

Chapter 220. Zoning

Article III. Land Use District Regulations

§ 220-10. Allowable uses.

A. Purpose. The use regulations in this article are intended to allow flexibility of land use to encourage business development that is consistent with the character and scale of Gardiner's hamlets, neighborhoods, and rural areas. The use categories in the Use Table that follows are intentionally broad in order to allow flexibility and responsiveness to innovation. Most nonresidential uses require site plan review and/or special permits, which involve compliance with performance and design standards to ensure compatibility between neighboring uses. In reviewing applications for special permits and site plan approval, the Planning Board shall impose any conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings. The Planning Board shall deny any proposed use which does not satisfy the criteria in this chapter.

B. Use restrictions and Use Table. No structure or land shall be used except as provided in the Use Table below. Use regulations for the SP-2 and SP-3 Subdistricts in the Shawangunk Ridge (SP) District are contained in a separate table in § 220-16. See § 220-74 for definitions of the use categories. In the event that a particular proposed use outside of the SP District does not fit into one of the categories shown on the Use Table and is not prohibited by § 220-10C below, it may be allowed by special permit issued by the Town Board. The meaning of the symbols on the Table is as follows:

[Amended 11-6-2008 by L.L. No. 6-2008; 2-11-2020 by L.L. No. 1-2020; 7-9-2019 by L.L. No. 3-2019; 2-8-2022 by L.L. No. 1-2022]

- P Designates a use permitted by right. Usually requires a zoning permit or a building permit and a certificate of occupancy from the Building Inspector, but does not require review by any municipal board.
- PS Designates a use permitted by right, subject to site plan review by the Planning Board (see §§ 220-65 through 220-68).
- S Designates a use permitted by special permit issued by the Planning Board (see §§ 220-60 through 220-64).
- ST Designates a use permitted by special permit issued by the Town Board.
- Designates a prohibited use.

Use Table							
(Note: Use regulations for the SP-2 and SP-3 Subdistricts in the SP District are contained in § 220-16.)							
Use Category	Use Districts						Section Reference
	RA	HM	HR	CLI	HC	SP-1	
Residential Uses							
Single-family	P	P	P	–	P	P	

Use Table							
(Note: Use regulations for the SP-2 and SP-3 Subdistricts in the SP District are contained in § 220-16.)							
Use Category	Use Districts						Section Reference
	RA	HM	HR	CLI	HC	SP-1	
dwelling							
Two-family dwelling	PS or S	P	P	–	PS or S	PS or S	220-12A
Multifamily dwelling (conversion)	S	PS	S	–	PS	–	220-12B
Multifamily dwelling (new)	PS ¹	PS	S	–	S	–	220-12B
Accessory apartment	P ⁹	P	P	PS	PS	P	220-12C
Mobile home parks	See Chapter 154 of the Town Code and § 220-44 of this chapter.						220-44
Upper-floor apartment in mixed-use building	PS	PS	PS	PS	PS	–	
Residential care facility	S	S	S	–	–	–	220-52
Business Uses²							
Adult use	–	–	–	ST	–	–	220-48
Agriculture	P	P	P	P	P	P	220-37, 220-49
Bed-and-breakfast	PS	PS	PS	–	PS	S	
Campground	See Chapter 200 of the Town Code and §§ 220-18.2 , and 220-45.2 of this chapter.						220-18.2, 220-45.2
Home occupation	P ⁴	P ⁴	P ⁴	–	P ⁴	P ⁴	220-41
Kennel	S	–	–	–	–	–	220-49B
Light industry	–	S	–	PS	S	–	220-50
Lodging facility	S	PS	–	–	PS	–	
Motor vehicle gas station	–	–	–	–	S	–	220-10K
Motor vehicle repair shop	–	–	–	PS	S	–	
Office	S ³	PS	–	PS	PS	–	
Overnight camp/day camp	S	–	–	–	–	S	220-45
Public utility facility	S	S	S	S	S	S	
Recreational business, indoor	S	S	–	–	PS	–	220-10K
Recreational business, outdoor	S	–	–	–	S	S	220-10K
Restaurant	S ³	PS	–	–	PS	–	

