

*File Copake
2005*

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~~County~~
~~City~~ of Copake
Town
~~Village~~

Local Law No. 2 of the year 2005

A local law Amending the Zoning Code and Establishing a Scenic Corridor Overlay Zone Along New York State Route 22 in the Town of Copake
(Insert Title)

Be it enacted by the Town Board of the

~~County~~
~~City~~ of Copake as follows:
Town
~~Village~~

Section I. Title of Local Law:

This law shall be entitled, "A Local Law Amending the Zoning Code and Establishing a Scenic Corridor Overlay Zone Along New York State Route 22 in the Town of Copake".

Section II. Legislative Findings and Purpose:

A. Findings. The Town of Copake, New York, finds that the Route 22 corridor and that portion of the Harlem Valley which includes the Taconic Mountains and Alander Ridge are among the Town's most important natural and scenic resources. The

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Route 22 viewshed and overlooks are critical features whose conservation enriches and benefits both residents and visitors, as documented in the Town's Scenic Resource Protection Plan adopted as an amendment to the Town's Comprehensive Plan on April 14, 2005. Conservation of the scenic character of these areas of the Town emerged as an important priority in the public planning process, conducted during 2004 and 2005. The Town, therefore, finds that protection of the Route 22 corridor is essential to maintaining the Town's rural character and its sense of place. It further recognizes that the Route 22 corridor and its associated viewshed contribute significantly to the Town's quality of life and its attractiveness for residential and commercial development, as well as for tourism. The Town further finds that development of the area covered by this Scenic Corridor Overlay Zone is appropriate, if such development is carefully planned and designed to maintain, conserve, and enhance to the extent practicable the scenic features of the area and the views into the landscape from the public roads, residences, hiking trails, bike paths and parklands. Protection of the Route 22 corridor will also have the effect of protecting Copake's important wildlife habitats and environmentally fragile areas as well as preserving open space.

- B. Purpose.** The purpose of the Scenic Corridor Overlay Zone is to establish clear guidelines for development and/or redevelopment, and protection of the Town's Route 22 corridor which comprises the most scenic and environmentally sensitive areas of the Town and to preserve existing open land now being actively used in agriculture.

Section III. Location of Scenic Corridor Overlay Zone:

The Scenic Corridor Overlay Zone encompasses those lands shown on a map entitled, "Town of Copake Scenic Corridor Overlay Zone", which is being adopted in this Local Law as part of the Town of Copake Zoning Map pursuant to Section 232-5 of the Town Code. This area encompasses those lands identified in the Town of Copake Scenic Resource Protection Plan as "important views" and "scenic roads". The Scenic Corridor Overlay Zone areas constitute all areas from the Town's boundary with the State of Massachusetts to an area 1,500 feet west, and paralleling the center line of State Route 22 as it runs north and south through the Town.

Section IV. Amendments to Chapter 232 of Town Code (Zoning):

1. Article III, Section 232-4A of the Town of Copake Code is amended to provide for an eleventh zoning district called the Scenic Corridor Overlay Zone ("SCOZ").
2. Article V, Supplementary Regulations, of the Town of Copake Code is hereby amended to create a new Supplementary Regulation, Section 232-26 titled, "Scenic Corridor Overlay Zone".
3. Section 232-26 **Scenic Corridor Overlay Zone (SCOZ)** shall read as follows:

A. Purpose and Intent

The purpose of the Scenic Corridor Overlay Zone is to establish clear guidelines for development and/or redevelopment, and protection of, the Town's Route 22 corridor which comprises the most scenic and environmentally sensitive areas of the Town and to preserve existing open land now being actively used in agriculture.

B. Applicability

Any of the following uses occurring on a parcel of land lying fully, or partially, within the SCOZ shall be subject to these Supplementary Regulations:

- (1) All subdivisions that exceed the threshold for minor subdivisions as set forth in the Town's Subdivision Regulations.
- (2) All land use development that requires Site Plan approval pursuant to Section 232-23 of the Town Code.
- (3) All commercial structures and uses requiring a Special Use Permit and/or Site Plan approval pursuant to the Town Code.
- (4) All uses requiring the issuance of a Special Use Permit and/or zoning variance pursuant to the Town Code.

