

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

ARTICLE VII – Chapter 190-7 (as last amended 8/28/08 by LL#8-08)

Overlay Districts

A. Overlay Districts Generally.

Overlay districts do not change the use and dimensional requirements of the underlying land use district unless specifically stated in this article. They are not intended to prohibit development, but rather to assure that the siting and design of development is sensitive to environmental and historic resources and constraints.

B. Conservation Development Overlay District.

- (1) Purpose. The purpose of the Conservation Development Overlay District is to require the use of conservation development design principles to preserve open space and viable agricultural lands. The Conservation Overlay District is intended to protect the Town's natural environment, provide for a balance between developed and undeveloped land, protect air quality, and to provide adequate open areas for recreation and conservation. Conservation development is a form of design that preserves important natural resources and open space while still allowing for development to occur. The following provisions intend to achieve a balance between well-designed development, meaningful open space conservation, and natural resource protection in the portions of the Town of Colonie covered by the Conservation Development Overlay. Conservation Development will preserve tracts of environmentally, scenically and recreationally significant undeveloped land and preserve contiguous open spaces and important scenic and environmental resources, while allowing compact development and creating more walkable and bike-able neighborhoods.
- (2) Applicability. These regulations shall apply to all site plan development and subdivisions of property within the Conservation Development Overlay unless:
 - (a) The development is a minor site plan development; or
 - (b) The development is classified as a minor subdivision as defined in the Subdivision Article of this Chapter; or
 - (c) The Planning Board determines, based upon the conservation analysis outlined below, that there is no

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

reasonable basis for requiring conservation development. The Board may then approve a conventional development of the site. In order for the Planning Board to make such a determination, the applicant must demonstrate at least one of the following:

- [1] The land contains no resources with conservation value;
 - [2] The acreage is too small to preserve a substantial amount of land with conservation value (this criterion shall not be circumvented by piecemeal subdivision of larger tracts); or
 - [3] The lot configuration is unique and precludes preservation of a substantial amount of land with conservation value.
- (d) In order to make the required showing, the applicant must also demonstrate that the parcel does not adjoin other land that, when combined with open space on the parcel, would result in the preservation of a substantial amount of land with conservation value (including any portion of a designated trail corridor), regardless of whether or not the adjoining parcels have been protected as open space.
- (e) An approval of a conservation development shall refer to the conservation findings and may be conditioned upon the protection by conservation easement of portions of the site identified in the conservation analysis and findings as having conservation value.
- (3) Standards For Conservation Development.
- (a) Density Calculation
 - [1] Residential. The number of residential units permitted on a lot is calculated following the steps below.
 - [a] Determine the acreage of unconstrained land on the lot. Unconstrained land is the total acreage of the proposed development parcel excluding Constrained Land.
 - [b] Determine the number of permitted residential units on the lot. Multiply the acres of unconstrained land by the base residential density for the district, as set forth in the Dimensional Table included in the Dimensional Requirements and Density Incentives Article of this Chapter. Round down fractional units of 0.5 or less and

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

- round up fractional units greater than 0.5. The resulting number is the base residential density.
- [2] Commercial. The allowable commercial development on a lot is calculated following the steps below.
 - [a] Determine the acreage of unconstrained land on the lot. Unconstrained land is the total acreage of the proposed development parcel excluding Constrained Land.
 - [b] Determine the permitted Gross Floor Area on the lot. Multiply the acres of unconstrained land by the base commercial density for the district, as set forth in the Dimensional Table included in the Dimensional Requirements and Density Incentives Article of this Chapter. Round down fractional units of 0.5 or less and round up fractional units greater than 0.5. The resulting number is the base commercial density.
 - (b) Density Increase. Pursuant to the Incentives section of this Chapter, the base residential and/or commercial density, as determined above, may be increased.
- (4) Conservation Analysis.
- (a) As part of its Site Plan or Subdivision Review, an applicant shall prepare a conservation analysis, consisting of inventory maps, description of the land, and an analysis of the conservation value of various site features. The conservation analysis shall show lands with conservation value, including but not limited to the following:
 - [1] Constrained Land
 - [2] Open Space and Recreational Resources
 - [3] Buffer Areas (Define to include screening and environmental buffers)
 - [4] Land exhibiting present or potential recreational, historic, archeological, ecological, agricultural, water resource, scenic or other natural resource values.
 - (b) The conservation analysis shall describe the importance and the current and potential conservation value of all land on the site. In the course of conceptual site plan or subdivision review, the Planning Board shall indicate to the applicant which of the lands identified as being of conservation value are most important to preserve.
 - (c) The outcome of the conservation analysis and the Planning Board's determination shall be the identification of land to

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

be preserved by a permanent easement. The conceptual site plan or subdivision plan shall also show preferred locations for intensive development as well as acceptable locations for less dense development.