Use Table							
(Note: Use regulations for the SP-2 and SP-3 Subdistricts in the SP District are contained in § 220-16.)							
Use Category	Use Districts						Section Reference
	RA	HM	HR	CLI	HC	SP-1	
Retail business (not listed elsewhere)	S ³	PS	–	S ⁵	PS	–	
Service business (not listed elsewhere)	S ³	PS	–	S	PS	–	
Soil mining	ST ⁶	–	–	ST ⁶	–	–	220-17
Solid waste management facility	–	–	–	S	–	–	220-50
Veterinary hospital	S	S	–	–	S	–	
Warehouse/ Wholesale business	–	S	–	PS	PS	–	
Wireless telecommunications facility	ST	ST	–	ST	–	–	220-46
Riding academy	PS	–	–	–	–	PS	
Timber harvesting ⁸	P	–	–	–	–	P	220-16 (for SP); 220-32
Community Uses							
Cemetery	S	S	S	–	–	–	
Educational/ Charitable/ Religious	S	S	S	–	S	S	
Health care facility	–	PS	–	–	PS	–	
Membership club	S	S	–	–	S	S	
Municipal	P	P	P	P	P	P	
Nature preserve	PS ⁷	PS ⁷	PS ⁷	PS ⁷	PS ⁷	PS ⁷	

Notes:

- ¹ Only permitted in an open space development (see § 220-20).
- ² Subject to limitations on building footprint in the Dimensional Table.
- ³ Only in connection with agricultural use, or as provided in § 220-10I.
- ⁴ Requires a special permit if more than two nonresident employees or 30% of dwelling unit floor space.
- ⁵ Retail use shall not exceed 20% of floor area and shall include only sale of items produced on the premises and customary accessories to such items.
- ⁶ Only within the Soil Mining Floating District.
- ⁷ Site plan review required only if there will be a parking lot or any structure requiring a building permit.
- ⁸ Timber harvesting in the RA and SP-1 Districts requires a timber harvesting permit from the Building Inspector pursuant to § 220-32. Timber harvesting in the SP-2 and SP-3 Districts requires both a timber harvesting permit and a special permit as required by § 220-16.

Notes:

⁹ A special use permit is required for small-scale development lots in the RA District that are less than five acres in size but confirming under § **220-24**.

- C. Prohibited uses. Any use, whether or not listed in the Use Table, is prohibited if it does not satisfy the standards and criteria in §§ **220-40** and **220-63**. The following uses are prohibited under all circumstances (existing uses may be continued pursuant to the nonconforming use provisions of Article **VI**): heavy industry, asphalt plants, facilities for disposal of hazardous or radioactive material, and, except as provided in § **220-50**, solid waste management facilities as defined in Article **XII**, including but not limited to the use of solid waste or material that has previously been part of the solid waste stream (whether or not it has a "beneficial use designation" from DEC) as fill. Existing uses listed above, if they were legal when they began operation, may be continued pursuant to the nonconforming use provisions of Article **VI**.
- D. Accessory uses. Uses customarily incidental and subordinate to principal uses shown on the Use Table shall be allowed on the same terms as the principal uses unless otherwise indicated on the Use Table. Such accessory uses may be on the same lot, on adjoining lots, or on lots that face each other across a street. Noncommercial recreational use and residential camping shall be permitted as an accessory use in all districts, provided that it does not create noise, traffic, dust, odor, or other impacts that exceed those normally associated with single-family uses and complies with any applicable supplemental regulations. If there is no principal use on a residential lot, a use that is typically a residential accessory use, such as a residential garage, swimming pool, tennis court, or tool shed, may be allowed in the absence of the principal use by the Building Inspector. Solar and wind energy conversation systems producing electricity and/or heat primarily for on-site use, including those with net metering, shall be considered customary uses to all principal uses. [Amended 2-11-2020 by L.L. No. 1-2020]
- E. Mixed use. The Town of Gardiner encourages the mixing of uses where such mixing does not create land use conflicts. Accordingly, all special permit and/or site plan reviews for the same project shall be consolidated into one proceeding before the Planning Board (except where the Town Board or Zoning Board of Appeals has jurisdiction over a special permit).
- F. Change of use or structure. A change of use is the initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A mere change of ownership, tenancy, or occupancy is not a change of use. (An expansion of a use shall be reviewed according to the provisions of the use table for that particular use.) Once a special permit has been granted, it shall run with the land and apply to the approved use, as well as to any subsequent use of the property in the same use category. Any change to another use allowed by special permit shall require the granting of a new special permit or a special permit amendment.
- G. Rebuilding, replacement, and expansion of structures. The rebuilding or replacement on the same footprint of any structure for a use which requires site plan review (PS) and/or a special permit (S) shall require site plan review, even if it is a continuation of the same use.
- H. Special site design and operational considerations in the CLI District.
- (1) The purpose of the CLI District is to allow larger-scale nonresidential uses that contribute to the Town's tax base and provide jobs for local residents, while protecting the Town's treasured scenic and rural qualities using open space buffers. Impervious surfaces are limited to 70% of total project area, requiring 30% to be maintained as open or undeveloped "green space." This green space shall be arranged in a manner that adequately buffers buildings and parking areas from public roads and neighboring properties, while protecting wetlands, watercourses, and scenic views.
 - (2) Buildings shall be placed in front of their parking lots to screen the parking from the road. This requirement shall not apply if the entire site is screened from the road by natural vegetation and/or natural topography. The Planning Board may modify or waive this requirement where environmental or topographic constraints or unusual lot configurations such as corner lots or through lots make compliance with this requirement impractical or impossible, or where the

