

## Town of North East

### Zoning Audit 7/ 5 /18

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Upon review of the Town's Zoning Chapter 180, in comparison to the updated vision and goals desired by the community and using zoning audit practices as recommended by the New York State Department of State, I offer the following comments and suggestions to improve the zoning that I believe will more fully address the vision and goals. Some of the comments below point out deficiencies, areas needing clarification, or sections that could be improved to be more effective. Some of the recommendations are 'housekeeping' in nature to help with clarity. Others point out omissions, while others point out areas that the 1990s plan called for but that are not yet realized in the zoning. In addition, I have offered a variety of other zoning techniques that should be considered for inclusion in the updated plan. This Audit can be included as an appendix of the plan if you want this level of detail. Ultimately, the Plan will include more details on those zoning recommendations below you wish to move forward with.

#### General

##### Chapter 180...

1. Does not refer to the statutory source of power to do zoning. Should add this.
2. Does not include the 'savings clause' that states if any part of the law is declared illegal, the provisions of the rest of the law shall be deemed to be separately adopted and still in force.
3. Does not have a purpose statement that does not articulate the more detailed purposes of land use regulation in North East – namely to address environmental protection, farmland protection, community character protection, etc. The purpose statement should be re-written to follow and emulate the goals and objectives as stated in the comprehensive plan. See the statements used for intent in section 180-55. These are more like what I recommend.
4. Defines agriculture but also defines farm. The Town Agricultural and Farmland Protection Plan (Ag Plan) recommends removing 'agriculture' and using 'farm'. I agree.
5. Does not include many other farm related terms that should be included such as agri-tourism, ag-business or agri-commerce. Make sure desired types of farm related activities are defined and allowed.
6. Does not include a definition or allowance for senior housing. Given the need for affordable housing, especially for seniors, and the ability to help people age in place, this should be addressed in the zoning via definitions, determination where these facilities could go (in and closest to the Village) and their scale, intensity and design.
7. Does not address multiple business use on farms. Should clarify that a farm operation can also have other agri-businesses such as tasting rooms, food processing, retail sales, etc. that are part of the farm operation. This is especially important for farms in the NYS Ag District.
8. Has an outdated definition for 'Industry' – there are no SIC codes anymore. Should refer instead to what replaced them - the NAICS codes ([North American Industry Classification System \(NAICS\)](#)).

9. Motor Freight Terminal – clarify if this also includes unloading of natural gas on trucks – this has been an issue in other places.
10. Does not address newer uses that can be problematic such as solar facility (large and small), portable outdoor storage (POD), short term rental units, glamping, wedding venues, mixed uses, outdoor wood furnaces, tiny houses, natural gas facilities, etc.
11. Has some definitions also include regulatory provisions. Actual regulations should not be in the definitions but moved to the supplemental regulation section.
12. Separates out nursery farm from other kinds of farms. These should be considered a farm operation unless it is purely a retail operation with no connection to growing the plants.
13. Family homes as defined in the law seem to be the same ones that are regulated by New York State. You should change this definition to match the NYS group home definition. Further, group homes are considered single family homes and may not have special use permits or other zoning reviews different from single family dwellings.
14. Define farm worker housing and tie it and standards to the NYS Department of Agriculture and Markets guidance on farm worker housing.
15. Defines ‘conversion’ as an adaptive reuse of existing building only and only allowed to convert to residential use. Consider allowing conversion of an existing building to any use permitted in the district. That would open up more opportunities for adaptive reuse within the existing confines of allowed uses.

## **Zoning Map**

1. The text in the zoning does not match the zoning map. Text creates HB- I, HB – II, M and BD districts that are not on the map. I assume the Boulevard district replaced the HB I and II districts. But not sure. Make sure text and map match. Note the text says there is a separate BD district, but the BD districts are actually named BD1 through BD6.
2. There is no BD1 or BD 2 that I can find in the Town or on the Village map. If these don’t exist, these parts of the text should be removed. If they do exist, the map needs to show them.
3. The Zoning Map is not included online with the rest of the zoning at General Code Publishers.
4. The map is difficult to read without more road names on it. You might want to consider having larger scale cutouts of different areas so you can see more detail – especially around Millerton where it is more difficult to see what parcel is in what district without scaling it up on a computer.
5. The LC district, according to the 1990’s Comprehensive Plan should encompass NYS Parklands, classified streams, surface water systems, 100-year floodplains, NYS Parklands and designated wetlands. The LC district does not encompass all these areas. Some streams and stream tributaries are included, others are not. State lands are not include. I recommend use of the GIS maps to re-draw the LC district to encompass what was envisioned in the 1990’s plan. Based on today’s community goals, these are still relevant to plan for and treat in a LC district. Alternatively, the Town could have an environmental overlay that could be drawn to capture in detail the locations of these and other environmental features and address them that way.

