added 10-6-1997 by L.L. No. 3-1997]**

A. Findings. The Village Board of the Village of Barker makes the following findings:

- (1) Requests to site personal wireless telecommunications facilities may occur in the Village of Barker.
- (2) The Village Board finds that the small Village atmosphere and character of the Village of Barker requires the stringent regulation of telecommunications towers; that such towers inherently detract from the nature and character of the Village of Barker, and this amendment is necessary to direct the location of personal wireless telecommunications facilities within the boundaries of the Village of Barker to minimize the number of such towers; to protect residential areas and other land uses from potential adverse impacts of personal wireless telecommunications facilities; to minimize adverse visual impacts of personal wireless telecommunications facilities, and to encourage shared use and co-location of existing and new

3. Editor's Note: See also Village Law § 20-2006, Subdivision 1-a.

4. Editor's Note: Former § 210-17, Special use permits, added 3-5-1990 by L.L. No. 1-1990, was repealed 5-19-2004 by L.L. No. 3-2004.

personal wireless telecommunications facilities and communications towers as a primary option rather than construction of additional single-use towers; and to protect the general welfare of the citizens of the Village of Barker.

B. Definitions. The following shall apply to this section:

MAJOR MODIFICATION OF PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES — A modification of the height, silhouette and/or ground area of any telecommunications tower or telecommunications accessory structure, and/or the addition of telecommunications antennas of a new provider to an existing tower.

PERSONAL WIRELESS TELECOMMUNICATIONS SERVICE FACILITY — Persons, firms or corporations supplying personal wireless telecommunications service, including all equipment, apparatus, facilities and devices used in the supplying of personal wireless telecommunications service.

PERSONAL WIRELESS TELECOMMUNICATIONS SERVICES — Commercial mobile services, unlicensed wireless services and common carrier exchange access services.

TELECOMMUNICATIONS ACCESSORY STRUCTURE — Accessory buildings and structures, including base stations, designed and used to shelter telecommunications equipment and/or to support personal wireless telecommunications facilities.

TELECOMMUNICATIONS ANTENNA — An antenna designed to transmit or receive communications as authorized by the Federal Communications Commission (FCC). Design examples of telecommunications antennas are described as follows: whip; panel; and dish.

TELECOMMUNICATIONS TOWER — A tower greater than 35 feet in height and which does not exceed 310 feet in height (including antenna) and which supports communications (transmission or receiving) equipment. The term "telecommunications tower" shall not include amateur radio operators' equipment as licensed by the FCC. Design examples of telecommunications towers are described as follows: self-supporting lattice; guyed; and monopole.

- C. Personal wireless telecommunications service facilities and towers: use districts where allowed. Subject to the provisions of this section, personal wireless communications facilities and communications towers shall be allowed only in the F-1 Districts (Factory or Industrial Districts) or upon Village-owned property in any district.
- D. Personal wireless telecommunications service facilities and towers: regulations.
 - (1) The placement, construction, and major modification of all personal wireless telecommunications facilities and telecommunications towers within the boundaries of the Village of Barker shall be permitted only by special permit, upon site plan approval issued by the Zoning Board of Appeals and issuance of a building permit, and subject to all the provisions of this chapter and all other applicable regulations. This section shall take precedence over any inconsistent provision of the this chapter.
 - (2) All new telecommunications antennas which are not attached to telecommunications towers shall comply with the provisions of this chapter.
 - (3) Any applications pending for telecommunications towers, antennas or accessory structures on the effective date of this section shall be subject to the provisions of this section.

- (4) To preserve the aesthetic and scenic value of the Village, new telecommunications facilities shall be sited on an existing telecommunications tower, unless the applicant demonstrates unequivocally that co-location is not possible. Any existing permit shall, regardless of additional expense or modification of facilities, allow and encourage co-location on its facilities. If co-location is not possible, such facilities shall be located in the area already in use for telecommunications towers, as close as possible to existing towers. At the option of the Village Board, any telecommunications towers, antennas or accessory structures shall be located on Village-owned property.
- (5) Applications under this section shall be made as follows: Applicants for a special permit to place, construct or modify personal wireless telecommunications facilities within the Village of Barker shall submit the following information to the Zoning Board of Appeals for its referral to a professional engineer or consultant for review and recommendation:
- (a) Visual environmental assessment form (visual EAF). Landscaping plan and visual assessment report including appropriate models and photography assessing the visibility from key viewpoints identified in the visual EAF, existing tree lines, and proposed elevations.
 - (b) Preliminary report prepared by a licensed professional engineer describing:
 - [1] Feasibility of co-location on existing structures and telecommunications facilities;
 - [2] Applicant's full map and grid coverage in the Village;