predominant character of surrounding development is such that compliance with this requirement would serve no useful purpose, provided that the applicant minimizes the visual impacts of such parking areas as seen from residential streets or main thoroughfares. See § **220-38** for additional parking standards and parking lot design requirements.

- I. Small-scale business uses in the RA District. Structures previously used for residential and agricultural purposes may be used for business purposes by special permit, if allowed by the Use Table, provided that their exterior appearance is not significantly modified and that the business use does not occupy more than 5,000 square feet of floor area. Any changes to an existing structure shall be made with consideration of the design guidelines referred to in § **220-5**. The uses allowed by this Subsection I may only be permitted if they have frontage on and access to a state or county highway.
- J. Standards for the Highway Commercial (HC) District. All new development in the HC District, excluding agricultural structures used on a farm operation, shall comply with the following design standards. Where alterations to existing structures and business operations require special permit or site plan approval, they shall comply with these standards to the extent practical; i.e. full compliance shall not be required if it would impose unnecessary economic hardship or discourage property owners from improving their properties. The overall design goal is to maintain and enhance the landscape character of commercial road corridors. This is to be accomplished by mitigating the visual impacts of business development through landscape, layout, and architectural standards. The design guidelines referred to in § **220-5** shall apply except where a building or site is screened from public roads and adjacent properties. The following standards shall apply in the HC District for buildings that are visible from public roads:
 - (1) Building placement.
 - (a) Buildings shall be clustered together to the extent practical, preserving existing green areas.
 - (b) Lots on which all buildings and all parking lots are screened from view by trees, natural topography, and other landscape features shall be entitled to an additional 20% impervious surface coverage allowance and shall be exempt from the architectural design requirements of this subsection.
 - (c) Buildings shall be placed in front of their parking lots to screen the parking from the road. This requirement shall not apply if the entire site is screened from the road by natural vegetation and/or natural topography.
 - (d) Parking lots on adjoining parcels shall interconnect wherever practical to minimize curb cuts and allow circulation between adjoining uses.
 - (2) Architecture.
 - (a) Existing structures with historic or architectural significance, as determined by the Planning Board, shall be retained to the extent practical. Alterations to such structures shall be compatible with the architecture of the existing structure.
 - (b) Buildings, including canopies for accessory facilities, shall have peaked roofs with a slope of at least 8:12, except that hip roofs with a slope of at least 4:12 and flat roofs that are hidden by a raised cornice shall also be permitted.
 - (c) Windows shall be vertically proportioned and balanced on facades, with width to height ratios ranging from 1:2 to 3:5. Horizontal windows may be used just below roof eaves ("eyebrow" windows) and as first-floor display windows.
 - (d) Trademarked architecture which identifies a specific company by building design features shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of the region.