## Zoning District Regulations

1. Each zoning district should have its own purpose statement that clearly states the Town's objectives for what that district is supposed to accomplish.
2. The purpose statement in 180-9 for the BD (Boulevard) is not clear as to whether this district is actually an overlay or not. The language says that the BD district is 'in addition to and overlapping' with other districts. This conveys that it is an overlay, but it is not identified as that and unclear. This should be addressed as it makes a difference in what rules apply.
3. 180-11 (E) on Stream Buffers is good that it is in there. However, this should really match a map showing them. I also suggest this section be better integrated with the LC district – they overlap but more streams are affected by stream buffers than the LC district. I recommend all the classified streams be mapped and included as an overlay district that would have the buffer rules apply to. There are no stream-related terms defined. More definitions needed here – what is a major stream? What is a normal waters edge? These should be explained. It also references the ZBA here – is it referring to an area variance by the ZBA or something else.
4. The distance required for a stream buffer in 180-11 is smaller than that recommended in the North East Habitat Plan. I recommend the buffers follow what is recommended in the Habitat Plan. Overall, this section needs much work and clarification to enhance its effectiveness.
5. There are other potential uses that could occur in A5 that are not addressed including art and music studios, wedding venues, solar facilities, PODS, tiny houses, outdoor furnaces, glamping/camping, and placement of two single family homes on one lot, etc. These are all 'hot button items' that come up in rural areas. The Plan should identify issues that need to be addressed in the future zoning and establish a direction for them.
6. Many farms are looking to diversify and often use their land for operations that are only marginally related or not related to the farm operation. The State is clear about which uses are considered part of the farm operation that should be allowed in zoning. Other uses are peripheral at best such as camping/glamping, wedding events, restaurants, etc. We recognize that sometimes farming is not enough and farmers have to expand. But some of those operations can be problematic for traffic and neighbors. As such, zoning should clarify what is part of a farm operation and what is not.
7. The purpose of the NYS Ag and Markets Law is to prevent over regulation of farms. As such, use of site plan review or special use permits for farm operations is not allowed. But the State recognizes that some uses such as agri-tourism can have impacts on roads, noise, etc. To address this consider including a Modified Site Plan Review process (as recommended by NYS Ag and Markets) to address farm-related expansions and diversification. This gives the Town some review and control, but not over-regulation.
8. Consider making a single use table for all districts, and a single dimensions table for all districts. Each district has a list of uses and text outlining the dimension standards. Would it be easier to use if all the uses were included in a table (like the BD district) and all dimensions in a separate table for all districts?
9. Part A of the BD district shows permitted and site plan required uses. It does not identify any uses requiring special user permits. Are there no uses that may be appropriate in the BD district

but may need a special use permit? Discuss if this can be expanded to promote new opportunities.

