

## **Chapter 79**

### **ZONING**

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## MALONE CODE

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[HISTORY: Adopted by the Town Board of the Town of Malone 10-21-1974. Amendments noted where applicable.]

## GENERAL REFERENCES

Airport approach hazard protection — See Ch. 4.  
Fire prevention and building code administration — See Ch. 28.  
Flood damages prevention — See Ch. 31.  
Freshwater wetlands — See Ch. 37.  
Home occupations — See Ch. 40.  
Junk dealers — See Ch. 44.  
Planning Board; Board of Variances and Appeals — See Ch. 57.  
Realty subdivisions — See Ch. 59.  
Sanitary landfill — See Ch. 64.  
Stormwater management and erosion and sediment control — See Ch. 70.  
Waterfront consistency review — See Ch. 77A.  
Wind energy facilities — See Ch. 78.

## ARTICLE I

### General Provisions

#### § 79-1. Enactment.

The Town Board of the Town of Malone, under and pursuant to Article 16 of the Town Law, does hereby adopt provisions for the establishment of comprehensive zoning regulations governing the location, density and characteristics of permitted land uses through the delineation of zoning districts in accordance with a comprehensive plan; and provisions for uniform administration and enforcement, including penalties for the violation thereof, in accord with the applicable provisions of law.

#### § 79-2. Title.

This chapter shall be known and may be cited as the "Zoning Regulations for the Town of Malone, New York."

#### § 79-3. Purpose.

The purpose of this chapter is to promote the health, safety, morals or the general welfare of the town and thus to lessen congestion in the streets; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of

transportation, water, sewerage, schools, parks and other public requirements; to protect the natural and scenic qualities of the community; and to encourage the most appropriate use of land throughout the Town of Malone.

#### **§ 79-4. Scope.**

This chapter shall apply to the construction, installation or alteration of any building, structure or appurtenant system; any change in use; and any lot, plot or parcel of land used, occupied or otherwise maintained as herein provided for in the Town of Malone.

#### **§ 79-5. Definitions.**

- A. For the purposes of this chapter, certain terms and words used herein shall be interpreted as follows: Words used in the present tense shall include the future. The singular number includes the plural, and the plural the singular. The word "lot" includes the word "plot" or "parcel." The word "person" includes a corporation, partnership, association or organization as well as an individual. The word "building" includes the word "structure." The word "used" or "occupied" as applied to any land or building shall be construed to include the words "built, arranged or designed to be used or occupied." The word "shall" is mandatory.
- B. Where a term or word is not defined or where there is a question of interpretation, the Board of Variances and Appeals, upon application, shall make a determination relative thereto.
- C. Individual terms and words used in this chapter shall be defined as follows:

**BUILDING, GOVERNMENT** — Office or storage building used by any agency of state, county or town government. Repairs to machinery may be made in such buildings.

**CAMP** — A parcel of land on which is located shelter for temporary living arrangements, including but not restricted to tent platforms. The facilities must be designed for use by one or two families or by informal groups, such as hunting clubs of fewer than 12 people.

**CLEAR-CUTTING** — The practice of cutting all the trees in an area, regardless of size or maturity. It includes cutting all the trees in a given area except one or two left for reseeded purposes.

**DWELLING, ONE-FAMILY** — A detached, permanent building designed for year-round occupancy by one family only.

**DWELLING, SEASONAL** — A detached dwelling unit providing housekeeping facilities for one or two families living independently of one another.

**FARM** — A parcel of land which is used for the raising, for commercial purposes, of crops or livestock products, or both. It includes the buildings customarily used in conducting this sort of business.

**FOREST PRACTICES** — The planting, cultivating, pruning, shearing or other care of the trees for the production of ornamental greens, Christmas trees, pulpwood, sawlogs or veneer logs, including thinning and harvesting thereof.

**JUNKYARD** — A parcel of land or a structure, or both, used for the collection, storage or sale of discarded materials or machines. It includes the mechanical processing of such materials, such as shredding or dismantling. Not included are any processing by chemical means or permanent deposit of materials of any kind.

**MINIMUM ROAD FRONTAGE** — The distance which a parcel of property devoted to one primary use must extend along each public road bordering that property.

**MOBILE HOME** — A factory-finished, movable dwelling unit, designed for permanent occupancy year round. It does not include recreational vehicles, modular houses that are not designed to be moved once erected on a foundation nor units having less than 500 square feet of floor space. All such mobile homes shall have been designed and installed in compliance with the State Code for the Construction and Installation of Mobile Homes and Standards, Rules and Regulations for Mobile Homes, effective January 15, 1974, and as it may be amended [as set forth in Volume 9, Executive (B) of the Official Compilation of Codes, Rules and Regulations of the State of New York], and further, any such unit shall bear the required seal noting such compliance.

**OCCUPATION, HOME** — A business or occupation operated for gain by a householder or members of his family living with him. It may employ no more than two persons not members of the family living in the home. It may use not more than 25% of the floor area of the home, or if located in a separate building, that building may have not more than 50% of the floor area of the home. Signs indicating a home occupation may not exceed six square feet in area.

**OUTDOOR RECREATIONAL DEVELOPMENT** — A parcel of land with facilities designed to make possible recreational activities in the outdoors. Included are such uses as picnic areas, scenic trails, ski lifts, golf courses and horseback riding facilities. Amusement parks featuring mechanical rides are not included.

**OVERNIGHT CAMPSITE** — A parcel of land on which is located shelter for temporary living arrangements, including but not limited to tent sites, seasonal dwellings and parking space for campers designed for occupancy by more than one or two families. Such facilities may be operated by a membership association, incorporated bodies or individuals. They may be operated as charitable or educational enterprises or for profit.

**ROADSIDE STAND** — A counter or booth for the sale of fresh produce, Christmas trees or greens or handicrafts to passing motorists and pedestrians. Such structures must be movable and must not be equipped for housekeeping or living. No food or beverages may be served on such premises, except produce or fruit juice grown and extracted on the same or an adjoining lot. No facilities for cooking or for seating customers may be included.

**SANITARY LANDFILL** — A parcel of land used for the deposition of solid refuse, followed by its compaction and covering with earth in a systematic and sanitary manner.

**STABLE, SALES** — A building with or without adjacent holding pens regularly or periodically used for the public sale of livestock.

**STORE, GENERAL MERCHANDISE** — A business establishment having as its principal activity the retail sale of a variety of goods, including but not restricted to food, clothing and hardware. Such does not include the sale of large home appliances or any store having a floor area of more than 2,000 square feet.

**STORE, RETAIL FOOD** — A business establishment having as its principal activity the retail sale of food in raw or unfinished form for home preparation and consumption.

**VARIANCE** — A change in the requirements of this chapter as they apply to a specific parcel of property.

**WIND ENERGY FACILITY** — Any wind energy conversion system, small wind energy conversion system, or wind measurement tower, as each is defined in Chapter 78 of this Code, including all related infrastructure, electrical lines and substations, access roads and accessory structures. Public utility uses otherwise allowed under this chapter do not include wind energy facilities. **[Added 5-24-2006 by L.L. No. 1-2006]**

**WORKSHOP** — A building used for home repairs or for the pursuit of a hobby by residents of the dwelling located on the same or an adjoining parcel of land under the same ownership. It does not include the housing of activities carried on for gain or profit. (See "occupation, home.")