- (e) Large buildings (footprint larger than 10,000 square feet) shall generally be broken up into smaller volumes using building proportions found in the region's traditional architecture.
- (3) Landscaping.
- (a) A continuous green landscaped buffer shall be maintained along the road, consisting of trees, shrubs, fields, meadows, natural areas, and lawns, provided that such buffer vegetation does not interfere with required sight distances. Bikepaths and/or sidewalks may be constructed within this landscaped buffer. To the extent practical, existing trees, lawns, and shrubs shall be preserved.
 - (b) Undeveloped natural areas shall be managed to maximize recharge of groundwater, protection of surface water quality, and protection of wildlife habitat.
- (4) Fences. Fence materials and designs shall be appropriate to the historic character of Gardiner and shall not block visual access to scenic views. Chain link fencing shall not be used in locations visible from public highways. Existing chain link fences may be replaced if coated with a dark, nonreflective finish or screened by an evergreen hedge.
- (5) Outdoor storage and enclosed buildings. All permitted and accessory uses shall be confined within completely enclosed buildings, with the exception of off-street parking spaces, off-street loading berths, accessory fuel storage and employee recreational facilities. Outdoor storage of materials, equipment or vehicles in an orderly manner is permitted in any area other than required front, rear or side yards, provided that such outdoor storage does not exceed 10% of the area of the lot and is effectively screened from public roads and from any adjacent residential district boundary. This ten-percent limitation may be waived by the Planning Board in the course of site plan review for those uses which by their nature require outdoor storage of material or products, such as nurseries, lumberyards, outdoor sculpture galleries, and automobile service facilities and dealers. The screening requirement may be waived where it would prevent the necessary display of merchandise for public viewing, provided that the Planning Board finds that such display will be orderly and attractive.
- (6) Curb cuts. The minimum distance between curb cuts shall be 600 feet, unless the configuration of a parcel in relation to adjoining parcels makes this requirement impossible to satisfy.
- K. Requirements for specific uses.
- (1) Motor vehicle gas stations. One motor vehicle gas station may be located in the HC District. No other motor vehicle gas stations may be established in the Town of Gardiner.
 - (2) Recreational businesses. The threshold for major project review for a recreational business shall be 5,000 square feet of building footprint or 15,000 square feet of land with or without structures. In reviewing proposals for recreational businesses, the Planning Board shall take into account the surrounding land uses and the type of recreational use proposed to determine the suitability of the proposed use in a given location. Where the use may involve potentially significant amounts of noise, traffic, outdoor lighting, or other impacts on a neighborhood, the Planning Board shall impose additional setback and buffer requirements to minimize such impacts. If such impacts cannot be avoided, the Planning Board shall deny the application for a special permit.

Article IV. Overlay, Floating, and Special District Regulations

§ 220-16. Shawangunk Ridge Protection District (SP).

A. Findings.

- (1) The Town of Gardiner finds that the unique scenic character, water resources, and fragile ecology of the Shawangunk Ridge, escarpment, and foothills are critical features of the Town

whose conservation enriches and benefits residents and visitors.

- (2) The ecological resources of this entire area (which includes not only the SP District but also land located in the same ecosystem in adjoining towns) are of national and international significance, considered by the State of New York and major conservation organizations as one of the most important sites for biodiversity conservation in the northeastern United States. Because this area includes a set of closely related ecosystems, whatever occurs on one portion of it can have a significant effect on other resources. This area includes visually prominent and geologically significant cliffs and talus slopes and five globally rare plant communities, including the world's best example of the dwarf pine ridge community. The significance of this area has been documented in numerous programs and studies, including the Town's 2004 Comprehensive Plan and the "Green Assets" program report referenced therein, entitled "Planning for People and Nature Along the Shawangunk Ridge" (hereinafter "the Green Assets Report"). Gardiner is a participating Town in the Green Assets Program along with the Shawangunk Ridge Biodiversity Partnership.
 - (3) As documented in the Town's 1992 Comprehensive (Master) Plan and the 2004 Comprehensive (Master) Plan update, which both contain provisions for the protection of the Shawangunk Ridge and its immediate surroundings, conservation of the visual resources, watersheds, and sensitive ecosystems in this area of the Town has repeatedly emerged as an important priority in the public planning process. While not all of this area is within the Town of Gardiner, any development within the Town at the higher elevations or on the steeper slopes of the Ridge can significantly affect the ecological integrity of this entire area. At higher elevations and on steeper slopes, the visual and ecological impacts tend to be more significant.
 - (4) The Town therefore finds that protection of the scenic character and ecological integrity of the Shawangunk Ridge area are important to maintaining rural character, a sense of place, and scenic landscapes, all of which contribute to the Town's quality of life and its attractiveness for tourism and for residential and commercial development.
 - (5) The Town further finds that limited development of the area covered by this district may be appropriate, as long as such development is carefully planned and designed to maintain, conserve, and enhance the scenic and ecological features of the area and the views into the landscape from publicly accessible locations. Protection of this area from inappropriate development is necessary to protect visual quality, water resources, and environmentally fragile areas.
 - (6) In order to achieve the Town's goal of protecting the visual and environmental quality of this sensitive area, the Town finds that planning and zoning should direct development to areas of lower elevation by strictly regulating development at higher elevations and providing incentives for development to occur in the least sensitive locations. The Town finds that a "tiered" approach, in which land use is regulated less stringently at lower elevations and more stringently at higher elevations, is an appropriate tool to accomplish this goal, particularly with respect to protection of the steepest slopes and the large blocks of unfragmented forest.
- B. Purpose. The purpose of the Shawangunk Ridge Protection District (hereafter the "SP District") is to protect the resource values of the Shawangunk Ridge area as described in the Comprehensive Plan and to establish clear guidelines for its future protection and sensitive development.
- C. Location and boundaries. The Shawangunk Ridge Protection District is delineated on the Town of Gardiner Zoning Map and is divided into three subdistricts shown thereon as SP-1, SP-2, and SP-3. The purpose of this division into three subdistricts is to have a graduated system of regulation that is least restrictive at the bottom of the slope (SP-1), more restrictive on the middle portion of the slope (SP-2), and most restrictive at the higher elevations (SP-3). The subdistricts are shown on the Zoning Map. The location of the boundary lines between the subdistricts has been determined based on a combination of elevation, slope factors, and the pattern of existing development.
- D. Use regulations.