C. Prohibited Uses

The following uses currently permitted in the underlying zoning district either subject to site plan approval from the Planning Board and/or subject to a Special Use Permit from the Zoning Board of Appeals are prohibited if they occur on parcels located entirely or partially within the SCOZ:

- (1) Extractive operations and soil mining. New or expanding mine sites that require a Mined Land Reclamation Permit from New York State Department of Environmental Conservation ("DEC") in accordance with Title 27 of Article 23 of the New York State Environmental Conservation Law and its regulations, as the same may be amended, are prohibited. Extractive mining operations and soil mining that are below the New York State DEC permitting required thresholds will continue to be permitted subject to the issuance of a Special Use Permit and Site Plan review and approval. However, in the event that DEC raises its thresholds, for the requirement of a DEC permit, above the thresholds which are in existence at the time of the enactment of this Local Law, all extractive mining operations and soil mining that exceed the DEC thresholds in effect at the time of the enactment of this

Local Law shall continue to be prohibited regardless of whether they require a permit from DEC.

- (2) Telecommunications towers.
- (3) Radio and television stations and towers.
- (4) Bus stations.
- (5) Mobile home parks.
- (6) Power plants.
- (7) Fuel storage and distribution facilities.
- (8) Commercial solar power generator plants.
- (9) All uses that are currently prohibited in the underlying zoning district shall continue to be prohibited in the SCOZ.

D. Exempt Uses

The following uses shall be exempt from the SCOZ Design Requirements;

- (1) "Agricultural activities, farms and farm operations", as those terms are defined in the Town Zoning Code and/or Agriculture and Markets Law Section 301, Subdivision 11.
- (2) Construction of agricultural buildings or structures less than 7,500 square feet in area. Any agricultural buildings or structures 7,500 square feet or more shall be permitted subject to expedited site plan review.
- (3) Construction of single family homes.
- (4) All "minor subdivisions" as that term is described in the Town of Copake Subdivision Regulations.

E. Conflicts

In any case of a conflict between these Supplementary Regulations, and the requirements of the underlying zoning district, other sections of the Town Code, the Town road specifications and/or the Town's land subdivision regulations, the provisions contained in these Supplementary Regulations shall control.

F. Design Requirements

In approving applications for parcels within the SCOZ, the design standards and principles provided herein shall be applied by the Planning Board and/or Zoning Board of Appeals, as the case may be (the Reviewing Board). These design requirements are intended to ensure that development and/or redevelopment within the SCOZ: (i) preserves, wherever practical, working farm fields; (ii) creates no more than a minimal impact on the SCOZ and surrounding area; (iii) is achieved in a manner which makes open space planning a central focus of development and/or redevelopment within the SCOZ; and (iv) ensures that projects fit into the scenic viewshed found along the Route 22 corridor to the fullest extent practicable.

- (1) **Preservation of Scenic Features.** In any application subject to these Supplementary Regulations, features that provide scenic importance to the Route 22 corridor should be preserved to a reasonable extent. These features include, but are not limited to, individual healthy trees within open fields that are at least eighteen inches (18") in diameter at breast height (dbh), historic structures, hedgerows, public or private unpaved country roads, and stone walls.
- (2) **Placement of Structures.** To ensure the placement of structures within the SCOZ on proposed building lots, building sites, including areas of cleared vegetation, shall be clearly designated on the applicable subdivision plat and/or site plans, at the time of Building Permit application. Constructed structures should not differ more than twenty (20) feet in any direction from building site locations shown on approved subdivision and/or site plans. Wherever practical, structures shall be sited to be as visually inconspicuous as possible when seen from a distance and from lower elevations, and to minimize impact on open and agricultural lands. Wherever possible, the reviewing Board may require that structures be located at the edge of agricultural land to minimize the loss of such land.
- (3) **Restrictions on Height.** No principal or accessory structure with a building height of greater than 35 feet shall be constructed within the SCOZ.
- (4) **Mitigation of Impacts.** All principal and accessory structures subject to these regulations shall comply with the following measures, designed to mitigate the impact of the structure, and the clearing of vegetation and regrading involved in the construction of the structure;
 - (a) **Visual Impact.** All structures shall be sited to avoid, to the greatest extent practical, occupying or obstructing public views of land within the SCOZ. A Visual Environmental Assessment Form may be

required to be submitted with the application. Public views shall be considered to be from any location listed on the SEQRA Visual Environmental Assessment Form Addendum (V-EAF) pursuant to 6 NYCRR 617.20 Appendix B. Visibility shall be measured using a condition of no leaves on trees. When appropriate, the Review Board may require more extensive visual impact analysis as part of its application and/or SEQRA review of the project.