10. District A5 allows for the keeping of not more than 2 transient boarders. This sounds a lot like short term rental to me. How is this enforced? There does not appear to be any review, permit, or standards associated with it. Short term rentals (like Air BnB) is a growing use and a growing issue related to affordable housing that I recommend the Plan address more diligently than currently. It may be more effective to develop a short term rental policy, registration, regulations.
11. The 1990s plan suggested use of average density (where new lots are allowed to be averaged together to meet an average lot size instead of a minimum lot size). I strongly agree, and recommend the new plan continue that recommendation to allow for average lot sizes in subdivisions.
12. Consider adding a section that establishes how density of residential development is calculated. I recommend use of 'net density' which means that all or some portion of unbuildable land or identified environmental features are not included in the acreage to calculate how many homes would be allowed. In that way, the density allowed on a parcel is dictated more from the actual conditions on the ground and would result in development that better matches that parcels capacity. New lots created according to existing minimum lot size and road frontage requirements will likely 'use' up more land. They tend to become part of lawns or brush-hogged fields that can't be farmed. Use of average lot sizes, net density, and more effective clustering will help yield a more sustainable rural development pattern. Consider this for A5, R3A and even R1A districts. Ancram has good model of this.
13. Each residential district allows for clustering. Each also allows for offering a density bonus. That is consistent with the 1990s plan. However, 'clustering' has given way to the conservation subdivision design technique and that is what should be incorporated. The 1990s plan suggests use of conservation subdivision. I strongly agree. The single paragraph that is offered for clustering however does not offer any procedures, details, or definitions to effectively result in actual application of this technique. I recommend each district currently authorizing clustering be replaced with all the steps, development standards, and procedures associated with a modern conservation subdivision. I further recommend that all major subdivisions be required to be designed as per a conservation subdivision. For minor subdivisions that are not likely to be developed as a cluster or conservation subdivision, consider adding in rural siting standards (consistent with the Greenway Guidelines) to help ensure that all subdivisions are sited properly to maintain farmland, open space, environmental features, and rural character. Rural siting standards can apply to A5 and R3A especially.
14. Density bonuses are incentives and must follow steps and standards as per NYS Town Law 261-b. The one sentence in the zoning is not adequate to ensure density bonuses are done consistent with 261-b. A separate section in zoning should be added that fully details how a density bonus is given, when, how much, and by whom as per 261-b. Both of these will be critical techniques to promote in the new plan.
15. Current language allows a density bonus only when water and sewer infrastructures are provided for. Given the limitation of water and sewer, I do not think that is reasonable and will likely result in an applicant not able or wanting to get a density bonus. The incentive is an opportunity for the Town to gain a desired amenity so it should want to offer bonuses. A

community septic or small community wastewater system can be developed to support a clustered subdivision. Not all conservation subdivisions result in clusters of houses so septic and wells may work for some situations. Address this in the updated conservation subdivision and density bonus sections recommended above.

16. R1A is a higher density district. Given its location near the Village, you may want to promote traditional neighborhood design lots and streets that would result in neighborhoods more Village-like in that location. Traditional neighborhood standards would prevent the R1A area from developing in a suburban style out of context with the Village.
17. You may want to consider having the R20,000 district extend to the southern side of the Village as well to create a 'ring' of higher density/more traditional lots adjacent to where infrastructure may be in the future.
18. 180-17 R20,000 District. To address housing, the town should look at appropriate places for multi-family dwellings. As this location has the highest allowable density, and is in an area more likely to have sewer service, this may be an appropriate place for well-planned multi-family. I note that the zoning should have adequate controls for multi-family units to ensure they are of the scale and intensity and design that fits in the neighborhood. Zoning should also establish the density allowed for multi-family units. This may be the same as the density in the district, but you may want to incentivize it by offering higher density. Multi-family dwellings need not be large or out of character and can even be built to look like single family structures. The plan could offer illustrations and pictures for this. The only place you allow multi-family units now is when there is a conversion of an existing building. This seems very limiting to me. Coupled with lack of addressing the various kinds of senior housing, lack of multi-family options seems to be a missing tool.
19. To further promote affordable housing, consider use of the inclusionary zoning technique and offering density bonuses when affordable housing is offered. Inclusionary zoning would require a certain percentage of new units to be affordable units. It would only come into play in large subdivisions or multi-family developments. Pine Plains has a good model.
20. 180-18 and 180-19 (HBI and HB II) should be removed from the zoning as the zoning map seems to eliminate the HB1 and HB II districts in the Town. Unless the map is in error, the text here is outdated. If the HB 1 and HB II still exist, then it is the map that needs updating.
21. The 1990's plan included many details about appropriate development in the BD district, including siting, design, parking, landscaping, and lighting standards that are not currently included in the BD regulations. The 1990s plan suggestions should be updated but included in the new plan to guide BD growth. These standards then, as now, would help the BD district be less suburban, and more traditional village-scale and with buildings consistent with the streetscape. The Town should adopt commercial design standards to ensure architectural design matches desired community character. This would include shorter setbacks, placement of buildings closer to the road, parking to the side or rear, allowance for taller buildings, and façade treatments that emulate desired designs. These are all concepts discussed in the 1990s plan and should still be incorporated into the zoning. The Greenway Guides should also be better integrated to help visually illustrate many of the concepts. Overall, the Greenway Guides should have a more prominent role in the zoning.