- (1) The uses permitted in the SP-1 Subdistrict are shown on the Use Table in § **220-10**. Permitted uses in the SP-2 and SP-3 Subdistricts are contained in a table at the end of this § **220-16** (Subsection I).
 - (2) Any use not shown on the Use Table in Subsection I shall be prohibited in the SP-2 and SP-3 Subdistricts.
 - (3) The following are specifically prohibited within the SP District:
 - (a) Privately owned central sewage systems or sewage disposal facilities as defined in this chapter.
 - (b) Privately owned central water systems.
 - (c) Commercial excavation.
 - (4) In making its determination on a special permit application, the Planning Board shall require the preparation of a conservation analysis pursuant to § **220-20A** and shall make conservation findings as provided in § **220-20A(8)**. The Board shall consider all resource protection criteria and standards listed in Subsection F below and shall ensure maximum feasible protection of the SP District's unique resources, in particular the cliffs and talus slopes and the five globally rare plant communities identified in the Comprehensive Plan.
 - (5) The Planning Board shall attach conditions to its special permit approval as it deems necessary to achieve the resource protection objectives of the SP District. Such conditions may include the following:
 - (a) Limiting building to a specified "building envelope" area.
 - (b) Requiring a conservation easement as described in § **220-21** on land outside a building envelope, only within the SP-3 Subdistrict.
 - (c) Requiring landscaping to buffer and screen proposed structures.
 - (d) Reducing the height, footprint, or floor area of a proposed structure.
 - (e) Modifying the architecture, building materials, or other design features of a structure so that it will blend into the landscape.
 - (f) Limiting alteration of landforms through grading, cutting, or filling.
 - (g) Changing the location and siting of structures, including the alignment of roads and driveways and the placement of any other improvements on the property.
 - (h) Restricting clearing of trees and reduction of tree cover.
 - (6) In the event that, even with the imposition of conditions, the resource protection objectives of this section cannot be satisfied, the Planning Board shall deny an application for a special permit.
 - (7) In order to enable the Planning Board to fulfill its obligations under Subsection **D(4)** and **(5)** above, an applicant shall be required to submit site plans, architectural elevations and models, ecological data, viewshed analyses, or any other materials that are deemed necessary by the Planning Board to make an informed decision.
- E. Dimensional regulations. The dimensional regulations for uses in the SP District shall be as follows:
- (1) In the SP-1 Subdistrict, dimensional regulations shall be as shown on the Dimensional Table in § **220-11**.
 - (2) In the SP-2 and SP-3 Subdistricts, dimensional regulations shall be as shown on the Dimensional Table in § **220-11** for SP-1, except as modified below in Subsection **E(3)** and **(4)**.