- (b) Colors. Reflective materials and bright colors that contrast dramatically with the colors of the land and vegetation around them shall not be used as predominant colors on any wall or roof surface.
- (c) Vegetation. Existing vegetation within the SCOZ shall be preserved to the maximum extent practical. Every attempt shall be made to limit cutting necessary for either construction or the opening of views from the subject site so as to maintain native vegetation as a screen for structures as seen from public roads or parks or other public views. This section is not intended to limit forest management in the SCOZ when practiced in accordance with environmentally sound and sustainable silvicultural principles.
- (d) Tree cutting shall be subject to the following:
 - [1] All timber harvesting in the SCOZ shall comply with the most recent versions of *Timber Harvesting Guidelines for New York* and *Best Management Practices*, as promulgated by the New York State DEC. There may be situations where strict adherence to certain provisions of the *Timber Harvesting Guidelines for New York* and *Best Management Practices* are impossible or impractical to attain. Alternate measures exist that can be substituted for such guidelines at the discretion of the Board in appropriate circumstances. In such cases, the reviewing board may grant a waiver from the strict application of the guidelines where reasonable and necessary.
 - [2] Clear-cutting of all trees in a single contiguous area in excess of one-half (½) acre in area shall be prohibited; replanting of trees and/or shrubbery after construction may be required.
 - [3] This subsection shall not apply to:
 - [i] Christmas and landscaping tree culture or other existing tree plantation;

- [ii] Harvests conducted in accordance with a timber harvesting plan prepared pursuant to Section 480-a of the New York State Real Property Tax Law;
 - [iii] Tree clearing for farm purposes within Agricultural Districts established pursuant to New York State Agriculture and Markets Law;
 - [iv] Severe natural disturbances, which include fire, insect infestation, disease, ice and wind;
 - [v] Removal of timber stands that, if partially harvested according to accepted silvicultural practice, are at high risk for windthrow due to factors such as soils, rooting depth, crown ration, or stem quality;
 - [vi] Ecologically appropriate improvement or creation of wildlife habitat, with accompanying prescription and justification from a certified wildlife professional, a New York State DEC Forester, a member of the New York Institute of Consulting Foresters, or a Cooperating Consultant Forester.
- (5) View Preservation. Where appropriate, preservation of views shall be by conservation easement, pursuant to Section 247 of New York State General Municipal Law, Sections 49-0301 through 49-0311 of the NYS Environmental Conservation Law, or other legal instruments, such as deed restrictions, acceptable to the Town Board, Planning Board and Town Attorney.
- (6) Lighting.
- (a) Exterior lighting in the SCOZ shall be controlled in both height and intensity and shall be in conformance with the requirements established herein. The light level at any lot line shall not exceed 0.2 foot-candles, measured at ground level. Floodlights shall not be used to light any portion of a principal or accessory structure facade (except for temporary lighting) and all outdoor light sources mounted on poles, buildings or trees to illuminate driveways, sidewalks, walkways, parking lots, or other outdoor areas shall use fully shielded light fixtures. For purposes of this section, a "fully shielded light fixture" is one in which no more than 2.5 percent of the total output is emitted at 90 degrees from the vertical pole or building wall on

which it is mounted. All such fixtures shall be installed or shielded so that part of the light bulb or light source is not visible beyond the property boundaries. The maximum allowable height of a freestanding light fixture shall be 16 feet above the average finished grade. Exceptions to the maximum height limitations up to 25 feet above the average finished grade may be made when it can be demonstrated to the Planning Board that glare to off-site locations will not occur with such higher fixture. The maximum allowable height of a building or structure mounted light fixture shall be 35 feet.

- (7) Solar Energy. Solar energy installations for residential and/or agricultural use are permitted within the SCOZ. Solar energy equipment/supply/service businesses are permitted under SCOZ design guidelines.
- (8) Design principles. To meet the purposes of the SCOZ, the following design principles shall also be applied by the Planning Board:
 - (a) Within the SCOZ, Flexible Lot Subdivisions, as defined in Town Code Section 232-8K and Cluster Subdivisions, as defined in Section 232-17 of the Town Code shall be encouraged as alternatives to maximum density development.
 - (b) Wherever practical, vegetation and topography shall be used to buffer and screen buildings.
 - (c) Clearing of existing vegetation at the edge of the road shall be minimized, except to open landscape views and as necessary to create road and driveway entrances with adequate sight distance. Curved driveways shall be used to increase the screening of buildings.
 - (d) Wherever practical, buildings shall be sited so that they do not protrude above treetops and ridgelines of hills as seen from public places and roads. This shall not be interpreted to mean that the buildings should not be seen, only that they should not protrude above the trees or hilltops.
 - (e) Wherever practical, all electric, telephone, television, and other communication lines, both main and service connections, servicing new development, shall be provided by underground wiring installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.
 - (f) Parking. Parking lots for non-residential and multi-family residential

