

To:

Town of Canandaigua Zoning Board of Appeals
5440 Routes 5 & 20 West
Canandaigua, NY 14424

From:

Priscilla & Christian Herbig
5029 Wyffels Rd
Canandaigua, NY 14424

Re:

Public Hearing 11/20/2018
Michael & Patricia Mullally
5020 Wyffels Rd
Canandaigua NY 14424
Area Variance for placement of 2300 sq. ft. detached Accessory Building

Town of Canandaigua Town Code states that an **Accessory Building** is:

A building, as defined in this section, that is subordinate and incidental to the principal building or structure on the same lot.

The Town Code does not contain definitions of subordinate and incidental.

Therefore an outside source was needed. **The Land Use Law Center of Pace University School of Law (Westchester NY) states :**

In order to qualify as accessory, a use must also be incidental and subordinate to the principal use. To be incidental, an accessory use must be reasonably related to the principal use. For instance, a garage or recreational use are reasonably related to the principal residential use and thus, deemed incidental. To be subordinate, the accessory use must be proportionately smaller than the principal use.

The Property Description Report For : 5020 Wyffels Rd. Indicates that the Mullally home has a Living Area of 2,655 sq.ft., and also a detached accessory improvement, Gar-2.0 of 336 sq.ft. **The requested 2,300 sq.ft. detached Accessory Building is therefore not proportionally smaller than the principal use, and does not fit the legal definition of subordinate as provided by Pace University School of Law, Land Use Center.**

Town Code 220-9 Regulations applicable to all districts in (7)(b)[2] allows a larger footprint. However, Article I: 220-4 Conflict with other provisions states : Whenever a requirement of this chapter is at variance with any other requirement (s) of this chapter or the requirement of any other Town of Canandaigua rules regulations, or laws, the most restrictive or those imposing higher standards shall govern.

It thus follows, that the Town Code definition of Accessory Building is in conflict with other regulations of the code, and that the most restrictive must apply. The proposed Accessory Building must be subordinate (proportionally smaller) to the principal use.

Further, an Area Variance is being requested for placement of this Accessory Building in a side yard when a rear yard is required.

When the five components of the **Statutory Standard for Area Variances** are evaluated , the requested variance must outweigh the detriments on the neighborhood. It does not. (Refer to Pace Law School enclosure)

Therefore, by legal standards, the ZBA must not grant the variance requested.

Thank you,
Priscilla and Christian Herbig

Enclosures:
Accessory Building Definition
Pace University School of Law
Property Description Report
Regulations Applicable to all districts
220-4 Conflict with other provisions

ACCESSORY BUILDING

A building, as defined in this section, that is subordinate and incidental to the principal building or structure on the same lot, contributes to the comfort, convenience, or necessity of the occupants of the principal building or structure, and is used for a purpose incidental to the use of the principal building or structure. Accessory buildings include but are not limited to storage sheds, nonagricultural barns, and detached private garages.

[Amended 7-25-2005 by L.L. No. 7-2005; 9-1-2009 by L.L. No. 2-2009; 4-8-2013 by L.L. No. 2-2013; 7-17-2017 by L.L. No. 16-2017]

ACCESSORY STRUCTURE

A structure, but not including buildings, subordinate and incidental to the principal building or structure on the same lot, that contributes to the comfort, convenience, or necessity of the occupants of the principal building or structure and that is used for a purpose incidental to the use of the principal building or structure. Accessory structures include but are not limited to swimming pools, tennis courts, basketball courts, paddleball courts, patios, decks, generators, and fences. Accessory structures shall not include fences for setback purposes.

[Added 4-8-2013 by L.L. No. 2-2013; amended 3-16-2015 by L.L. No. 3-2015; 10-17-2016 by L.L. No. 9-2016; 7-17-2017 by L.L. No. 16-2017]

ACCESSORY USE

A use incidental and subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building.

ACTION

Any project or physical activity, such as construction or other activity that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that requires a permit or approval from any board or official of the Town of Canandaigua.