- (3) Within the SP-2 Subdistrict, the following modified dimensional standards shall apply:
- (a) The minimum lot area shall be 10 acres except in open space developments. The maximum base density for open space developments shall be 10 acres per unit.
 - (b) Maximum building height shall be 25 feet.
 - (c) The maximum total floor area of all structures shall not exceed 6,000 square feet, unless the Planning Board finds that a structure of greater size will not compromise the purposes of this § **220-16** or the conservation findings, and that special design features or other mitigating circumstances justify allowing an increased floor area . Such circumstances may include the grant of a conservation easement on land of conservation value substantially in excess of the minimum lot area requirement.
 - (d) No lot shall have more than five-percent impervious surface coverage except in open space subdivisions.
 - (e) Subsection **E(3)(c)** and **(d)** above shall not apply to existing dwellings but shall apply to additions to such dwellings in excess of 750 square feet of floor area.
- (4) Within the SP-3 Subdistrict, the following modified dimensional standards shall apply:
- (a) The minimum lot area shall be 20 acres except in open space developments. The maximum base density for open space developments shall be 20 acres per unit.
 - (b) Maximum building height shall be 25 feet.
 - (c) The maximum total floor area of all structures shall not exceed 4,000 square feet, unless the Planning Board finds that a structure of greater size will not compromise the purposes of this § **220-16** or the conservation findings, and that special design features or other mitigating circumstances justify allowing an increased floor area . Such circumstances may include the grant of a conservation easement on land of conservation value substantially in excess of the minimum lot area requirement.
 - (d) No lot shall have more than three-percent impervious surface coverage except in open space subdivisions.
 - (e) Subsection **E(4)(c)** and **(d)** above shall not apply to existing dwellings, but shall apply to additions to such dwellings in excess of 750 square feet of floor area.
- (5) For new subdivisions of land, the Planning Board may require an open space development based upon its conservation findings, as provided in Subsection **F(1)(d)** and **(e)** below. In such open space developments:
- (a) The requirements for lot area, setbacks, lot width, impervious surface coverage, and street frontage listed above and on the Dimensional Table may be varied as provided in § **220-20**.
 - (b) No units in an open space development may be built in the SP-3 Subdistrict, unless the entire parcel proposed for development is located within the SP-3 Subdistrict, as provided in Subsection **F(10)**.
 - (c) As provided in Subsection **F(1)**, the maximum impervious surface in an open space development in the SP District shall be 6%.
- (6) The minimum lot area for any preexisting lot which lies in more than one subdistrict and is not created as part of an open space development shall be the same as the minimum lot area for the SP-2 Subdistrict. In new subdivisions that are not open space developments, lots lying entirely in one subdistrict shall comply with the lot area requirements for that subdistrict. Lots that cross subdistrict boundaries shall comply with the lot area requirements for the subdistrict in which more than 50% of the land is located.

F. Special resource protection design requirements for the SP District.

(1) Purpose and applicability.

- (a) All development requiring a special permit within the SP District that requires review by the Planning Board, Town Board, or Zoning Board of Appeals shall comply with the standards in this Subsection F. The intent of the design requirements is to ensure that development within the SP District creates no more than a minimal impact on the scenic and ecological resources of the district and the surrounding area, makes open space planning a central focus of any future development, and provides siting principles to help landowners and the Planning Board plan projects that fit into the scenic and rural countryside in the Shawangunk Ridge area.
- (b) The Planning Board shall insert conditions on any approval, or deny approval, as necessary to satisfy the requirements of this Subsection F or any other part of this § **220-16**. Such conditions shall include the requirement that permitted construction occur at the lowest feasible elevation on the property.
- (c) As part of any application for a subdivision, special permit, or site plan approval in the SP District, the applicant shall prepare a conservation analysis as described in § **220-20A**, except in the case of a minor subdivision located entirely within the SP-1 Subdistrict. The scope of such a conservation analysis shall be tailored to the size, scale and impact of the proposed development. For applications involving only individual single-family dwellings on lots which existed on January 1, 2005, and for minor subdivisions and uses other than single-family dwellings, the conservation analysis requirement shall apply only to the portion of the property where construction or land disturbance is proposed. For lots created after January 1, 2005, the conservation analysis shall be prepared as part of the subdivision application process by which the lot is created. At the time of application for a special permit for a specific lot, the Planning Board shall rely on the prior conservation analysis but may request that the conservation analysis be updated or further detailed if necessary for the Board to make an informed decision.
- (d) Before making any decision on an application for a special permit or site plan approval, or for a subdivision sketch plan, the Planning Board shall make conservation findings as provided in § **220-20A(8)** based upon this conservation analysis.
- (e) In the case of applications for conventional subdivisions, unless the Planning Board determines that the conventional subdivision would have less impact on the fragile visual and ecological resources of the district than an open space development, it shall deny tentative approval for the sketch plan of the conventional subdivision application and require the applicant to submit an open space development sketch plan consistent with its conservation findings, as provided in § **220-20**.
- (f) In the event that an applicant files an application for an open space development, and the Planning Board determines that a conventional subdivision would have less impact on the fragile visual and ecological resources of the district, the Planning Board may deny tentative approval of the sketch plan for the open space development and require the applicant to submit a conventional subdivision sketch plan application.
- (g) The provisions of this section shall not apply to farm operations which are located within agricultural districts established pursuant to New York State Agriculture and Markets Law.

(2) Guidance and consulting assistance.