- (d) The final determination as to which land has the most conservation value and should be protected from development shall be made by the Planning Board. Whenever the Planning Board approves a plan with protected open space, it shall make written findings identifying the specific conservation values protected and the reasons for protecting such land (the "conservation findings"). The Planning Board shall not approve development without a complete conservation analysis sufficient for the Board to make its conservation findings.
 - (e) The Planning Board may determine that limited areas of constrained land may be disturbed in order to secure a reasonable development of the site, consistent with the findings of the conservation analysis. In that event, a portion of the site twice the area of the constrained lands to be disturbed shall be set aside from the lands identified as being of conservation value, and treated as constrained lands for the purposes of the density calculation and concept plan preparation.
 - (f) The Conceptual Plan shall show the constrained land identified by the analysis described above, and at least 40% of the land not constrained as land to be preserved.
- (5) Lot Sizes in Conservation Subdivisions.
- (a) After the final residential and/or commercial densities are determined, there shall be no mandatory minimum lot size in a conservation development. The Planning Board shall determine appropriate lot sizes in the course of its review.
 - (b) In order to permit a clustered lot configuration, wells and septic systems may be located in common areas of protected open space, provided that necessary easements are provided for maintenance of these facilities.
- (6) Other Area and Dimensional Requirements.
- (a) There shall be no minimum required area, bulk, or dimensional standards in a conservation development, except that where such development abuts an existing single family dwelling, a suitable buffer area shall be required by the Planning Board.

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

- (b) The applicant shall specify dimensional requirements for a proposed conservation subdivision by identifying setbacks and other lot dimensions to be incorporated into the final site plan or subdivision plan, subject to review and approval by the Planning Board.

- (7) Conservation Development Design.
 - (a) Compliance with subdivision rules and regulations. All requirements of the rules and regulations of the Planning Board with respect to the development and approval of subdivision plans shall be complied with except insofar as the same may conflict with specific requirements set forth herein. Where the requirements of this article conflict with those contained in the subdivision regulations of this Chapter, the specific requirements set forth in this article shall control.
 - (b) Lots shall be arranged in a manner that protects land with conservation value and facilitates pedestrian and bicycle circulation. Permitted building locations or areas ("building envelopes") shall be shown on the final site plan and/or subdivision plan.
 - (c) Parking. Parking spaces shall be a minimum of nine feet wide and eighteen feet long. Each dwelling unit shall have at least two exterior, off-street parking spaces. Common parking areas shall also be provided, with at least 1/2 additional parking space for each dwelling unit. These common parking areas shall be no further than 250 feet from the dwelling unit they are intended to serve. The Planning Board may waive the requirement for common parking areas if the applicant demonstrates that sufficient exterior, off-street parking is available on the individual lots. Curbing, fencing, or other physical barriers shall be provided as approved by the Planning Board to prevent encroachment onto landscaped areas by vehicles.
 - (d) Snow clearance and removal. The means employed to remove snow and ice from sidewalks, parking lots, and driveways must be sufficient to safely and adequately handle the volume of snow and ice reasonably anticipated to be deposited by nature on the site, without subjecting green space areas to damage, and while maintaining the minimum required parking spaces. Provisions for winter snow storage for common parking areas shall be included as an integral part of the project plan, and such snow

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

storage provisions shall not reduce the number of parking spaces beyond the minimum number established by these rules. A plan for snow removal rather than storage shall not be an acceptable alternate.

- (e) Design elements review. The design elements of the project shall be in harmony with the natural environment and in keeping with the character of the adjacent land uses.
- (8) Special Standards for Areas Influenced by Albany Pine Bush Preserve.
- (a) Native Albany Pine Bush species will be used to landscape new commercial, industrial and residential buildings to the greatest extent practicable. New landscaping shall not consist of known invasive species. A list of native Albany Pine Bush species shall be made available at the applicant's request.
 - (b) Sufficient open space shall be provided to permanently protect ravines, major dunes, pine-barrens vernal ponds, rare and endangered species habitat, or to connect other preservation lands. All development proposals will be designed in such a way as to ensure the proper management of the open space lands and shall be consistent with the Conservation Development concept. Protection efforts can include, but are not limited to land dedications to the Albany Pine Bush Preserve, set-asides, donations, and conservation easements.
 - (c) Where practical, parking shall be provided by several small lots as opposed to one large one.
 - (d) There should be no general leveling and clearing of any site. Construction should follow the contour of the land and not destroy trees or natural features except where necessary for the building of foundations and approved parking and paved areas.
 - (e) All lighting fixtures used to provide exterior security or parking lot lighting shall utilize high pressure sodium vapor lights as opposed to mercury vapor or other lighting fixtures and otherwise comply with Town lighting requirements. The use of excessive dusk-to-dawn exterior lighting shall be discouraged.
 - (f) Where practical and when excess sand from projects is available applicants should consider donating such excess sand to the Albany Pine Bush Preserve Commission.