ADEQUATELY FUNCTIONING ON-SITE WASTEWATER TREATMENT SYSTEM

A. A system which meets all of the following conditions:

[Added 7-25-2005 by L.L. No. 3-2005]

- (1) The septic tank has operational inlet and outlet baffles.
 - (2) The septic tank is watertight, allowing no inflow of groundwater, or leaking of septage through the walls, floor, or roof of the tank.
 - (3) The distribution box is evenly distributing septic tank effluent to each absorption trench.
 - (4) Effluent is not surfacing on the ground at any location.
 - (5) The absorption field is not directly short-circuiting effluent into any well, watercourse, or water body.
 - (6) The absorption field is never subject to flooding, or ponding of water on its surface.
 - (7) All pipes for conveying effluent to the absorption field are watertight.
 - (8) The system is capable of handling the design hydraulic load without backup of waste into the house.
 - (9) The system is not subject to hydraulic loads exceeding the original design capacity.
- B.** Where an aerobic treatment unit is present, the unit must have a current operation and maintenance contract with the manufacturer's representative, and shall have been inspected by the representative in accordance with manufacturer's specifications for maintenance.

ADULT ARCADE

Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.

[Added 7-24-1995 by L.L. No. 4-1995]

ADULT BOOKSTORE or ADULT VIDEO STORE

A commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, videocassettes or video reproductions, slides, or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or instruments, devices, or paraphernalia which are designed for use in connection with specific sexual activities. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specific sexual activities or specified anatomical areas and still be categorized as "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas. For purposes of this definition, "principal business purpose" shall mean 20% or more of any of the following:

[Added 7-24-1995 by L.L. No. 4-1995]

- A.** The number of different titles or kinds of such merchandise;
- B.** The number of copies or pieces of such merchandise;
- C.** The amount of floor space devoted to the sale and/or display of such merchandise; or
- D.** The amount of advertising which is devoted to such merchandise, whether in print or broadcast media.



PACE LAW SCHOOL
P A C E U N I V E R S I T Y

BEGINNER'S GUIDE TO LAND USE LAW

**Land Use Law Center
Pace University School of Law
www.law.pace.edu/landuse**

2. The hardship must be unique to the owner's property and not applicable to a substantial portion of the zoning district. If the hardship is common to the whole neighborhood, the remedy is to seek a change in the zoning, not to apply for a use variance. In another case, the applicant had failed to establish that the hardship -- being located near a city landfill -- was unique to his property. Rather, it was held that the hardship was common to all properties in the area. Thus, the property owner should make an application for rezoning to the local legislature.

3. Granting the variance will not alter the essential character of the neighborhood. In making this determination, the court often considers the intensity of the proposed development as compared to the existing and permitted uses in the neighborhood. For example, a use variance to permit construction of an office building in a single-family neighborhood where several tall commercial structures already exist would not alter the essential character of the neighborhood. Conversely, a cemetery would alter the essential character of a district zoned for residential development, despite the fact that the land in the district was undeveloped at the time of the application.

4. The hardship is not self-created. In *Clark v. Board of Zoning Appeals of Town of Hempstead*, the Court of Appeals held that "one who ... knowingly acquires land for a prohibited use, cannot thereafter have a variance on the ground of special hardship." For example, a developer may not acquire land zoned for residential use at the time of acquisition and successfully petition for a variance to construct office buildings. Whether the purchaser actually knew about the use restriction is not relevant; it was his responsibility to discover such restrictions.

In issuing a use variance, the board may impose "such reasonable conditions and restrictions as are directly necessary to and incidental to the proposed use of the property. Such conditions shall be ... imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Statutory Standard for Area Variances

For a zoning board of appeals to grant a variance from the dimensional and area requirements of a zoning ordinance, it must find that the benefits to the applicant of the requested variance outweigh the detriment it will cause to the health, safety, and welfare of the neighborhood. The board must weigh the benefits of the requested variance to the applicant against the five factors set forth in the statute:

1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance?
2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?
3. Is the requested area variance substantial?
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
5. Is the alleged difficulty self-created? This consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

As an example, a case involved an application for an area variance to allow the property owner to build a boat house on a lot that was smaller than the required minimum lot size. The zoning board of appeals granted the

use variance are satisfied, the board can award the requested variance. Although the board can impose reasonable conditions on the use of the property, the award of a use variance frees the property from the provisions of zoning that limit nonconforming uses. The effect of a variance is to declassify the use as nonconforming.