**YARD, FRONT** — An open space, not occupied by any building, between the center line of the road or street right-of-way and the closest projection of any building located on the parcel of land. An unenclosed porch or a flight of steps may extend up to six feet into this space.

**ARTICLE II  
Establishment of Districts**

**§ 79-6. Designation of districts.**

For the purpose of this chapter, the Town of Malone is divided into the following districts:

R	Residential District
R-S	Residential-Seasonal District
C	Countryside District
C-G	General Commercial District
O-S	Open Space District
P-D	Planned Development District
WO	Waterfront Overlay District [ <b>Added 10-26-2011 by L.L. No. 2-2011</b> ]

**§ 79-7. R Residential District uses.**

- A. Permitted primary uses. Buildings and parcels of land located in the R Residential District may be constructed, occupied and used for the following purposes:
  - (1) Without special restrictions, other than specified minimum lot size, lot width, yard dimensions and setback.



- (a) Existing farms.
  - (b) One-family dwellings.
  - (c) Two-family dwellings.
  - (d) Schools.
  - (e) Existing cemeteries.
  - (f) Churches or houses of worship.
  - (g) Public parks, including golf courses.
  - (h) Existing public-service clubs.
- (2) With the particular restrictions specified.
- (a) Public utilities. Restrictions: The facility must be an outdoor facility, not an office building, workshop or garage. It must not emit an objectionable level of noise. If visible from the adjacent public highway or adjoining properties, the facility will be constructed and maintained in a manner which will have the least objectionable environmental impact consistent with practicality.
  - (b) Mobile homes. Restriction: must be erected on a permanent, continuous masonry wall foundation. Within 30 days after the removal of a mobile home, the owner of the land shall remove any structure formerly attached to that mobile home and any foundation, except for a flat concrete slab, rising not more than one foot above the ground. This removal is not required if, within the thirty-day period, a notification of intent to erect on the site a permitted building attached to or incorporating the structure has been filed. If such notice has been filed, actual construction must begin within one year or the structure removed within that period.

- B. Permitted accessory uses. The following uses and buildings are considered to be accessory to permitted primary uses and are also permitted when located on land adjoining that on which a permitted primary use is located and when both parcels of land are owned by the same party. Accessory uses are also permitted within the same building as a permitted primary use.
- (1) Garages.
  - (2) Toolsheds.
  - (3) Workshops.
  - (4) Home occupations.
  - (5) Barns housing not more than 3,000 pounds of livestock.
- C. Minimum lot sizes. For public utility structures, there shall be no minimum lot size. For all other uses, the minimum lot size shall be one acre, except that when an external source of either water and/or sewage disposal is available, then the minimum lot size shall be 30,000 square feet.
- D. Minimum front yard depth. The minimum front yard depth shall be 75 feet.
- E. Minimum side and rear yard dimensions. Except on the side adjoining a public road, there shall be a minimum of 15 feet between any point on any structure, including a screening fence or planting required by this chapter, and the nearest boundary of the parcel of land on which it is located.
- F. Minimum road frontage. The minimum road frontage for all uses shall be 100 feet.

**§ 79-8. R-S Residential Seasonal District uses.**

- A. Permitted primary uses. Buildings and parcels of land located in the R-S Residential-Seasonal District may be constructed, occupied and used for the following purposes with the particular restrictions hereinafter specified for all shoreline uses:
- (1) One-family dwellings.
  - (2) Two-family dwellings.
  - (3) Camps and seasonal dwellings.
  - (4) Outdoor recreational developments.
  - (5) Overnight campsites.
  - (6) Public utility facilities.
- B. Permitted accessory uses. The following uses and buildings are considered to be accessory to permitted primary uses and are also permitted when located on land adjoining that on which permitted primary uses are located and when both parcels of land are owned by the same party or when the accessory use is located in the same building as the permitted primary use:
- (1) Garages.
  - (2) Toolsheds.
  - (3) Workshops.
  - (4) Storage buildings.
  - (5) Boathouses.
  - (6) Docks.
  - (7) Privies.
- C. Minimum lot width shall be 99 feet.

- D. Minimum front yard depth shall be 50 feet from the road or shoreline, as is appropriate.
- E. Minimum side and rear yard dimensions shall be 15 feet.
- F. Additional shoreline restrictions shall include the following:
- (1) The removal of vegetation, including trees, will be permitted on shorefront lots, provided that the following standards are met:
    - (a) Within 35 feet of the mean high-water mark not more than 30% of the trees in excess of four inches in diameter at breast height existing at any time may be cut over any ten-year period.
    - (b) Within six feet of the mean high-water mark no vegetation may be removed, except that up to a maximum of 30% of the shorefront may be cleared of vegetation on any individual lot, provided that such clearing will not exceed 100 feet. This provision will be adhered to in addition to Subsection F(1)(a).
    - (c) The above cutting provisions will not be deemed to prevent the removal of diseased vegetation or of rotten or damaged trees that present safety hazards.
  - (2) The following minimum shoreline frontages will be required in all land use areas for deeded or contractual access to all such lakes, ponds, rivers or streams for five or more lots, parcels or sites or multiple-family dwelling units not having separate and distinct ownership of shore frontage:
    - (a) Where five to nine lots or multiple-family dwelling units are involved, a total of not less than 99 feet of shoreline frontage will be required when shoreline access is provided.

- (b) Where more than nine lots or multiple-dwelling units are involved, a minimum of seven feet of shoreline for each additional lot or multiple-dwelling unit will be required when shoreline access is provided.
  - (3) The only type of building to be allowed on the shoreline shall be one boathouse per lot for sheltering and storage of boats and equipment, not to exceed 20 feet in width nor 12 feet in height.
  - (4) The minimum setback of any on-site sewage drainage field or seepage pit shall be 75 feet, provided that percolation of the soil is satisfactory (by test) at that distance; otherwise as much farther back as necessary to obtain satisfactory percolation results to accommodate sewage effluent.
- G. Wetland areas. In addition to the foregoing, no use and no alteration of the land, including draining or filling, shall take place until the notification of intent for such proposed use or activity has been referred to and approved by the Planning Board.

**§ 79-9. C Countryside District uses.**

- A. Permitted primary uses. Buildings and parcels of land located in the C Countryside District may be constructed, occupied and used for the following purposes:
  - (1) Without special restrictions, other than specified minimum lot size, lot width, yard dimensions and setback.
    - (a) One-family dwellings.
    - (b) Two-family dwellings.
    - (c) Farms.
    - (d) Schools.

- (e) Churches or houses of worship.
  - (f) Cemeteries.
  - (g) Government buildings.
  - (h) Private clubs.
  - (i) Camps and seasonal dwellings.
  - (j) Outdoor recreational developments.
  - (k) Nurseries.
  - (l) Animal hospitals.
  - (m) Kennels.
  - (n) Roadside stands.
  - (o) Public utility facilities.
- (2) With the particular restrictions specified.
- (a) Retail food or general merchandise stores. Restriction: no more than 2,000 square feet of floor space.
  - (b) Mining or commercial excavation of sand and gravel. Restriction: No excavation area shall be located within 100 feet of any highway right-of-way or adjacent property line. Where visible from the public right-of-way and where it will accomplish the intended purpose of screening from the public view, it shall be screened with evergreen plantings sufficient to accomplish the intended purpose.
  - (c) Junkyard and sanitary landfills. Restrictions:
    - [1] Junkyards and sanitary landfills must not be located within 1,000 feet of any public right-of-way or of any adjacent parcel of

land. If the use is visible, a screening fence or evergreen plantings must be erected and maintained in good condition sufficiently high to prevent this visibility.