- (a) For guidance in applying the standards in this § **220-16**, the Planning Board may refer to recommendations in the Green Assets Report and "Gateway to the Shawangunks: Maintaining a Scenic Road Corridor" (1997), published by Mohonk Preserve, Inc. and Friends of the Shawangunks, as well as other design guidance documents which the Planning Board determines to be relevant to protecting the resources of the SP District.

- (b) The Planning Board shall retain the services of qualified experts, including but not limited to landscape architects, ecologists, DEC-certified professional foresters, arborists, hydrologists, engineers, and architects to the extent necessary to adequately review a conservation analysis and proposed open space development plan, and may charge the applicant for the reasonable costs of review by such experts. The level of required professional qualification of the experts shall be determined by the Planning Board and shall be commensurate with the scale and impact of the proposed development and the characteristics of the site. The Planning Board shall also refer all applications to the Town of Gardiner Environmental Conservation Commission (ECC) for comment, which must be received at or prior to the public hearing.
- (3) Building envelopes. To ensure that the placement of structures and other improvements complies with the standards in this Subsection **F** and minimizes visibility and impacts on the ecological resources of the escarpment and ridge, the Planning Board shall limit permitted development to specified building envelopes showing acceptable building sites and areas of permitted clearing of vegetation and grading of land. Constructed improvements and cleared vegetation shall not differ more than 20 feet in any direction from site locations within building envelopes shown on approved subdivision and/or site plans. Such building envelopes shall:
- (a) Be clearly designated on the approved subdivision plat and/or site plan.
- (b) Be the minimum size necessary to accommodate the approved development and protect the remainder of a site from significant alterations.
- (c) Comply with all provisions of this § **220-16**, including the conservation findings.
- (4) Regulation of land disturbance. The natural contours of the land and existing vegetation shall be maintained as much as possible. Any alterations to the natural landscape shall not adversely affect natural drainage or cause erosion or sedimentation. The following regulations apply to all development and other land-disturbing activities. For purposes of determining the location of steep slope areas, only slopes containing at least 3,000 square feet of contiguous steep slope area at least 10 feet in width shall be considered.
- (a) Limitation of area disturbed. All land-disturbing activities, including but not limited to clearing, grading, excavation, building construction, construction of driveways and roads, cutting, and filling, shall be limited to the minimum land area necessary to accommodate the proposed use or activity, and shall in no case be greater than 15,000 square feet plus land necessary for driveway access, unless a larger area is required by the County Health Department to accommodate a septic system, in which case that larger area shall be permitted to be disturbed.
- (b) Disturbance of very steep slopes (greater than 20%).
- [1] General prohibition on land disturbance. Land-disturbing activities, including but not limited to clearing, excavation, grading, construction, reconstruction, and investigative land-disturbing activities such as test wells, are prohibited on slope areas greater than 20% except as allowed under Subsection **F(4)(b)[2]** below.
- [2] Permitted uses and activities. The following are permitted on very steep slope areas, subject to applicable development standards:
- [a] Passive recreation uses, including trails not exceeding 10 feet in width.
- [b] Open space, forestry, and other conservation uses.
- [c] Land surveying or study.
- [d] Local distribution utilities, roads and driveways, provided that they comply with the standards set forth in Subsection **F(4)(c)[3]** and **(g)** below.