The property owner asking for a use variance must prove that the variance, if granted, will not alter the essential character of the neighborhood. If it does not, then and to this extent, the proposed use is compatible with the surrounding neighborhood. The property owner must also show by competent financial evidence that he cannot realize a reasonable return by using the property under any use allowed in the district or by continuing the nonconforming use in its unaltered condition. This financial requirement makes it very difficult for most owners of existing nonconforming uses to prove that they are entitled to a use variance.

Another local practice that influences the continuation of nonconforming uses is the interpretation of the building inspector as to what types of building improvements are prohibited by the language of the local zoning provisions. Usually, these provisions permit the repair and maintenance of nonconforming uses, or improvements that do not "enlarge or expand" the nonconforming use. Some building inspectors take a broad view of what repair and maintenance are and have a limited view of what constitutes an expansion or enlargement of the nonconforming use. By awarding building permits to improve nonconforming uses, the building inspector indirectly encourages their continuation.

Allowing the expansion and reconstruction of noncomplying buildings, granting variances to allow the expansion of nonconforming uses, and issuing building permits to improve nonconforming uses do not advance the policy of discontinuing nonconforming uses. They do, however, allow the municipality flexibility in accommodating the needs of property owners while mitigating the impacts of the continued presence of these uses to protect adjacent owners and surrounding neighbors.

Accessory Uses

Accessory uses are those uses of land found on the same lot as the principal use and that are subordinate, incidental to, and customarily found in connection with the principal use. For example, a garage may be accessory to a residential use of a property because it is customarily found in connection with and is incidental and subordinate to the principal residential use. Generally, zoning laws permit lot owners to use their land for a permitted principal use as well for activities that are accessory to that use.

In order to qualify as accessory, a use must also be incidental and subordinate to the principal use. To be incidental, an accessory use must be reasonably related to the principal use. For instance, a garage or recreational use are reasonably related to the principal residential use and thus, deemed incidental. To be subordinate, the accessory use must be proportionately smaller than the principal use. The garage is generally smaller than the house, for instance.

An accessory use must also be customarily found in conjunction with its principal use. A use is customary if it commonly, habitually, and by long practice has been reasonably associated with a principal use. A most common example of this is vehicle parking for a residence or business. But, a municipality need not be bound by specific uses that are customary, so long as the type of use is customary. For instance, a court upheld a zoning board of appeals determination that a skateboard ramp, which is a recreational use, was customary because recreational uses of property that serve the needs of the occupants are customary in a residential district. The test is whether the recreational use is incidental to the residential use, not whether landowners in the town are engaged in similar activities.



Property Description

Report For: 5020 Wyffels Rd, Municipality of Town

of Canandaigua



Total Acreage/Size: 2.90
Land Assessment: 2018 - \$87,400
Full Market Value: 2018 - \$424,400
Equalization Rate: ----
Deed Book: 1161
Grid East: 630612

Status: Active
Roll Section: Taxable
Swis: 322400
Tax Map ID #: 112.02-1-72.000
Property Class: 210 - 1 Family Res
Site: RES 1
In Ag. District: No
Site Property Class: 210 - 1 Family Res
Zoning Code: R130 - ResDist-SF30000
Neighborhood Code: 24730 - Lake View
School District: Canandaigua City
Total Assessment: 2018 - \$424,400

Property Desc:
Deed Page: 270
Grid North: 1035819

Area

Living Area: 2,655 sq. ft.	First Story Area: 2,070 sq. ft.
Second Story Area: 0 sq. ft.	Half Story Area: 0 sq. ft.
Additional Story Area: 0 sq. ft.	3/4 Story Area: 0 sq. ft.
Finished Basement: 1,683 sq. ft.	Number of Stories: 1
Finished Rec Room: 0 sq. ft.	Finished Area Over Garage: 585 sq. ft.