- [2] In addition to the above provisions, no mining, sand or gravel excavation or sanitary landfill shall be established until evidence has been presented that the proposed use will not increase or otherwise change in an objectionable manner the flow or seepage of water or other materials onto any other parcel of land. Such evidence would include certification by a representative of the United States Soil Conservation Service or by a licensed civil engineer.

(d) Forest practices. Restrictions:

- [1] Within any ten-year cutting cycle, timber harvesting will be limited to cutting per acre no more than 75% of the merchantable trees over six inches in diameter at breast height or 60% of the basal area of the merchantable trees over six inches in diameter at breast height, whichever is less.
- [2] No landings for timber harvesting activities will be greater than 1/2 acre in size.
- [3] These standards will not be deemed to prevent the construction and maintenance of access points for wood roads and skid roads reasonably necessary for forest management purposes.

[4] These restrictions shall not apply to land being cleared in the process of returning it to use for agricultural purposes.

- (e) Commission sales stables. Restriction: A commission sales stable shall have an off-street parking area adequate to accommodate all the cars and trucks which are parked during sales. In any case, this parking area shall include at least one acre. There shall be at least two driveways, not less than 50 feet in width, leading from the public highway into the parking area.
- (f) Overnight campsites. Restriction: must comply with the requirements of the New York State Department of Health and must have a permit issued by the District Health Officer.
- (g) Individual mobile homes. Restriction: must be erected on a permanent, continuous masonry wall foundation or must have appropriate skirting installed and maintained. Within 30 days after the removal of a mobile home from its site, the owner of the land shall remove any structure formerly attached to that mobile home and any foundation, except for a flat concrete slab, rising not more than one foot above the ground. This removal is not required if, within the thirty-day period, a notification of intent to erect on the site a permitted building attached to or incorporating the remaining structure has been filed. If such notice has been filed, actual construction must begin within one year or the structure removed within that period.

B. Permitted accessory uses. The following uses and buildings are considered to be accessory to permitted primary uses and areas also permitted when located on land adjoining that on which permitted primary uses are located and



when both parcels of land are owned by the same party or when the accessory use is located in the same building as the permitted primary use:

- (1) Garages.
- (2) Toolsheds.
- (3) Workshops.
- (4) Home occupations.
- (5) Barns.

C. Minimum lot sizes.

- (1) For the following uses, there shall be no minimum lot size:
  - (a) Roadside stands.
  - (b) Public utilities.
- (2) For the following uses, the minimum lot size shall be one acre, except that when an external source of either water and/or sewage disposal is available or where a qualified licensed engineer's study indicates that the land can sustain both water and sewage disposal on the same lot, then the minimum lot size shall be 32,500 square feet:
  - (a) One-family dwelling.
  - (b) Two-family dwelling.
  - (c) Campsite and seasonal dwellings.
  - (d) Mobile home.
- (3) For commission sales stables, the minimum lot size shall be 10 acres.
- (4) For all other uses, the minimum lot size shall be three acres.

D. Minimum front yard depth.

- (1) The minimum front yard depth for any structure connected with the following shall be 150 feet:
  - (a) Junkyards.
  - (b) Sanitary landfills.
  - (c) Mining or commercial excavation of sand or gravel.
  - (d) Commission sales stables.
- (2) The minimum front yard depth for all other uses shall be 75 feet.
- (3) The minimum front yard depth for roadside stands shall be sufficiently great that no traffic hazard is created.

E. Minimum side and rear yard dimensions. Except on the side adjoining a public road, there shall be a minimum of 15 feet between any point on any structure, including a screening fence or planting required by this chapter, and the nearest boundary of the parcel of land on which it is located.

F. Minimum road frontage. The minimum road frontage for all uses shall be 100 feet.

**§ 79-10. (Reserved)**

**§ 79-10.1. C-G General Commercial District uses.**

A. Permitted primary uses. Buildings and parcels of land located in the C-G General Commercial District may be constructed, occupied and used for the following purposes:

- (1) Without special restrictions, other than specified minimum lot size, lot width, yard dimensions and setback.
  - (a) One- and two-family dwellings.
  - (b) Retail store, personal service shop, office, restaurant, motel, bank.
  - (c) Lumber, feed, fuel sales or storage.
  - (d) Heating, plumbing, electrical, metal or similar fabrication or welding shop.
  - (e) Concrete products.
  - (f) Machine shop.
  - (g) Light manufacturing or assembly.
  - (h) Wholesale, storage, warehouse or processing facility.
  - (i) Development or research center.
  - (j) Accessory building or use.
- (2) With particular restrictions as may have been specified for these uses in previous districts.
  - (a) Light manufacturing of a similar and no more objectionable nature and character than the above-listed uses.
  - (b) Animal hospital, kennel.
  - (c) Drive-in restaurant, refreshment stand.
  - (d) Gasoline station, garage, auto wash.
  - (e) Automobile, boat, mobile home, farm implement or recreational vehicle sales or rental.

- (f) Commercial recreation, golf driving range, outdoor theater.
  - (g) Junkyard.
  - (h) Public utility structure, use.
  - (i) Accessory building, use.
- B. Minimum lot sizes. For all uses, minimum lot size shall be one acre.
- C. Minimum front yard depth shall be 100 feet unless particular restrictions called for above require more.
- D. Minimum side and rear yard dimensions. Except on the side adjoining a public road, there shall be a minimum of 15 feet between any point on any structure, including a screening fence or planting required by this chapter, and the nearest boundary of the parcel of land on which it is located.
- E. Minimum road frontage. The minimum road frontage for all uses shall be 150 feet.

**§ 79-10.2. Adult uses. [Added 3-27-2002 by L.L. No. 5-2002<sup>1</sup> ]**

Adult uses, as defined in § 79-10.2B, shall be allowable only in the C-G General Commercial District and only as a special exception issued by the Board of Variances and Appeals after public hearing.

**A. Purposes and considerations.**

- (1) In the execution of this section it is recognized that there are some uses which, due to their very nature, have serious objectionable characteristics. The objectionable characteristics of these uses are further

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1. Editor's Note: This local law also redesignated former § 79-10 as § 79-10.1.

heightened by their concentration in any one area, thereby having deleterious effects on adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods or land uses.

- (2) It is further declared that the location of these uses in regard to areas where our youth may regularly assemble and the general atmosphere encompassing their operation is of great concern to the Town of Malone.
- (3) These special regulations are itemized in this section to accomplish the primary purposes of preventing a concentration of these uses in any one area and restricting their accessibility to minors.

B. "Adult uses" shall be defined as follows:

**ADULT BOOK AND/OR VIDEO STORE** — A commercial establishment which has as a substantial or significant portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental for any form of consideration, of any one or more of the following: books, magazines, periodicals, or other printed matter or photographs, films, videos, slides or other visual representations, which are characterized by the exposure or emphasis of specified sexual activities or specified anatomical areas or instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities which are for sale, rental, or viewing on or off the premises. An establishment may have other principal business purposes that do not involve the offering for sale or rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as an adult book and/or video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult book and/or video store

so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe specified anatomical areas or specified sexual activities.