- [3] Surrounding topography and relation to line of sight transmission;
 - [4] Available road access, electric power and land-based telephone lines and/or microwave link capability;
 - [5] Required improvements or construction activities, including those within the public right-of-way or lands owned or controlled by the Village of Barker;
 - [6] Identity of location, ownership and usage of currently existing telecommunications facilities within the Village;
 - [7] Plans for construction of telecommunications accessory equipment building or structure and landscaping plan;
 - [8] Proposed mitigation measures for visual impacts;
 - [9] Proposed safety measures; and
 - [10] Compatibility with existing telecommunications networks, New York State Thruway Authority telecommunications network and public safety and emergency networks, such as fire, ambulance, police and 911.
- (c) In the case of an application for a telecommunications tower, additional information shall be provided describing: the telecommunications tower height and design, including a cross section of the structure; the telecommunications tower's compliance with applicable structural standards; the telecommunications tower's capacity, including the number and type of telecommunications

antennas it can accommodate and the basis of calculation of capacity.

- (d) In the case of a telecommunications antenna mounted on an existing structure, additional information shall be provided indicating: the existing structure's suitability to accept the telecommunications antenna; the proposed method of affixing the telecommunications antenna to the structure; and complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.
- (e) Demonstration of need for proposed telecommunications facility showing the impracticality of upgrading or expanding an existing site.
- (f) Demonstration that the proposed site is the most appropriate available site for the location of the cellular telephone facility.
- (g) Inventory of existing telecommunications facilities within the Village outlining opportunities for shared use as an alternative to the proposed use. If co-location is not used, the alternative must demonstrate that the proposed telecommunications tower or telecommunications antenna cannot be accommodated on an existing approved telecommunications tower or facility, or an existing facility with modifications.
- (h) Description of the applicant's long-range plans which project market demand and long-range facility expansion needs within the Village.
- (i) Proof of certified mail announcements to all other telecommunications providers in the area declaring the applicant's sharing capabilities and/or siting needs.

- (j) A map showing the location of the premises for which the permit is sought and sketch plan showing all features of the facility necessary for providing road access, electrical service, land-based telephone line connection and/or microwave link capability within the property boundaries of the proposed location.
 - (k) In the case of an application for a telecommunications antenna or tower to be located on private lands owned by a party other than the applicant or the Village, a copy of the lease agreement with the property owner shall be provided.
 - (l) Such other information as may be required by the Planning Board, the Zoning Board of Appeals or the Village Engineer or Building Inspector.
- (6) Special permits issued for personal wireless telecommunications service facilities and telecommunications towers shall be subject to the following general conditions:
- (a) Separation distance. Telecommunications facilities shall be separated from all residential dwellings by a distance of 250 feet or 1 1/2 times the height of the tower, whichever is greater.
 - (b) All telecommunications accessory structures shall comply with zoning setback regulations in the affected zone. In any event, a telecommunications tower shall be set back a distance at least equal to its height. This requirement may be waived by the Zoning Board of Appeals, if other considerations require such waiver. Additional setbacks from all property lines may be required by the

Zoning Board of Appeals in order to provide for the public safety, and for aesthetic reasons.