Structure

Building Style: Ranch	Bathrooms (Full - Half): 3 - 0
Bedrooms: 4	Kitchens: 1
Fireplaces: 1	Basement Type: Full
Porch Type: Porch-up opn	Porch Area: 295.00
Basement Garage Cap: 0	Attached Garage Cap: 0.00 sq. ft.
Overall Condition: Good	Overall Grade: Good
Year Built: 2008	

Owners

Michael Mullally	Patricia Mullally
5020 Wyffels Rd	5020 Wyffels Rd
Canandaigua NY 14424	Canandaigua NY 14424

Improvements

Structure	Size	Grade	Condition	Year
Garage w/apt	822.00 sq ft	Good	Good	2008
Porch-up opn	295.00 sq ft	Good	Good	2008
Gar-2.0 det	336.00 sq ft	Average	Good	2010

G. Steep slope protection area review process.

- (1) Steep slope protection area application: The steep slope protection area review process will follow the Town of Canandaigua Site Plan Regulations (Chapter 220, Article VII), in addition to the following criteria:
 - (a) The preliminary site plan and final site plan shall include the following:
 - [1] Documentation that the improvements were designed to comply with § 220-8 and have been designed to fit the existing natural elements of the site instead of altering the site to fit the development goals.
 - [2] Contours of existing and proposed conditions at vertical intervals of no more than two feet.
 - [3] Temporary roads, driveways, parking areas and pathways, including the widths and slopes of these features.
 - [4] Location of all trees within the proposed project limits that are located in a steep slope protection area with a DBH of six inches or greater and which, if any, of these trees will be cut as part of this project.
 - [5] An overlay of each steep slope category as defined in § 220-8.1(B)(2) of this local law for existing site conditions.
 - [6] Location and description of all existing and proposed, open and closed, drainage features, to include roof drains, footing drains and retaining wall drains, with discharge points identified. Stormwater calculations shall be provided for all existing and proposed culverts or changes to gullies. The applicant will need to document that each of these drainage features can convey the twenty-five-year one-hour storm event.
 - [7] The Planning Board may request cross-sectional profiles of the existing and proposed slopes for projects that disturb greater than 2,500 square feet of a steep slope protection area. The applicant is encouraged to submit three cross-sectional profiles of the existing and proposed slopes if the applicant proposes greater than 2,500 square feet of disturbance in a steep slope protection area to expedite the review process.
- (2) The application shall be prepared in accordance with the New York State Standards and Specifications for Erosion and Sediment Control and the New York State Stormwater Management Design Manual.

§ 220-9 Regulations applicable to all districts.

[Amended 2-13-2012 by L.L. No. 1-2012; 4-8-2013 by L.L. No. 2-2013; 2-10-2014 by L.L. No. 1-2014; 10-17-2016 by L.L. No. 9-2016]

A. Preservation of natural features.

- (1) Except as otherwise stated in this chapter, no structure shall be built within 100 feet of the bed of a stream carrying water on an average of six months of the year or within 25 feet of the mean high-water elevation of Canandaigua Lake, except for:
 - (a) Docks, piers, boathouses and/or ramps designed for provision of navigational access;
 - (b) Public bridges, public waterworks and other municipal or public utility facilities; and
 - (c) Private bridges, fords, drainage conduits, embankments and similar structures as are necessary to permit access to a lot or portion thereof or as are incidental to a lawful use of a lot, provided that such structure will not have a material adverse effect on the stream, nor alter the flow of water therein, nor substantially increase the likelihood of flood or overflow in the area.
- (2) No person shall strip, excavate, stockpile, or otherwise remove or relocate topsoil, except:
 - (a) In connection with the approved construction or alteration of a building, a structure, a parking lot or road, a swimming pool, a pond, or lawful excavation operations pursuant to § 220-38 of this chapter; and
 - (b) In compliance with the provisions of Chapter 165 of the Town Code, Soil Erosion and Sedimentation Control.
- (3) No movement of earth or soil erosion shall be permitted at any time in any district which adversely affects conditions on any other property.
- (4) Whenever natural features such as trees, brooks, drainage channels and views interfere with the proposed use of property, the retention of the maximum amount of such features consistent with the intended use of the property shall be required.

B. All accessory buildings and accessory structures, not including agricultural structures and except as otherwise specified in this chapter, shall be subject to the standards in this section.