**ADULT ENTERTAINMENT CABARET** — A public or private establishment which regularly presents topless and/or bottomless dancers, strippers, waiters or waitresses, male or female impersonators or exotic dancers, or other similar entertainment or films, motion pictures, videos, slides, or other photographic material, or which utilizes employees, as part of their employment, to regularly expose patrons to specified sexual activities or specified anatomical areas. This definition shall include establishments that serve alcohol, as well as those that do not serve alcohol.

**ADULT MOTION-PICTURE THEATER** — Any motion-picture theater where, for any form of consideration, films, motion pictures, videocassettes, slides, or other photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT THEATER** — A theater, concert hall, auditorium, or similar establishment which, for any form of consideration, regularly features live performances characterized by the exposure of specified sexual activities or specified anatomical areas.

**SPECIFIED ANATOMICAL AREAS** —

- (1) Less than completely and opaquely clothing-covered human genitals, pubic region, buttocks, and/or female breasts directly and laterally below the top of the areola; and
- (2) Human male genital in a discernible turgid state even if completely and opaquely clothing covered.

## SPECIFIED SEXUAL ACTIVITIES —

- (1) Human genitals in a state of sexual stimulation or arousal; or
- (2) Acts of human masturbation, sexual intercourse, oral copulation, or sodomy; or
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or breasts.

UNLICENSED MASSAGE ESTABLISHMENT — Any establishment having a fixed place of business where massages, or any other treatment or manipulation of the human body, are administered for any form of consideration or gratuity, as part of or in connection with specified sexual activities or where any person providing such treatment or service related thereto exposes specified anatomical areas. This definition shall not be construed to include a hospital, nursing home or medical clinic, or the office of the physician, surgeon, chiropractor, osteopath, duly licensed physical therapist, or duly licensed massage therapist or barbershop or beauty salon, athletic club, health club, school, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental accessory service by a person duly licensed to provide such service. If an unlicensed massage establishment is illegal under the laws of the State of New York, it shall not be a permitted adult use.

- C. Adult uses are to be restricted as to location in the following manner:
- (1) Adult uses shall not be located within a one-thousand-foot radius of any area zoned for residential use. Measurement of the distance shall be measured from the shortest distance between the boundary of the residential use zone and the property line of the proposed adult use.

- (2) Adult uses shall not be located within a one-thousand-foot radius of another such use. Measurement of the distance shall be from the property lines of the uses.
  - (3) Adult uses shall not be located within a one-thousand-foot radius of any school, church, temple, mosque or other place of religious worship, park, playground or playing field, day-care facility, governmental building or post office. Measurement of distances shall be from the property lines of the uses.
  - (4) Adult uses shall not be located within 500 feet from any property classified by the State's Office of Real Property Service as residential that is located within the C-G General Commercial District. Measurement of distances shall be from the property lines of the residential property and the proposed adult use.
- D. Adult uses must comply with the following additional requirements to control the secondary effects of such uses on the surrounding community:
- (1) In any adult use where there is provided the performance of live dancers, said dancers shall perform only on a stage or platform which is at least 18 inches above the immediate floor level and which is removed at least six feet from the nearest patron.
  - (2) In any adult use where there is provided the performance of live dancers, no entertainer or dancer shall touch any guest or the clothing of a guest.
  - (3) There shall be no outdoor display or advertising of any kind, other than one business identification sign complying with all signage requirements set forth in the Town Code.<sup>2</sup>

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2. Editor's Note: See § 79-15, Signs.



- (4) All adult uses shall take place within an enclosed building. All building openings, entries, windows and doors of the adult use shall be located, covered or screened in such a manner as to prevent a view into the interior of the building from any public right-of-way or adjacent property.
  - (5) All off-street parking areas and premises entries of the adult use shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one footcandle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the business of personal safety of patrons and employees, and to reduce the incidents of vandalism and criminal conduct.
  - (6) No adult use may remain open at any time between the hours of 12:00 a.m. and 10:00 a.m. on weekdays and Saturdays. No adult use may remain open at any time on Sundays.
  - (7) No one under the age of 18 shall be permitted into or on the premises of the adult use.
- E. The restrictions enumerated in Subsections C and D above may be waived by the Board of Variances and Appeals if the applicant shows and the Board finds that the following conditions have been met in addition to the general conditions:
- (1) That the proposed adult use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of this section will be observed;
  - (2) That the establishment of an additional Adult Use of this type in the area will not be contrary to any program of neighborhood conservation or

improvement, either residential or nonresidential;  
and

- (3) That 51% or more of the property owners within the restricted area, as defined in Subsection C(1) of this section, have signed a petition stating that they have no objection to the establishment of one of the uses defined above.

F. Any person or entity seeking to conduct an adult use shall submit the following information, accompanied by the following documents:

- (1) If the applicant is:
  - (a) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;
  - (b) A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
  - (c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process;
  - (d) A company, including but not limited to limited-liability companies, the company shall state its complete name, its owners, members and managers.

- (2) If the applicant intends to operate the adult use under a name other than that of the applicant, he or she must identify the adult use's fictitious name.
- (3) The applicant's mailing address and residential address.
- (4) Whether the applicant has been convicted of a crime and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
- (5) The location of the proposed adult use, including a legal description of the property, street address, and telephone number(s), if any, and the exact nature of the adult use to be provided.
- (6) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- (7) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing adult uses within 1,000 feet of the proposed location of the new adult use, as well as any schools, churches, temples, mosques or other places of religious worship, parks, playgrounds and playing fields, day-care facilities, governmental buildings or post offices within 1,000 feet of the proposed location of the new adult use; the boundary of any area zoned for residential use that is within 1,000 feet of the proposed location of the adult use; and, finally, the boundary of any residential property located within the C-G General Commercial District.

- (8) Property owner's written consent to the proposed adult use.
- G. An owner or operator of an adult use shall permit the Town Code Officer to inspect the premises of such adult use for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- H. No more than one of the adult uses as defined in Subsection B above shall be located on any Tax Map parcel.

**§ 79-11. O-S Open Space District uses.**

- A. Permitted primary uses. Buildings and parcels of land located in the O-S Open Space District may be constructed, occupied and used for the following purposes:
- (1) Without special restrictions, other than specified minimum lot size, lot width, yard dimensions and setback.
- (a) Forest practices, nursery, reforestation area.
  - (b) Reservoir, watershed area.
  - (c) Fish or game club, wildlife management area.
  - (d) One- and two-family dwellings.
  - (e) Seasonal dwelling.
  - (f) Camp.
  - (g) Public park, recreation area.
- (2) With the particular restrictions specified.
- (a) Forest practices. Restrictions:
    - [1] Within any ten-year cutting cycle, timber harvesting will be limited to cutting per

acre no more than 75% of the merchantable trees over six inches in diameter at breast height or 60% of the basal area of the merchantable trees over six inches in diameter at breast height, whichever is less.