22. 180-20 is the HB III district. It has very limited uses allowed there. But on the Village side of that same stretch there is a much wider variety of uses that are actually there. I suggest the committee look at other uses in the HB III district as there may be other suitable uses that may open up possibilities for economic development. Perhaps even mixed uses and allow for multi-family development there? With design and siting standards, as well as special use permits, the Town can ensure that new uses fit in.
23. 120-21 (E) are a set of performance standards (noise, odor, smoke, etc) that are good. However, these are included as standards only in the M district and should be standards for all uses. Usually these are standards for all uses in all districts.
24. 180-22 LC District. As per comments above, I think the map needs attention to ensure the LC district covers the locations that should be as per the 1990s Plan. The 1990s plan adequately establishes the need for the LC district and what it should be protecting. The LC should cover wetlands, floodplains and streams, and should coordinate with the stream buffer rules for all streams. I further recommend that Sub section (C) be expanded to prohibit dwellings in both the floodplain or in wetlands. Currently it just addresses dwellings in floodplains.
25. Article VI (Special Use Permits) authorizes the ZBA to review applications and issue special use permits with planning board advisory opinion. Most communities have now switched the authority for special use permits entirely to the Planning Board. This leaves all the planning with the Planning Board and allows the ZBA to be more independent for their prime role in reversing or affirming orders, requirements, decisions, interpretations, and variances. I highly recommend making this change. One significant reason is that when the ZBA works on special use permits, it may also have to interpret or agree to a variance on the very same application they are reviewing.
26. 180-27 (E) requires the ZBA to refer a special use application to the Planning Board and gives them 30 days. Is that adequate time?
27. 180-35 Traffic Impact Study. This is good to see in there, but I recommend that the threshold for requiring a traffic impact study be lowered so that any application likely to increase traffic by 100 cars per day would need the study. Currently it requires a traffic study when there are more than 200 vehicle trips per day or more than 100 vehicle trips per day per 1,000 square feet of floor area. The industry standard is 100 cars per day.
28. Consider adding in a requirement for conducting a visual impact study. The Planning Board (or ZBA) could be authorized to ask for a visual impact study when they felt it was needed. Alternatively, if the Town identifies areas as scenic, or in certain districts, it could require visual impact studies when a project could impact those areas.
29. The zoning can be updated to be more farm friendly. This should include adding in language that requires an application to identify if it is in a NYS Agricultural District, to submit the ag data statement as required in AML 25-aa, to include an ag disclosure statement on the plat or plan if it is in a NYS Ag District, to identify active farm operations adjacent to a project, and to ensure that general and specific approval criteria for site plans and special use permits require the board to evaluate a project impacts on nearby agricultural operations.
30. Standards should at least reference the NYS stormwater requirements (SWPPP) whenever a commercial project disturbs > 1 acre. For certain areas, the Town may want to lower this threshold and have additional stormwater and erosion requirements.

31. All lighting should require use of full-cut off lights to reduce glare. Current regulations do not state that.
32. As per the 1990s plan, zoning should incorporate the lighting standards promoted by the Dark Sky Association. These are common zoning requirements to help reduce light pollution.
33. Current zoning only addresses LED signs at gas stations. Given the preponderance of these types of signs now, zoning should address and regulated all LED signs.
34. In the Sign section, carefully review to remove references to regulating by message. Recent Supreme Court decisions have made it clear that you can't regulated the message – only the placement, size, and other physical aspects of a sign.
35. 180-46 Mobile Homes. There is some clarification needed as this section says that mobile homes are not allowed except in a mobile home park, but 180-14 indicates the ZBA can issue a special use permit for mobile homes not in a park, and 180-15 indicates both mobile homes and mobile home parks are allowed uses. This should be clarified.
36. 180-54 Quarry. I am concerned that the zoning does not recognize that NYS DEC will permit and issue mining permits for those that remove > 700 cubic yards per year. I suggest this section be clarified. If the Town wants to prohibit large mines that need a NYS DEC mining permit, then say so. If you don't want to prohibit that, then this section will need some work as some of the things you seek to regulate would be superceded by the NYS process.
37. The zoning pays little attention to historic resources. It is addressed in the section on conversion of existing structures. I strongly recommend that preservation of historic resources and character be integrated into the zoning and subdivision laws via purpose statements, requirement that applications identify nearby historic resources, that archaeological sensitivity maps be included (these are available easily online from NYS), and that development standards be established (via site plan and special use criteria) that require the Planning Board and ZBA to evaluate potential impacts to, ideas to integrate and protect with new development, etc. This goes hand in hand with SEQR requirements as well.
38. SEQR as a requirement to be done prior to approval of an application should be included in the zoning language as part of the process.
39. Zoning should have provisions to address when areas of less restricted use border areas of a more restricted use – side or rear yard requirements, buffering, fencing, lighting, etc. ought to be required to minimize adverse impacts.
40. There may be areas in the Town (maybe BD and R20,000?) where a maximum front setback is needed to ensure streetscapes are maintained.
41. Do you want zoning to address location, height and character of walls and fences? This is not directly addressed in zoning, but if there have been issues over this, the zoning should more directly address it.