uses shall be provided with screened parking wholly at the side and/or rear of the structures, provided such an arrangement does not create a significant visual impact. If parking is provided at the side of structures, at least a ten foot wide landscaped area (exclusive of that required for sidewalks or utility easements) shall be provided between the road right-of-way and the parking lot, to be planted with shade or ornamental trees and at least a three-foot-high evergreen hedge, wall or fence. In addition, at least one tree and three shrubs shall be provided for each eight parking spaces in interior areas of the parking lot, whether such lot is provided at the side or rear of structures. Parking for single family dwellings shall also be provided at the side and/or rear of the principal structure, provided such an arrangement does not create a significant visual effect.

- (9) Dimensional Regulations. The following dimensional regulations shall apply to development within the SCOZ in addition to the dimensional regulations of the underlying zone district:
- (a) The Reviewing Board may require flexible lot or cluster subdivision in accordance with the Town Code and New York State Town Law when, in the Board's judgment, it would result in better preservation of open lands and/or the public viewshed.
 - (b) Non-residential and multi-family residential buildings shall be sited in clusters.
 - (c) No building shall exceed 7,500 square feet in footprint unless the structure is to be used exclusively for agricultural purposes on an active farm operation.
 - (d) The maximum allowable impervious surface coverage on any parcel proposed for subdivision or development shall be 20%. This includes the footprint of all buildings and/or structures. To implement this requirement, restrictions on impervious surface coverage for individual subdivided lots shall be shown on any submission plan or plat.
 - (e) Maximum building height requirements shall apply to the peak of the roofline. Cupolas, turrets and silos or barns when used in conjunction with agricultural operations, may exceed the maximum building height to the extent allowed elsewhere within the Zoning Code.
- (10) Prevention of soil erosion. No site plan or subdivision plat shall be approved

unless it includes storm water runoff prevention and soil erosion and sediment control measures prepared in accordance with applicable statutes, rules, regulations and guidelines.

- (11) Referral. The Town of Copake's SCOZ contains significant wildlife habitats, including those frequented by endangered and threatened species. To receive assistance in its review of applications, the reviewing board may refer the proposed plan to the New York State DEC or the New York Natural Heritage Program for its review and recommendations. Such reviewing board may also refer the proposed plans for comment to any agency, commission, committee, board or officials of the Town, county, state or federal government as the board may deem appropriate.
- (12) The Review Board may waive some or all of the regulatory and submission requirements of this Section in the SCOZ under any of the following circumstances:
 - (a) The structure or area within the SCOZ is situated so that it does not create a significant visual impact when viewed from visually sensitive areas and from significant resources within the Town.
 - (b) The Reviewing Board finds that the proposed project is of a minor nature and is consistent with the design standards set forth herein.

G. Non-Conforming Uses

Any use or structure prohibited herein, or subject to the Design Requirements of this Local Law, which lawfully exists, or for which a building permit has been approved and construction commenced, at the date of this Local Law, shall be permitted to continue as a non-conforming use. However, the provisions of this Local Law shall prohibit, or apply, as the case may be, to any expansion or extension of such use or structure (to the extent permitted by the Town Code or by issuance of a variance) or which requires the issuance of a Building Permit, Special Use Permit, and/or Certificate of Occupancy from the Town of Copake, or a permit or amended or modified permit from the New York State Department of Environmental Conservation (DEC) or any other state agency. Any mining operation which lawfully exists at the time of the enactment of this local law and which has been issued a Mined Land Reclamation Permit from DEC may continue to operate as a non-conforming use even if renewed permits are required from DEC, but only to the extent of the life of the mine area boundaries and limits of excavation as shown on the existing mining plans approved by DEC. Any expansion of such non-conforming mine beyond the mine boundaries, or at greater depths or excavation, than that shown on such approved and filed plans with DEC as of the date of this Local Law shall be

a prohibited use.