- [2] No landings for timber harvesting activities will be greater than 1/2 acre in size.
  - [3] These standards will not be deemed to prevent the construction and maintenance of access points for wood roads and skid roads reasonably necessary for forest management purposes.
  - [4] These restrictions shall not apply to land being cleared in the process of returning it to use for agricultural purposes.
- (b) Commercial recreation, golf course, ski slope, marina. Restriction: Commercial recreation of the types provided for here shall be permitted only when the proposed use is compatible with and does not detract from surrounding open space, natural and forest appearance or other characteristic uses. It shall be determined that any traffic, noise or light likely to be generated by any such activity will not abrogate the essential nature and stated purpose of the Open Space District.
- B. Permitted accessory uses. The following uses and buildings are considered to be permitted accessory uses and are also permitted when located on land adjoining that on which permitted primary uses are located and when both parcels of land are owned by the same party or when the accessory use is located in the same building as the permitted primary use:

- (1) Garages.
  - (2) Toolsheds.
  - (3) Workshops.
  - (4) Barns.
  - (5) Boathouses.
  - (6) Docks.
  - (7) Privies.
- C. Minimum lot sizes. All uses shall have a minimum lot size of three acres.
- D. Minimum front yard depth shall be 100 feet.
- E. Minimum side and rear yard dimensions shall be 25 feet.
- F. Minimum road frontage: none required; if located on public road, 200 feet.
- G. Wetland areas. In addition to the foregoing, no use and no alteration of the land, including drainage or filling, shall take place until the notification of intent for such proposed use or activity has been referred to and approved by the Planning Board.

**§ 79-12. P-D Planned Development District uses.**

- A. Purpose: to provide a means of developing those land areas within the community considered appropriate for new residential, recreational, commercial or industrial use, or a satisfactory combination of these uses, in an economic and compatible manner, while encouraging the utilization of innovative planning and design concepts or techniques in these areas without departing from the spirit and intent of this chapter.
- B. Procedure.

- (1) For the establishment of Planned Districts.
  - (a) Application for designation of a P-D District shall be referred to the Town Board. The Town Board shall refer the application to the Planning Board within 10 days of receipt. The applicant shall furnish basic data pertaining to the boundaries of the proposed development, the existing zoning, topography, drainage, soil conditions and such preliminary plans as may be required for an understanding of the type, uses and design of the proposed development.
  - (b) The Planning Board and the Board's professional planning consultant, if any, shall review such application. The Board may require such changes in the preliminary plans as are found to be necessary to meet the requirements of this subsection, to protect the established permitted uses in the vicinity and to promote the orderly growth and sound development of the community. In evaluating the proposal and in reaching its decision regarding the preliminary plans, the Planning Board shall consider and make findings regarding those pertinent site and development considerations.
  - (c) All applications for creation of a Planned District shall be referred to the Franklin County Planning Board, which may review and comment on the referral within 30 days.
  - (d) The Town Planning Board shall report its findings and render its decision to the Town Board within 45 days. It may approve, disapprove or give conditional approval subject to modifications regarding the proposed development.

- (e) The Town Board shall hold a public hearing after public notice as required for any amendment to this chapter and shall consider the report and recommendations of the Planning Board and all other comments, reviews and statements pertaining thereto. It may amend the Zoning Map to establish and define the type and boundaries of the Planned District, and in so doing may state specific conditions, in addition to those provided by this chapter, further restricting the nature or design of the development. In the event that the Planning Board disapproved the proposal or rendered conditional approval subject to modifications with which the developer is not willing to comply, the Town Board may amend the Zoning Map in accordance with the application only upon an affirmative vote of a majority of the members of the Town Board.
- (2) For the approval of development within an established Planned District.
- (a) Amendment of the Zoning Map shall not constitute authorization to develop in the district. Such authorization, after a Planned District has been established, shall require that the applicant submit to the Planning Board such further plans and specifications, supporting documents and data as shall be required by the Board, and specify on the plans and in writing the building types and layouts, setbacks, off-street parking and loading, ingress and egress, signs, existing and proposed amenities, screening, planting and ornamental features and the plan or arrangement for development of the area in stages or in its entirety.



- (b) The Planning Board and the Board's professional planning consultant, if any, shall set forth the particular ways in which the proposed development would or would not be in the public interest, including findings of fact and conclusions on all pertinent site and development considerations.
- (c) No notification of compliance shall be issued until the Planning Board has made its determination based on the pertinent considerations and the Town Board has considered this determination and any review by the Franklin County Planning Board and authorized such issuance by resolution. The town may override the recommendation of the Planning Board in adopting its resolution to authorize or deny notification of compliance only by an affirmative vote of a majority of the members of the Town Board.
- (d) All conditions imposed by the Town Board in its amendment and all subsequent conditions imposed by the Planning Board in its review of the final plans, including any the performance of which was a condition precedent to the issuance of any authorization to proceed, shall run with the land and shall not lapse or be waived as a result of any change in tenancy or ownership of any or all of the designated district.
- (e) If construction of the development in accordance with the approved plans and specifications has not begun within one year after the date of the resolution authorizing issuance of notification of compliance, such authorization shall become null and void, the approval shall be deemed revoked and vacated and the Town Board shall have the authority to

again amend the map to restore the zoning designation for the district to that which it had been prior to the application or any other district.

- C. Special application. All proposed mobile home courts and all proposed development at Malone-Dufort Airport and the town-owned property between Lower Park and Constable Streets will be considered under this P-D procedure. All development at Malone-Dufort Airport, including any within the conical approach zones, shall be approved under the P-D procedure only when in accord with the most recent Federal Aviation Agency standards for an airport and airport environs of Malone-Dufort's classification.

### **§ 79-13. Zoning Map.**

The location and boundaries of said districts are hereby established on the Zoning Map of the Town of Malone. Said map, with all notations, references and designations shown thereon, is hereby made a part of this chapter.

### **§ 79-14. Interpretation of district boundaries.**

- A. The district boundary lines are intended generally to follow the center line of streets and highways; the center line of railroad rights-of-way; existing lot lines; the center line of rivers, streams and other waterways; and town boundary lines. Where a district boundary line does not follow such a line, its position shall be shown on the Zoning Map by a dimension expressing its distance in feet from a street line or other boundary line as indicated or by use of the scale appearing on the Zoning Map.
- B. Where district boundaries are so indicated that they follow lot lines, such lot lines shall be construed to be said boundaries.

- C. Where district boundaries are so indicated that they are approximately parallel to the center line of streets or highways, such district boundaries shall be construed to be parallel thereto and at such distance therefrom as indicated on the Zoning Map.
- D. Where a district boundary line divides a lot in single ownership at the time of the passage of this chapter, the regulations for the less restricted portion of such lot shall extend not more than 30 feet into the more restricted portion, provided, that the lot has frontage on a street in the less restricted district.
- E. In case of uncertainty as to the true location of a district boundary line in a particular instance, the Board of Variances and Appeals shall render a determination with respect thereto.

### ARTICLE III District Regulations

#### **§ 79-15. Application of regulations.**

- A. No building shall be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be designed or used, for any purpose or in any manner other than as specified among the uses herein listed as permitted in the district in which such building or land is located, except as provided under § 79-21.
- B. No building shall be erected and no existing building shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity to the yard, lot area and building location regulations hereinafter designated for the district in which such building or open space is located.
- C. No yard or other open space provided about any building for the purpose of complying with the provisions of this

chapter shall be considered as providing a yard or open space for any other buildings, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.