- (1) An accessory building attached to a principal building shall be considered a part of the principal building and is required to comply with the yard requirements of this chapter for the principal building. For the purposes of this section, "attached" shall mean physical connection by way of a common wall or foundation and not separated by an unenclosed exterior space.
[Amended 7-17-2017 by L.L. No. 16-2017]
- (2) No detached accessory building shall be closer to the street or right-of-way line than the minimum front yard setback for the principal building.
- (3) Accessory buildings and structures for multiple-family dwellings, manufactured home parks, public uses, commercial uses and industrial uses may be allowed in rear or side yard(s) of the primary building(s).

- Detached accessory buildings and structures may be required to be fenced and/or buffered from adjacent properties, consistent with approved site plans, in order to protect the value of adjacent properties.
- (5) Except as otherwise stated in this chapter, a nine-hundred-square-foot accessory building shall be allowed on vacant lots with no primary building or use and may be used for storage of materials, equipment, and other personal property in the AR-1, AR-2, RR-3 and SCR-1 districts. Such accessory building shall be subject to the setback and height requirements contained in the Zoning Schedule (Schedule I).^[1]
- [1] *Editor's Note: Schedule I is included as an attachment to this chapter.*
- (6) Accessory buildings shall not be used as habitable space.
- (7) The following shall apply to lots with one or more single- and two-family dwellings outside of the Residential Lake District:
- (a) A lot of 20,000 square feet or less may have:
- [1] One detached or attached private garage;
- [2] One additional detached accessory building not exceeding 200 square feet; and
- [3] A total combined building footprint for all detached accessory buildings not exceeding 1,200 square feet.
- (b) A lot of greater than 20,000 square feet may have, in addition to attached accessory buildings:
- [1] A maximum of five detached accessory buildings; and
- [2] A total combined building footprint for all detached accessory buildings not exceeding 1,000 square feet plus 1% of the subject lot's area in square feet and rounded to the nearest hundred or 3,000 square feet, whichever is less.
- (c) Height allowances:
- [1] Detached accessory buildings with a building footprint of less than 1,000 square feet shall not exceed 16 feet in height.
- [2] Detached accessory buildings with a building footprint of 1,000 square feet or greater shall not exceed 22 feet in height.
- (d) Detached accessory buildings that are taller than the principal building shall be separated from the principal building by a distance greater than twice the rear setback required for a principal building on the subject lot.
- (e) Detached accessory buildings that have a footprint greater than that of the principal building, not including attached private garages, porches, decks and patios, shall be separated from the principal building by a distance greater than twice the rear setback required for a principal building on the subject lot.
- (f) With the exception of detached private garages, all detached accessory buildings shall be located in the rear yard and subject to the setback requirements for the district in which it is located.
- (g) Detached private garages shall be located to the rear of the front building line of the principal building and may be located in a side yard.
- (h) On corner lots, detached accessory structures shall be located in a side yard.
- (i) Accessory buildings may have electrical, gas, and water service but no other utilities.^[2]
- [2] *Editor's Note: Former Subsection B(7)(j), regarding decks or porches on accessory buildings, which immediately followed this subsection, was repealed 9-18-2017 by L.L. No. 17-2017.*
- (8) Lots located within the NC, CC, RB-1, LI, and I districts that accommodate one or more existing agricultural uses and/or single- and two-family dwellings shall be allowed the same accessory uses, buildings, and structures specified in Town Code § 220-14, AR-1 Agricultural Rural Residential District, but subject to the lot and setback requirements applicable to their respective zoning district, except that accessory buildings and accessory structures used for the sale of agricultural and nursery products shall not be allowed along State Route 332.
- (9) Additional requirements for detached accessory buildings and structures in the Residential Lake District are in Town Code § 220-21.
- C. Every developed lot of record shall have access to a public street. Access may be either direct or by private road or drive. Where a private road or drive provides access to more than one developed lot of record, said road shall have a right-of-way width of not less than 30 feet and an improved surface of at least 20 feet in width. All structures shall be so located on lots so as to provide safe and convenient access for servicing, fire protection and required off-street parking.
- D. At the intersection of two or more streets, no hedge, fence or wall (other than a single post or tree) which is higher than three feet above curb level, nor any obstruction to vision, including agricultural crops, shall be permitted in the triangular area formed by the intersecting street lines and a line joining each 50 feet distant from said intersection measured along the edge of the pavement.
- E. Where a building lot has frontage on a street which is proposed for right-of-way widening, the required front yard setback area shall be measured from such proposed right-of-way line.