- (c) Minimal visual impacts. All telecommunications towers and telecommunications antennas shall be sited to have the least possible practical visual effect on the environment.
- (d) Lighting. Telecommunications towers shall not be artificially lighted unless otherwise required by the Federal Aviation Administration (FAA) or other federal, state or local authority.
- (e) Material and paint. Telecommunications towers and telecommunications antennas shall be of a galvanized finish, or painted gray above the surrounding tree line, and gray or green below the tree line; the mountings of telecommunications antennas shall be nonreflective and of the appropriate color to blend with their backgrounds, unless otherwise required by the FAA.
- (f) Screening and architectural character.
 - [1] Screening may be required by the Zoning Board of Appeals to screen portions of the telecommunications tower and tower base from nearby residential property or important views.
 - [2] Architectural character. Design measures shall be used to integrate the facilities with existing buildings in the area.
- (g) Height. The size of telecommunications sites shall be limited to the minimum required to provide proposed telecommunications services but shall include consideration of height needed for co-location.

- (h) Access roads. Plans for access roads shall be submitted as part of the permit application and shall be subject to approval by the Superintendent of Public Works. **[Amended 8-7-2000 by L.L. No. 2-2000]**
- (i) Telecommunications accessory structures. Telecommunications support facilities such as vaults and equipment rooms, utilities and other support structures shall be screened, placed underground, depressed, earth bermed or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility.
- (j) Telecommunications antennas. Due to their high visibility, dish and parabolic telecommunications antennas shall be located at as low an elevation as possible without compromising the function the device, preferably on the sides of buildings or ground-mounted on slopes below the ridgeline wherever possible, rather than elevated on telecommunications towers. Microwave and satellite dishes shall be of mesh construction wherever possible.
- (k) Utility service. At the discretion of the Zoning Board of Appeals, electrical and land-based telephone utilities, extended to serve telecommunications sites, shall be underground on the applicant's property.
- (l) Security provisions. Each site shall have a security program including physical features such as fencing, anti-climbing devices or elevating ladders on the telecommunications towers and/or monitoring either by staff or electronic devices, to prevent unauthorized access and vandalism.

- (m) Safe zone. Telecommunications towers shall be designed so that in the event of failure they will fall within the setback area of the site and/or away from adjacent development.
- (n) Noise. Noise-producing equipment shall be sited and/or insulated to minimize noise impacts on adjacent properties.
- (o) Annual inspection and report. Unless waived by the Board, telecommunications towers over 100 feet in height, including towers existing on the effective date hereof, shall be inspected annually by a licensed professional engineer, or at any other time upon a determination by the Village's Building Inspector that the telecommunications tower may have sustained structural damage, and a copy of the inspection report shall be submitted to the Village Building Inspector.
- (p) Removal. All telecommunications facilities, including but not limited to antennas, towers and accessory structures, shall be dismantled and removed from the site when they have been inoperative, abandoned or had their special permit revoked, for six months. Applicants shall post a bond or other suitable undertaking as a condition of the use permit in order to guarantee removal of abandoned structures.
- (q) Post-installation field report. A post-installation field report identifying the facility's coverage area, the telecommunications tower's maximum capacity, committed capacity and unused capacity, if any, and co-located users of the telecommunications tower shall be submitted to the Village.

- (r) Proof of insurance. The applicant shall annually provide the Village Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.
 - (s) Special permit term. Special permits granted pursuant to this section shall be issued for a term of one year. Permits may be renewed yearly, without the need of a public hearing.
 - (t) To the extent determined by the Zoning Board of Appeals, the application shall provide for the placement of antennas and other telecommunications devices on its facilities for public safety organizations.
 - (u) The applicant shall pay for the costs of the Village's engineers and attorneys for time spent reviewing and analyzing the application in the actual amount billed, not exceeding the amount of \$5,000.
 - (v) Application fee. The applicant shall pay an application fee in the amount of \$500, or such other amount as the Village Board may, from time to time, determine by resolution, upon filing of its application to cover the expense of processing the application, exclusive of costs covered by Subsection D(6)(u) above. Such fees shall be paid for each annual renewal.
- (7) The Zoning Board of Appeals may grant the special permit, deny the special permit or grant the special permit with written stated conditions. Denial of the special permit shall be by written decision based upon substantial evidence submitted to the Board. Incompatibility with the character or aesthetic nature of the neighborhood of the Village as a whole

shall be sufficient ground for denial of the special permit.

(8) The special permit shall not be assignable or transferable.

E. Revocation. If the applicant violates any of the conditions of its permit or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit. Revocation may occur after the applicant is notified of the violations and the Zoning Board of Appeals holds a hearing on same.