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

- (9) Road Standards. Notwithstanding any other road construction requirements promulgated by the Town of Colonie, the size of roads built within conservation subdivisions may be reduced at the discretion of the Planning Board and with approval of the Superintendent of Highways.
- (10) Permanent Open Space. Open space set aside in a Conservation Development shall be permanently preserved. The open space protected pursuant to this Article must have "conservation value," which shall be determined in the course of the conservation analysis described above.
- (11) Preservation by Permanent Easement.
- (a) A perpetual easement restricting development of the open space land and allowing use only for agriculture, forestry, passive recreation, protection of natural resources, or similar conservation purposes, shall be granted to the Town, with the approval of the Town Board, and/or to a qualified not-for-profit conservation organization acceptable to the Planning Board. Such easement shall be approved by the Planning Board and shall be required as a condition of Final approval. The Planning Board shall require that the easement be enforceable by the Town if the Town is not the holder of the easement. The easement shall be recorded in the County Clerk's Office.
 - (b) The easement shall prohibit residential, industrial, or commercial use of open space land (except in connection with agriculture, forestry, and passive recreation), and shall not be amendable to permit such use. Driveways, wells, underground sewage disposal facilities, local utility distribution lines, stormwater management facilities, trails, and agricultural structures shall be permitted on preserved open space land with Planning Board approval, provided that they do not impair the conservation value of the land. Forestry shall be conducted in conformity with applicable best management practices as described by the NYS Department of Environmental Conservation's Division of Lands and Forests.
 - (c) A land management plan, approved by the Planning Board, may be required. The easement shall provide that if the Town Board finds that the management plan has been violated in a manner that renders the condition of the land

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

a public nuisance, the Town may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and that the cost of such maintenance by the Town shall be assessed against the landowner or, in the case of a Homeowners' Association (HOA), the owners of properties within the development, and shall, if unpaid, become a tax lien on such property or properties.

- (d) Preserved open space may be included as a portion of one or more large lots, or may be contained in a separate open space lot. The easement may allow dwellings to be constructed on portions of lots that include preserved open space land, provided that the total number of dwellings permitted by the easement in the entire subdivision is consistent with applicable density limitations.

(12) Ownership of Open Space Land.

- (a) Open space land shall under all circumstances be protected by a perpetual easement, but may be owned by an HOA, offered for dedication to Town, County, or State governments, transferred to a not-for-profit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds appropriate to properly manage the open space land and to protect its conservation value.
- (b) If the land is owned by an HOA, such HOA shall be established in accordance with the following:
 - [1] The HOA application must be submitted to the NYS Attorney General's Office before the approved subdivision final plan is signed, and must comply with all applicable provisions of N.Y. State law. The HOA must be approved by the NYS Attorney General's Office prior to issuance of the first building permit.
 - [2] Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
 - [3] The HOA must be responsible for liability insurance and property taxes for common lands, and the maintenance of recreational facilities, private roads, driveways and parking areas, and other common facilities.

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

- [4] Property owners must be required to pay their prorated share of the costs, and the assessment levied by the HOA must be able to become a lien on the individual homeowners' properties.
- [5] The HOA must be able to adjust the assessment to meet changed needs.
- [6] The applicant shall make a conditional offer of dedication to the Town binding upon the HOA for all open space intended to be conveyed to the HOA. The filing in the County Clerk's office of a subdivision map depicting such open space shall be considered an offer of dedication. Such offer may be accepted by the Town, at the discretion of the Town Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.
- [7] Ownership shall be structured in such a manner that real property taxing authorities can satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
- [8] The Town Attorney's Office shall find that the HOA documents presented satisfy the conditions above, and such other conditions as the Planning Board shall deem necessary.