**§ 79-16. Lot area and building location.**

- A. No more than one residential structure on any lot, other than group housing, shall be permitted unless lot area and yard requirements are met for each dwelling, including required road frontage, except as provided in this chapter.
- B. On a corner lot in any district where a front yard is required, a yard shall be provided on each road equal in depth to the required front yard on each such road. One rear yard shall be provided on each corner lot and the owner shall designate the rear yard on his application.
- C. Where a single lot under individual ownership extends from one road to another parallel or nearly parallel road, the principal structure shall be erected to face the road on which those adjoining structures face.
- D. Where a lot or parcel of land is isolated and does not have frontage on an existing or proposed right-of-way and is accessible only by private drive, water or where other unusual conditions prevail, the Board of Variances and Appeals may waive the requirement that such lot have a minimum frontage on a public road or an officially approved place so long as other minimum requirements can be met and when such waiver shall in no way be contrary to the intent and purpose of this chapter.
- E. Where an individual owns a parcel of land the size of which allows for construction of more than one principal building and the individual desires to construct the building or buildings away from the public road with access available only by private drive or water, the Board of Variances and Appeals may waive the requirement of minimum frontage on a public highway so long as other

minimum requirements for the district can be met, and further provided that said individual shall provide the minimum road frontage along said private drive if more than one principal building is to be constructed. Said waiver shall in no way be contrary to the intent and purpose of this chapter.

- F. When a vacant lot in any district is situated between two improved lots, the front yard of the vacant lot may have a minimum depth equal to the average depth of the front yards of the two adjoining improved lots, but not less than 20 feet from the road right-of-way.

**§ 79-17. Off-street parking and loading.**

- A. Off-street parking space shall be required for all principal buildings constructed or substantially altered after the effective date hereof. Each off-street space shall consist of at least 180 square feet with a minimum width of nine feet. In addition, space necessary for aisles, maneuvering and drives shall be provided and shall be so arranged as not to interfere with pedestrian or motor traffic on a public roadway.
- B. Off-street loading facilities shall be provided for each commercial or industrial establishment hereafter erected or substantially altered to have a gross floor area in excess of 2,000 square feet and shall be so arranged as not to interfere with pedestrian or motor traffic on a public roadway.

**§ 79-18. Signs.**

- A. The following regulations shall govern all signs or sign uses:
- (1) A notification of compliance shall be required for the erection, alteration or reconstruction of any business or advertising sign.

- (2) Signs must be constructed of durable materials, maintained in good condition and not allowed to become dilapidated.
  - (3) Signs, other than an official traffic sign, shall not be erected within the right-of-way lines of any roadway nor project beyond the authorized property lines.
  - (4) All temporary signs erected for a special event or property sale, rental or repair shall be removed by the property owner or his agent when the circumstances leading to their erection no longer apply.
  - (5) No flashing, rotating or intermittently lighted signs shall be permitted.
  - (6) In any Planned District, the Planning Board and Town Board shall review and approve any proposed sign as a part of their review of a project in these areas.
- B. In R and R-S Residential Districts, nonadvertising signs are permitted as follows:
- (1) One nameplate, identification or professional sign not to exceed two square feet in sign area, showing the name and address of the resident or a permitted home occupation of the resident of the premises.
  - (2) One nonilluminated sale or rental sign not to exceed six square feet in sign area during and pertaining to the sale, lease or rental of the land or building. Such sign shall be of a temporary nature.
  - (3) One artisan's sign not to exceed six square feet in sign area during and pertaining to construction, repairs or alterations on the property. Such sign shall be removed promptly upon completion of the work.

- (4) Institutional, service club or religious identification sign not to exceed 150 square feet in area.
  - (5) Sign advertising the sale or development of a tract of land may be erected upon the tract by the developer, builder, contractor or owner. The size of a sign shall not exceed 24 square feet and not more than two signs shall be placed upon the tract along any highway frontage. Such sign must be at least 75 feet from the road center line.
- C. In the C and C-G Districts, the applicable signs above are permitted and, in addition, the following:
- (1) Business signs erected hereafter in the C and C-G Districts shall not project into a public street right-of-way and shall not be closer than 10 feet to any lot line. No sign attached or unattached shall be higher than the principal building to which it is accessory, and no sign shall be erected upon the roof of any building. The gross surface area of business signs in the C and C-G Districts shall not exceed 150 square feet. All signs shall have sufficient clearance so as to provide clear and unobstructed visibility for vehicles entering or leaving the highway.
  - (2) Advertising signs are permitted in the C and C-G Districts as follows:
    - (a) The maximum size of any advertising sign shall be 150 square feet, and if illuminated, the light shall not be directed toward any public highway or adjacent residence.
    - (b) Any advertising sign shall be located at least 75 feet from the road center line of the nearest roadway. No such sign shall be erected or established within 200 feet of any road intersection or of any dwelling.

**ARTICLE IIIA**  
**Waterfront Overlay District**  
**[Added 10-26-2011 by L.L. No. 2-2011]**

**§ 79-18.1. Purpose and intent.**

- A. The Town intends to protect a scenic corridor along the Salmon River and its tributaries, in accordance with the Town and Village of Malone Local Waterfront Revitalization Plan. The purpose of the district is to maintain a green, undeveloped corridor along much of the Town's waterfront and to provide a consistent level of protection of the visual, environmental and historic resources within this corridor.
- B. The existing vegetation along the Salmon River is effective in creating a secluded natural experience for waterfront landowners, boaters, hikers and other waterfront users. In addition, a vegetative buffer reduces the velocity and volume of stormwater runoff entering the river, increases infiltration, decreases erosion, and protects water quality. Vegetation filters out pollutants, including nutrients from fertilizers and agricultural pesticides. Therefore, protection of the Salmon River waterfront is critical to its users as well as its ecology.
- C. The Waterfront Overlay (WO) District is overlaid onto existing zoning districts. All provisions of the underlying districts remain in full force, except where provisions of the WO District differ. In such cases, the more-restrictive provision shall apply. The principal control mechanisms of the WO are construction setbacks from the waterline, restrictions on the removal of natural vegetation within an established buffer zone adjacent to the water, and performance standards governing land use activities within the district. The WO will extend 200 feet from the Salmon River high-water mark.
- D. The specific purposes of this district include the following:



- (1) To preserve natural, scenic, and historic values along the Salmon River.
- (2) To preserve woodlands, wetlands, and other green space.
- (3) To regulate uses and structures along the Salmon River to avoid increased erosion and sedimentation.
- (4) To encourage compatible land uses along the Salmon River.
- (5) To recognize areas of significant environmental sensitivity that should not be intensely developed.
- (6) To allow reasonable uses of lands while directing more-intense development to the most appropriate areas of the community.

**§ 79-18.2. Permitted uses; prohibited uses.**

- A. The underlying zoning district determines the permitted principal uses, accessory uses and special permit uses within the Waterfront Overlay District. Underlying districts within the WO District include those districts located within 200 feet of the high-water mark.
- B. The following uses, however, are specifically prohibited within the WO District:
  - (1) Junkyards and solid waste disposal or processing facilities.
  - (2) Mineral extraction or surface mining.
  - (3) Freight or truck terminals.
  - (4) Bulk fuel storage.
  - (5) Bulk industrial chemical storage or processing.

- (6) Uses which may be noxious or injurious due to the production or emission of dust, smoke, odor, gases, fumes, solid or liquid waste, noise, light, vibration, or nuclear or electromagnetic radiation or due to the likelihood of injury to persons or damage to property if an accident occurs.