#### **Other planning Options I Suggest for Consideration**

1. The 1990s plan references a hamlet designation at Shekomeko. This is no longer on the map. But the philosophy is sound – have hamlet development standards and mixed uses to perpetuate those historic patterns. Should one or more hamlet districts be designated?
2. One map of the Town developed by the County shows several significant aquifer recharge areas in the town (around Millerton). The County natural resource inventory plan also suggests that

pumping tests be done for higher capacity wells to evaluate impacts to streams and wetlands, that stormwater measures be taken to maximize groundwater replenishment, and that in highly permeable soils (Group A, B and C) have limited impervious surfaces. The Town should consider if additional zoning protections are needed to address the recharge areas already identified in the Town and to incorporate the County suggestions. Allowable density of development could be influenced by soils and recharge, and the zoning could take these factors into consideration when density of development is determined. Most likely important with major subdivisions, the zoning could include maximum impervious surfaces allowed (lot coverage), requirement that there be infiltration devices, etc. Committee should discuss if there is a need for an aquifer protection law for Millerton's water supply.

3. Incorporate green infrastructure and low impact development (LID) standards for enhanced stormwater and erosion control. Use already developed State and Federal standards designed for these purposes.
4. Consider new climate change models to set stream buffer distances.
5. Consider limiting development on slopes > 20%.
6. Add a new section to the Town Code outlining Planning Board powers, duties, and procedures. The ZBA has a similar section in the Zoning, but none exists for the Planning Board.
7. Enhance role of the CAC in project review and specify in the zoning that the Planning Board or ZBA can (or must??) refer an application to the CAC for an advisory opinion related to environmental concerns.

#### **Other recommendations from the Town Ag and Farmland Plan Related to Zoning**

1. Allow for farm markets and farm stands to sell produce from other farms in North East. Currently they can only sell produce from their farm.
2. Allow for agri-tourism and other agri-commerce businesses. Define and add to at least A5 district.
3. The Ag Plan indicates that the County Right to Farm Law will protect farmers. That is so, but I also recommend that the zoning include a right to farm declaration to ensure the message of the importance of farms permeates all reviews.
4. In a clustered or conservation subdivision, make sure that agriculture is an allowed use on any preserved open space.
5. Consider use of an ag overlay district oriented to locations of prime farmland soils (and maybe soils of statewide significance) where development standards would help guide disturbances to less fertile locations. Pine Plains has a good model for an ag overlay.

#### **Other recommendations from the Significant Habitats Plan Related to Zoning**

1. All the maps created for this Plan should be printed and large scale for the Planning Board and ZBA to use in their project reviews. All maps should be separately posted online for all to use, including applicants. Zoning should refer to those maps in both site plan and special use applications.
2. Add criteria to site plan and special use permit approvals that seeks projects to have important habitats linked (or not fragmented), that they minimize adverse impacts of special conservation areas (see Page 69 of Habitat Plan for a list of these potential criteria). I strongly recommend that the zoning be better linked and use the information provided in the Habitat Plan.

3. Site Plans and Special Use applications in the A5 district (and other locations perhaps) should include an environmental site analysis that identifies what environmental features identified in the Habitat Plan may be on that parcel of land. Having this information will help the Planning Board avoid or minimize impacts to it. This will be especially true if the zoning specifically addresses a requirement to minimize impacts to these special areas.
4. Other techniques to be considered to better integrate conservation into the zoning includes use of more overlay districts targeted to these environmentally sensitive areas, and requirement that a 'yield plan' be done when a significant habitat is present to determine the actual capacity for residential density in that location.
5. Incorporate biodiversity conservation principles into the zoning and subdivision law.