(13) Conservation Development Procedures. The conservation development shall follow the same Site Plan and/or Subdivision process contained in this Chapter subject to the additional provisions contained herein.

C. Historic Overlay District.

The purpose of the Historic Overlay District is to recognize the importance of the Loudon Road Historic District and the Watervliet Shaker Historic District.

D. Airport Noise Impact Overlay Districts: special conditions and restrictions.

**COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007**

- (1) District Limits. The limits of the Airport Noise Overlay Districts shall be the boundaries of the Year 2000 65-70 DNL and 70+ DNL noise impacts areas, as delineated in the Albany County Airport F.A.R. Part 150 Noise Compatibility Study Record of Approval. DNL noise levels represent a twenty-four-hour average sound level, in decibels, averaged over a year, with 10 decibels added for noise occurring between 10:00 p.m. and 7:00 a.m.
- (2) Land Use and Standards Table.
In order to protect the public from conflicts arising due to incompatible land uses being developed adjacent to the Albany International Airport, the uses otherwise permitted within any district shall, when lying within an Airport Noise Impact Overlay District, be subject to conditions and restrictions as set forth in the following table:

**Land Use and Standards for the Year 2000 65 to 70
and 70 + DNL Boundaries**

| Land Use ¹ | Proposed 65 to 70 DNL Overlay | Proposed 70+ DNL Overlay |
|--|-------------------------------------|--------------------------------|
| Residential | | |
| Single units, detached | Y ² | N |
| Single units, semidetached | Y ² | N |
| Single units, attached row | Y ² | N |
| Two units, side by side | Y ² | N |
| Two units, one above the other | Y ² | N |
| Apartments, walk-up | Y ² | N |
| Apartments, elevator | Y ² | N |
| Group quarters | Y ² | N |
| Residential hotels | Y ² | N |
| Mobile home park or courts | N | N |
| Transient lodgings | Y ² | N |
| Other residential | Y ² | N |
| Manufacturing | | |
| Food and kindred products | Y | Y ³ |
| Textile mill products | Y | Y ³ |
| Apparel and other finished products made from fabrics, leather, and | | |

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

| | | |
|---|---|----------------|
| similar materials | Y | Y ³ |
| Lumber and wood products (not furniture) | Y | Y ³ |
| Furniture and fixtures | Y | Y ³ |
| Paper and allied products | Y | Y ³ |
| Printing, publishing, and allied | Y | Y ³ |
| Chemicals and allied products | Y | Y ³ |
| Petroleum refining and related industries | Y | Y ³ |
| Rubber and miscellaneous plastic products | Y | Y ³ |
| Stone, clay, and glass products | Y | Y ³ |
| Primary metal industries | Y | Y ³ |
| Fabricated metal products | Y | Y ³ |
| Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks | Y | Y ³ |
| Miscellaneous manufacturing | Y | Y ³ |
| Transportation, Communication, and Utilities | | |
| Railroad, rapid rail transit, transit and street railway transportation | Y | Y ³ |
| Motor vehicle transportation | Y | Y ³ |
| Aircraft transportation | Y | Y ³ |
| Marine craft transportation | Y | Y ³ |
| Highway and street right-of-way | Y | Y ³ |
| Automobile parking | Y | Y ³ |
| Communication | Y | Y ³ |
| Utilities | Y | Y ³ |
| Other transportation, communication, and utilities | Y | Y ³ |
| Trade | | |
| Wholesale trade | Y | Y ³ |
| Retail trade, building materials, hardware, and farm equipment | Y | Y ³ |
| Retail trade, general | Y | Y ³ |
| Retail trade, food | Y | Y ³ |
| Retail trade, automotive, marine craft, aircraft, and accessories | Y | Y ³ |
| Retail trade, apparel and accessories | Y | Y ³ |
| Retail trade, furniture and furnishings | Y | Y ³ |
| Retail trade, eating and drinking establishments | Y | Y ³ |
| Other retail trade | Y | Y ³ |

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

Services

| | | |
|-------------------------------------|----------------|----------------|
| Finance, insurance, and real estate | Y | Y ³ |
| Personal services | Y | Y ³ |
| Cemeteries | Y | Y ³ |
| Business services | Y | Y ³ |
| Repair services | Y | Y ³ |
| Professional services | Y | Y ³ |
| Hospitals, nursing homes | N | N |
| Other medical facilities | Y ⁴ | Y ⁵ |
| Contract construction services | Y | Y ³ |
| Governmental services | Y | Y ³ |
| Educational services | N | N |
| Miscellaneous | Y | Y ³ |