### **§ 79-18.3. Development regulations.**

#### **A. Setback requirements.**

- (1) The minimum setback from the high-water mark of the river shall be 200 feet for principal and accessory buildings.
- (2) Structures demonstrated to be directly related to the Salmon River may be authorized within the required setback distance; however, the Planning Board shall have the authority to impose additional conditions at the time of site plan review as may be warranted, such as buffering or screening.

#### **B. Riparian area vegetated buffer. Riparian areas shall be maintained with a natural vegetation strip on each parcel or lot between the normal high-water mark of the river and a point 100 feet from and perpendicular to the normal high-water mark. Removal of vegetation in the riparian area shall require a special permit in accordance with the following requirements:**

- (1) No clear-cutting shall be allowed.
- (2) One hundred percent of the vegetation strip may be selectively thinned as follows. No more than 35% of the number of trees six inches in diameter at 4.5 feet above the ground, or larger, shall be cut in any ten-year period. No more than 25% of trees four inches in diameter at 4.5 feet above the ground, or larger, shall be cut in any ten-year period. Additional

trees may be removed if the applicant can demonstrate one or more of the following conditions:

- (a) It is clearly necessary for traffic safety.
  - (b) It is clearly necessary for the development of an approved principal or accessory use or building, street, sidewalk, paved area, driveway, stormwater facility, utility or sewage system.
  - (c) It is within 25 feet of the foundation of an approved structure.
  - (d) It is diseased, dead or poses a clear danger to public safety, structure, utility or public improvement.
  - (e) It is related to agricultural activities, such as orchards or cultivation activities.
- (3) Existing soil and organic matter shall not be altered or disturbed within the vegetation strip except in connection with an activity otherwise permitted.
  - (4) No structures shall be permitted within the vegetation strip, with the exception of docks, boat ramps, bulkhead, pump houses, utilities, pervious walkways, and elevated walkways which provide the property owner with reasonable access to the water. Park-related furnishings (benches, picnic tables, pavilions, refuse containers, etc.) and vehicular parking areas shall be permitted, if associated with public recreation areas or public access to the river.
  - (5) No potentially polluting material, including but not limited to lawn clippings, leaves, garbage, refuse containers, junk cars, junk appliances, or toxic materials, may be dumped or stored within the natural vegetation strip. The vegetation strip shall not contain commercial or industrial storage or display, manufacturing or processing activity,

loading and unloading areas or vehicular parking areas.

- (6) Where there is no preexisting natural vegetation, new development requiring Planning Board approval pursuant to this section or site plan review shall include vegetation which shall screen the proposed development from the water and any existing waterfront trails or pathways. The width of this revegetated strip should be at least 75 feet from the high-water mark of the river. The plant material should consist of indigenous trees, shrubs, and grasses.
- (7) Reasonable efforts shall be taken during construction to ensure that trees protected by this section are not accidentally injured or removed, including root compaction by equipment or change in grade level. The developer shall replace any protected trees which are destroyed or injured with mature trees of similar diameter.

C. Protection of water quality.

- (1) There shall be no disturbance of existing federal and New York State wetlands, as identified by the New York State Department of Environmental Conservation, located within this WO District unless appropriate mitigation measures are defined and approved pursuant to a permit from the Department of Environmental Conservation and United States Army Corps of Engineers.
- (2) Stormwater and sedimentation control shall be guided by the standards of the New York Standards and Specifications for Erosion and Sediment Control, the New York State Stormwater Management Design Manual and the Town/Village of Malone

Stormwater Management and Erosion and Sediment Control Law.<sup>3</sup>

- D. Docks and water surface use.
- (1) Not more than one dock shall be permitted per residence.
  - (2) Multiple boat slips may be clustered.
  - (3) Bulkhead docks or off-channel basins are preferred for permanent docking.
- E. Agricultural activities. Soil shall not be tilled within 100 feet of the high-water mark of the river or within 100 feet of direct tributaries that are within the WO District.
- F. Additional requirements and standards.
- (1) Parking, fences and signs shall not detract from water views and are subject to regulations contained in this chapter. The following signs are prohibited within 300 feet of the river:
    - (a) Off-premises signs, such as billboards.
    - (b) Freestanding signs on site with a total height of greater than 12 feet above the surrounding average ground level or a sign area of greater than 40 square feet.
    - (c) Signs intended to be towed from one location to another.
  - (2) Development shall not interfere with or in any way prohibit, hinder or discourage the public use of waterfront trails.
  - (3) New development shall provide opportunities for trail linkages as identified in the Town/Village of

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3. Editor's Note: See Ch. 70, Stormwater Management and Erosion and Sediment Control.

Malone Local Waterfront Revitalization Plan. Any easement or trail construction should accommodate a pedestrian walkway or pathway having a right-of-way width of at least 20 feet along the length of and abutting the Salmon River shoreline.

- (4) When located adjacent to historic structures, new buildings shall reflect the architectural character of the existing historic structure.

#### **§ 79-18.4. Site plan review.**

Any proposed principal building or any proposed or expanded paved area larger than 5,000 square feet that would be partially or entirely located within the WO District shall be submitted for review by the Planning Board. Site plan review shall be conducted in accordance with the procedures established in this chapter.

### ARTICLE IV **Administration and Enforcement**

#### **§ 79-19. Zoning permit process.**

##### **A. Notification of intent.**

- (1) Prior to beginning construction or occupancy, the owner or occupier of real property shall give notice to the enforcement officer designated by the Town Board if:
  - (a) A new building is to be constructed;
  - (b) The outside dimensions of an existing building are to be enlarged;
  - (c) A building is to be altered to provide for a different primary use; or

- (d) A change in the primary use of a building is to occur.
- (2) The notice shall include the following:
  - (a) A sketch of the property, indicating the location and dimensions of the new or altered building. The sketch need not be drawn to scale, but the dimensions and distances must be stated accurately.
  - (b) A statement of the use to which the building will be put.
  - (c) Any other data or evidence required by this chapter, including but not limited to a photostatic copy of any state health certificate that may be required or any engineer's certificate required.
  - (d) The name and mailing address of the applicant or occupier.

B. Determination.

- (1) The enforcement officer shall, within 15 days, determine whether or not the proposed construction or use is permitted by this chapter and shall notify the applicant in writing, by certified mail, by issuance of one of the following:
  - (a) Notification of compliance stating that the application is in compliance with this chapter and the applicant is authorized to proceed in accord with the information supplied in the notification of intent; or
  - (b) Notification of objection stating that the application is not in compliance with this chapter. Such notice shall state precisely why the notification of intent is not in compliance

and what provisions of the chapter would be violated by approval of the application.

- (2) No construction or occupation against which a notification of objection has been issued shall begin until and unless the Board of Variances and Appeals has determined in writing and according to its procedures outlined elsewhere in this chapter that such construction or occupation may proceed.

### **§ 79-20. Board of Variances and Appeals.**

- A. **Establishment.** There is hereby established a Board of Variances and Appeals consisting of five members which shall function in the manner prescribed by law. The members of the Board of Variances and Appeals shall be residents of the Town of Malone and shall be appointed by the Town Board as prescribed by law.
- B. **Procedure.** The Board of Variances and Appeals shall act in strict accordance with the procedure specified by law and by this chapter. The Board of Variances and Appeals shall adopt such rules and regulations as it may deem necessary to carry into effect the provisions of this chapter, and all its resolutions and orders shall be in accordance therewith. All applications for appeal or variance made to the Board shall be in writing. Every application shall refer to the specific provision of this chapter involved and shall set forth the details of appeal or variance that is applied for and the basis thereof. All meetings of the Board shall be held at the call of the Chairman and at such other times as such Board may determine. The Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. Meetings of the Board shall be open to the public. Such Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.