Article I: Enactment and Purpose

§ 220-1 Title.

This chapter shall be known and may be cited as the "Zoning Law of the Town of Canandaigua." It is also to be known as the "Town of Canandaigua Code, Chapter 220."

§ 220-2 Purpose.

For the purpose of promoting the health, safety and general welfare of the people of the Town of Canandaigua, this Zoning Law is adopted pursuant to Article 16 of the Town Law and pursuant to the Municipal Home Rule Law of the State of New York. Its purpose is to regulate and restrict: the height, number of stories and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts and other open space; the density of population; and the location and use of buildings, structures and land for business, industry, agriculture, residence or other purposes. Such Zoning Law and the Official Zoning Map enacted pursuant to this chapter are designed to: lessen congestion in the streets; to secure safety from fire and other dangers; to provide adequate light and air; to provide for solar access and the implementation of solar energy systems; to prevent the overcrowding of land and to avoid undue concentration of population; to facilitate the efficient and adequate provision of public facilities and services; and to provide the maximum protection to residential areas from the encroachment of adverse environmental influences. Such Zoning Law and Official Zoning Map were enacted after reasonable consideration, among other things, as to the character of the Town and its peculiar suitability for particular uses and with a view to conserving property values and natural resources and encouraging the most appropriate use of land throughout the Town.

§ 220-3 Enforcement and interpretation.

[Amended 2-13-2012 by L.L. No. 1-2012]

Unless as specified herein, the Zoning Officer is hereby empowered to interpret and enforce the provisions of this chapter. The provisions of this chapter shall be held to be the minimum standards and requirements for the protection of the public health, safety and general welfare.

§ 220-4 Conflict with other provisions.

Whenever a requirement of this chapter is at variance with the any other requirement(s) of this chapter or the requirements of any other Town of Canandaigua rules, regulations, or laws, the most restrictive or those imposing the higher standards shall govern.

§ 220-5 Amendments.

- A. Procedure. The Town Board may from time to time on its own motion, on petition or on recommendation of the Planning Board, or on petition from an interested person and in accordance with the laws of the State of New York, amend, supplement or repeal the regulations, provisions or district boundaries of this chapter.
- B. Filing of petition. A petition to amend, change or supplement the text of this chapter or any zoning district as designated on the Official Zoning Map established herein shall be filed with the Town Clerk and shall be transmitted by the Clerk to the Town Board. A petition for a change to the Official Zoning Map shall contain a map which clearly describes the affected property and its boundaries and shall indicate the existing zoning district and the requested zoning change. In addition, every petition for a change to the Official Zoning Map shall contain an environmental assessment form completed and signed by the petitioner, or agent, in accordance with the procedures set forth in State Environmental Quality Review Act (SEQRA)^[1] regulations.

[1] Editor's Note: See *Environmental Conservation Law* § 8-0101 et seq.

- C. Referral to Planning Board. Each proposed amendment, except those initiated by the Planning Board, shall be referred to the Planning Board for an advisory report. In reporting, the Planning Board shall fully state its reasons for recommending or opposing the adoption of such proposed amendment. The Planning Board may condition its recommendation, as may be appropriate, and shall state whether such amendment is in harmony with the adopted Comprehensive Plan for the Town for land use. The Planning Board shall state its position relative to proposed zoning amendments, in writing, within 45 days of its receipt of a referral from the Town Board.
- D. Public hearing; notice; recording of actions. Unless otherwise provided, the provisions of the Town Law of the State of New York pertaining to public hearings, official notices and proper recording of zoning actions taken by the Town Board shall apply to all amendments to this chapter.
- E. Disposition final; rehearing on petition. The disposition of a petition for amendment by the Town Board shall be final, and disapproval or denial of the proposed amendment shall void the petition. No new petition for an amendment which has been previously denied by the Town Board shall be considered by it, except for a vote to table or to receive and file, and no public hearing shall be held on such amendment within a period of one year from the date of such previous denial unless the Planning Board shall submit a recommendation, with reasons certifying that there have been substantial changes in the situation which would merit a rehearing by the Town Board. Such rehearing may be granted only upon a favorable vote of a majority of the Town Board plus one.