Cultural and Recreational

| | | |
|---|----------------|----------------|
| Cultural activities (including churches) | N | N |
| Nature exhibits | Y ⁴ | N |
| Public assembly | N | N |
| Auditoriums, concert halls | N | N |
| Outdoor music shells, amphitheaters | N | N |
| Outdoor sports arenas, spectator sports | N | N |
| Amusements | Y ⁴ | Y ⁵ |
| Recreational activities (including golf courses, riding stables, water recreation) | Y ⁴ | Y ⁵ |
| Resorts and group camps | N | N |
| Parks | Y | Y ⁵ |
| Other cultural, entertainment | Y ⁴ | N |

Resource Production/Extraction

| | | |
|--|----------------|----------------|
| Agriculture (except livestock) | Y ⁶ | Y ⁷ |
| Livestock farming, animal breeding | Y ⁶ | Y ⁷ |
| Agricultural-related activities | Y | Y ⁷ |
| Forestry activities and related | Y | Y ⁷ |
| Fishing activities and related | Y | Y |
| Mining activities and related | Y | Y |
| Other resource production and extraction | Y | Y |

TABLE KEY:

- Y (Yes): This land use and related structures are compatible without restrictions.
- N (No): This land use and related structures are not compatible and shall be prohibited.

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

NLR (Noise Level Reduction): noise level reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.

Y(*) (Yes, with restrictions): Land use and structures generally compatible; see Notes.

dBA: A sound pressure level designed to approximate the response of the human ear to sound; dBA is a unit of measure of a sound expressed from a calibrated sound level meter utilizing an A-level weighting scale.

NOTES:

1. The Standard Land Use Coding Manual, first published by the Urban Renewal Administration in 1965, is the source of the classification system used in this section. This system was also used in the model ordinance included within the Albany County Airport: F.A.R. Part 150 Noise Compatibility Study.
2. Measures to achieve outdoor to indoor noise level reduction (NLR) of at least 25 decibels shall be incorporated into the design and construction of buildings to achieve an interior noise level of 40 dBA.
3. Measures to achieve NLR of at least 25 decibels must be incorporated into the design and construction of portions of any buildings where the public is received, office areas, and other noise sensitive areas to achieve an interior noise level of 45 dBA.
4. Measures to achieve NLR of at least 25 decibels must be incorporated into the design and construction of portions of any buildings where the public is received, office areas, and other noise sensitive areas to achieve an interior noise level of 40 dBA.
5. Measures to achieve NLR of at least 30 decibels must be incorporated into the design and construction of portions of any buildings where the public is received, office areas, and other noise sensitive areas to achieve an interior noise level of 40 dBA.
6. Residential buildings require an NLR of at least 25 decibels to achieve an interior noise level of 40 dBA.
7. Residential buildings not permitted.

(3) Exempt uses. The following uses shall be exempt from these conditions and restrictions:

- (a) Existing uses: Uses existing on the effective date of this Chapter shall not be required to change in order to comply with these regulations. The nonconforming use requirements of this chapter shall apply to the future applicability of the standards and requirements contained herein.

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

- (b) Temporary uses: temporary uses, including but not limited to public celebrations and outdoor entertainment events, so long as the period of operation does not exceed five days. A variance may be requested to extend the time period for a temporary use.
 - (c) Temporary structures: temporary buildings and structures that are not used for residential purposes and which meet applicable requirements as contained within this chapter, so long as such uses and associated structures are constructed incidental to a permitted use, as per the requirements of this chapter.
 - (d) Accessory uses and structures: accessory uses and structures incidental to a permitted principal structure or use and within the intent, purposes, or objectives of these regulations.
 - (e) Historic structures: Structures listed on the National Register of Historic Places, or on official state or local registers of historic places, may be exempt from the sound insulation requirements of this section if they compromise the architectural or historic integrity of the buildings.
- (4) Relation to existing laws, ordinances, and regulations. This section shall not be construed to repeal the provisions of existing laws, ordinances, and regulations established by housing, building, and zoning requirements for the Town. When the underlying zoning and the overlay zoning are in conflict or are not consistent, the most restrictive regulations shall apply.

E. Administration and Enforcement.

- (1) The provisions of this article with respect to Conservation Overlay Districts shall be primarily administered and enforced by the PEDD, which shall have the power to make necessary inspections.
- (2) The provisions of this article with respect to Airport Noise Impact Overlay Districts shall be primarily administered and enforced by the Building Department, which shall have the power to make necessary inspections.