- C. Fees. A schedule of fees for the appeal and variance process, to be borne by the applicant in accord with costs to be incurred by the town, shall be as established by the Town Board.
- D. Appeals.
- (1) A private citizen aggrieved by proposed construction or occupation or any notification of compliance issued may submit a request for a determination relative thereto by the Board of Variances and Appeals, which Board shall consider and rule on the request.
  - (2) An applicant against whose proposed construction or occupation a notice of objection has been issued may appeal to the Board of Variances and Appeals by filing a notice of appeal with the official designated by the Town Board.
  - (3) Within 30 days following the filing of a notice of appeal, the Board of Variances and appeals shall hold a public hearing at which the appellant may be heard and may be represented by counsel. This hearing shall be advertised not less than 10 days in advance in a newspaper of general circulation in the town.
  - (4) Within 10 days following such public hearing, the Board of Variances and Appeals shall indicate in writing its decision as to whether the proposed construction or occupation is permitted under this chapter, together with the reasons for this decision. One copy of the decision shall be sent to the appellant by certified mail. One copy of each such decision shall be maintained on file by the town.
- E. Variances.
- (1) An applicant whose planned construction or occupation is not permitted by this chapter may

apply for a variance by filing a notice of application for a variance in the same manner as one files a notice of appeal.

- (2) Within 15 days following the filing of a notice of application for a variance, the official designated by the Town Board shall give notice of the application to the owners listed on the town tax rolls of all land located within 1/4 mile as measured from the boundary line of the property involved in either direction and fronting on the same road as that for which the variance is sought and, as nearly as can be determined, all owners of property adjoining that for which the variance is sought. This notice shall include the date of the public hearing to be held on this application. Where such personal notice would require more than 20 separate notices, this requirement may be met by publication in three successive issues in a newspaper of general circulation in the town.
- (3) Within 30 days following the filing of a notice of application for a variance but more than 20 days following that filing, the Board of Variances and Appeals shall hold a public hearing on the application. This hearing shall be advertised not less than 10 days in advance in a newspaper of general circulation in the town.
- (4) At such public hearing, the applicant may be heard and may be represented by counsel. Any other property owner may also be heard, in person or by counsel.
- (5) The Board of Variances and Appeals shall indicate its decision on applications for variances in the same manner as in the case of appeals, but, in addition, it shall advertise its decision in the same manner as it advertises public hearings.

- (6) A variance shall be granted only if the Board of Variances and Appeals finds the following to be true:
  - (a) The exceptional shape, dimensions or topography of the specific parcel cause this chapter to restrict unreasonably or prevent its use.
  - (b) The variance granted is the minimum variance that will permit the reasonable use of the property.
  - (c) The granting of the variance is in harmony with the purpose of this chapter and will not, in effect, change any district regulations or boundaries and will not damage other property owners or the neighborhood.
- (7) The Board may attach such conditions as it considers necessary to the granting of a variance.

#### **§ 79-21. Nonconforming situations.**

The lawful use of any land or building existing on the effective date of this chapter may be continued although such use does not conform to the provisions of this chapter, and any such building may be reconstructed or structurally altered and the nonconforming use therein changed, subject to the following regulations:

- A. A nonconforming building or use shall not be added to or enlarged in any way that will increase the nonconforming situation unless such nonconforming building or use is made to conform to the regulations of the district in which it is located.
- B. A building nonconforming as to use may not structurally altered during its life to an extent exceeding in aggregate cost 50% of the fair value of the building, except as provided in Subsection E of this section, unless the use of such building is changed to a conforming use.

- C. A nonconforming use may be changed to another nonconforming use, provided that the new nonconforming use is not less compatible with the character of the district than the prior nonconforming use, and further provided that when such a use is changed to a use more compatible with the character of the district than the prior use, it may not thereafter be changed back to the prior use.
- D. Whenever a nonconforming building or use has been discontinued for a period of one year, any future use shall be in conformity to the provisions of this chapter. A reasonable interim, however, between tenants or occupants shall not be construed to mean discontinuance.
- E. A building nonconforming as to use which has been damaged by fire or other causes may be restored, reconstructed or used as before, provided that the bulk, height and area requirements shall not exceed that which existed before said damage. Said restoration must be completed within one year of such occurrence or the use of the building or land as a legal nonconforming use thereafter shall be terminated.
- F. If any building or use in which any nonconforming activity is conducted is hereafter removed, the subsequent use of the land on which such building or use was located and the subsequent use of any building erected thereon shall conform to the regulations of the district.
- G. Any building or use on which construction has been started and diligently prosecuted before the effective date of this chapter may be completed.
- H. A preexisting lot of record may be used for a permitted use in its respective district even though it does not meet the minimum lot size requirements of this chapter.

**§ 79-22. Amendments.**

- A. The Town Board may from time to time, on its own motion, amend, supplement, repeal or change the regulations and district boundaries established by this chapter pursuant to law.
- B. All proposed amendments, supplements or changes originating by petition or by motion of the Town Board shall be referred to the Town Planning Board for a report and recommendation thereon. The Planning Board shall submit its report within 30 days after receiving such referral. Failure of the Planning Board to report within the required time shall be deemed to be approval of the proposed amendment.
- C. Whenever any zoning regulation, including any amendment or variances, would change the district classification of or a regulation applying to real property within a distance of 500 feet from any boundary line of a neighboring municipality or upon county or state property as described in §§ 239-L and 239-M of the General Municipal Law, said zoning regulation or amendment shall be referred to the Franklin County Planning Board, which Board shall have 30 days in which to report its recommendations to the Town Board. Failure of the County Planning Board to report within 30 days may be construed to be approval by the Board.
- D. Before any amendment, supplement or change in the regulations or district boundaries, there shall be a public notice and hearing held by the Town Board as provided by law.
- E. After the public hearing and referral to and report by the Planning Board, a majority vote of the members of the Town Board shall be required to amend this chapter except in the instance of a protest petition, in which case the amendment shall not become effective except by the favorable vote of at least four members of the Town Board.

**§ 79-23. Enforcement penalties for offenses.**

- A. This chapter shall be enforced by a person hereinafter called the "enforcement officer," designated by the Town Board, who shall in no case grant any authorization for any building or use on premises where the proposed erection, alteration, relocation or use thereof would be in violation of any provision of this chapter. The enforcement officer shall make such inspections of buildings or premises as are necessary to carry out his duties. No authorization required hereunder shall be issued by the enforcement officer except in compliance with the provisions of this chapter or as directed by the Board of Variances and Appeals.
- B. Violations of this chapter shall be subject to the provisions of applicable law. Each week a violation continues shall constitute a separate, additional offense. Upon determination by the enforcement officer that a violation of this chapter exists, he shall send written notice to the last known owner of record of the property, as determined by the assessment records, informing said owner of the violation of specific provisions of this chapter and stating that action is to be taken by said owner to remove such violation within 30 days or proceedings to compel compliance with the chapter will be instituted. Any violation of this chapter may also be enjoined pursuant to law.

**§ 79-24. Interpretation.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety or the general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the highest standard shall govern.