4. The following definitions shall be added, in appropriate alphabetical sequence, to Section 232-3 of the Town Code:

AGRICULTURAL ACTIVITY - The activity of an active farm including, but not necessarily limited to, the growing of field or garden crops, vineyards, or orchards, keeping and/or selling of fowl and livestock, irrigating crops, harvesting crops, using land for growing agricultural products and the sale of products grown or raised directly on the farm. Agricultural activity shall also include a commercial horse boarding operation, as that term is defined in Agricultural and Markets Law Section 301, Subdivision 13.

STABLE, PRIVATE - An accessory building to a residence in which horses are kept for private use and not for hire, compensation or sale.

STABLE, PUBLIC - An establishment where horses are boarded for compensation. Riding lessons, training or instruction may be given on-site to individuals who board horses at the establishment, but riding lessons, training and instruction may not be provided to the general public. A public stable includes a commercial horse boarding operation as that term is defined in Agricultural and Markets Law Section 301, Subdivision 13.

5. Section 232-3 of the Town Code is amended to delete the current definition of "Farm" and to substitute instead the following new definition of Farm:

FARM - Any parcel of land which is used for gain solely for the purpose of the conduct of agricultural activities. It includes necessary farm buildings and structures and the storage of farm equipment used in the farming operation. It also includes greenhouse operations, but excludes the raising of fur bearing animals, riding academies, and dog kennels.

6. Section 232-3 of the Town Code is amended to delete the current definition of "Riding Academy" and to substitute instead the following new definition of Riding Academy:

RIDING ACADEMY - An establishment where horses are kept for purposes of providing training, instruction, and riding to the general public for compensation. A Riding Academy may not be established on a parcel of land less than 10 acres.

7. The Table of Use Regulations, in Part 1 of the Town of Copake Code is hereby amended as follows:

A. Under "General Uses"

The term "Stables for horses (§232-9 O)", shall be amended to read "Stable, Private (§232-9 O)."

B. Under "Accessory Uses"

The term "Stables for horses (§232-9 O)", shall be amended to read "Stable, Public (§232-9 O)."

C. Under "General Uses"

The following new categories of General Uses shall be provided, in appropriate alphabetical sequence, to read as follows:

Stable, Public (§232-9 O). This use shall be permitted pursuant to a Special Use Permit in each Zoning District, and the use table shall be amended accordingly using the appropriate key symbols.

Riding Academy. This use shall be permitted pursuant to a Special Use Permit in each Zoning District and the use table shall be amended accordingly using the appropriate key symbols.

8. The Section numbers under Article VI, administration and enforcement which are presently numbered §232-26 through §232-30 are renumbered to be §232-27 through §232-31.

Section V. Conflict of Laws:

Pursuant to the powers granted by the Municipal Home Rule Law, the Local Law supersedes all provisions of Article 16 of the Municipal Home Rule Law, the Local Law supersedes all provisions of Article 16 of the Town Law pertaining to zoning and planning, insofar as such statutes are inconsistent with this law and any other laws or regulations of the Town of Copake are superseded to the extent necessary to give the law full force and effect.

Section VI. Severability Clause:

If any section or part of this Local Law is declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section of this Local Law.

Section VII. Effective Date:

This Local Law shall take effect immediately, but shall not apply to commercial developments or major subdivisions currently under review by the Town of Copake Planning Board, and which commercial developments and/or major subdivisions were exempted from the Town of Copake Moratorium Local Law (Local Law No. 2 of the year 2004) and as such moratorium was extended under Local Law No. 1 of the year 2005.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2005 of the ~~(County)(City)(Town)(Village)~~ of Copake was duly passed by the Town Board on July 14, 2005, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, _____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____, _____, _____.
(Name of Legislative Body)
(Elective Chief Executive Officer*)
in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, _____, and (approved)(not disapproved)(repassed after disapproval) by the _____ on _____, _____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, _____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, _____, and (approved)(not disapproved)(repassed after disapproval) by the _____ on _____, _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____, _____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, _____ became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of _____, _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

[Handwritten Signature]

Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

VANA HOTALING, Town Clerk

Date: July 21, 2005

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF COLUMBIA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

[Handwritten Signature]

Signature Nelson R. Alford, Jr.

Town Attorney

Title

County

City

Town of Copake

Village

Date: July 21, 2005