- [3] Any such development and uses on very steep slope areas shall minimize disturbance to soil geology, hydrology, and environmental features.
- (c) Disturbance of moderately steep slopes (between 12% and 20%).
- [1] Permitted uses and activities. All uses and activities allowed in the zoning subdistrict shall be allowed on moderately steep slopes, subject to applicable review procedures and standards.
 - [2] Grading standards. The applicant shall preserve natural landforms and minimize grading and other land disturbance.
 - [3] Limits on changing natural grade. The original, natural grade of a lot shall not be raised or lowered more than four feet at any point for the construction of any structure or improvements, except that:
 - [a] The original grade of a lot may be raised or lowered a maximum of eight feet if retaining walls are used to reduce the steepness of man-made slopes, provided that the retaining walls comply with the requirements of this Subsection **F(4)**.
 - [b] These standards limiting change of natural grade shall not apply to grading required to construct or excavate a foundation or basement.
 - [c] The Planning Board may approve modifications to these standards if it finds that such modifications would result in less total site disturbance and visual impact than would compliance with the maximum limits on changing natural grade stated in this subsection.
- (d) Revegetation required. Any slope exposed or created in new development on very steep or moderately steep slope areas shall be revegetated or landscaped with noninvasive species as soon as possible after land disturbance occurs, and such landscaping shall be properly maintained to prevent erosion.
- (e) Excavation and clear-cutting.
- [1] To the maximum extent feasible, excavation for footings and foundations shall be limited to minimize site disturbance and ensure compatibility with sloped terrain.
 - [2] Unless performed pursuant to an approved site plan, special permit, subdivision, or building permit, or as a normal and customary activity in conjunction with an approved timber harvesting plan, excavation of any area and clear-cutting any area exceeding 2,000 square feet shall require a special permit from the Planning Board. If such excavation or clear-cutting occurs without a special permit, the Planning Board may refuse to issue an approval upon a subsequent application for a special permit, site plan, or subdivision for a period of two years. This subsection shall not apply to excavation done as part of the routine maintenance of existing roads, driveways, utilities, septic systems, or drainage ditches.
- (f) Retaining walls and terraces. Use of retaining walls and terraces is encouraged to reduce the steepness of man-made slopes and to provide planting pockets conducive to vegetation, in accordance with the following standards:
- [1] Retaining walls shall not exceed eight feet in height from the finished grade, except for:
 - [a] A structure's foundation or basement wall (i.e., a retaining wall may be part of a permitted dwelling unit).
 - [b] As necessary to construct a driveway from the street to a garage or parking area.
 - [c] As otherwise expressly allowed by this section.

- [2] Retaining walls shall be faced with stone or earth-colored materials similar to the surrounding natural landscape.
 - [3] Terracing shall be limited to two tiers, except that the Planning Board may approve more than two tiers when a greater number of tiers will result in less land disturbance and less steep man-made slopes.
 - [4] The width of the terrace between any two vertical retaining walls shall be at least five horizontal feet.
 - [5] Terraces created between retaining walls shall be permanently landscaped or revegetated with noninvasive species.
 - [6] The Planning Board shall determine the final configuration of retaining walls and terraces based upon the conservation findings and visual assessment.
- (g) Roads, driveways, and utilities.
- [1] All roads and driveways shall follow natural contour lines to the maximum extent feasible.
 - [2] Roads shall not be constructed on slopes greater than 30% under any circumstances.
 - [3] Roads shall not be constructed on very steep slopes between 20% and 30%, unless no other alternative exists to access a legal lot of record approved prior to the effective date of this section.
 - [4] Driveways and utilities shall generally not be constructed or installed on very steep slopes greater than 20%. However, a short run of no more than 250 feet or 10% of the driveway and/or utility's entire length, whichever is less, shall be allowed on very steep slopes between 20% and 30%, based on geotechnical and visual impact studies and findings that:
 - [a] Such driveway or utility will not have significant adverse visual, environmental or safety impacts; and
 - [b] No alternative location for driveway or utility access is feasible.
 - [5] Cuts shall be no higher than eight feet, with a final slope on each cut no greater than 20%.
 - [6] Driveway grades shall not exceed 12%, as shown by profiles submitted with an application.
 - [7] In order to minimize land disturbance, driveways shall be no longer than necessary to provide access to a buildable homesite on a lot. Driveways shall not exceed 1,200 linear feet in length, unless the Planning Board finds that a longer driveway is necessary to make access feasible. Driveways exceeding 1,200 feet in length, which are not otherwise subject to a special permit requirement, shall require a special permit from the Planning Board. Any home accessed by a driveway exceeding 1,200 feet shall incorporate a fire suppression system that complies with the recommendations of the Chiefs of the Gardiner and Shawangunk Valley Fire Departments. No driveway shall exceed a total of 2,500 feet in length. Driveways shall also comply with applicable requirements of §§ **184-33** and **220-43** of the Town Code.
- (5) Protection of water resources.
- (a) There shall be no structures located within 100 feet of a watercourse, wetland or spring unless specifically authorized by the Planning Board, consistent with the conservation findings.

- (b) There shall be no net increase in runoff, and pollution load shall not exceed the predevelopment load of nutrients or sediment.
 - (c) Runoff from impervious surfaces shall be routed to detention ponds, cisterns, or infiltration structures. Any such ponds or structures shall be constructed in a manner that minimizes impacts on landscape character and ecological function.
 - (d) Landowners shall bear full responsibility for the installation, construction, and maintenance of all erosion control measures required as a condition of approval.
 - (e) All development shall be done with appropriate soil erosion and stormwater and sediment control measures, prepared in accordance with the requirements of the New York State Department of Environmental Conservation, as well as the erosion control standards described in other manuals specified by the Town's engineer. Soil erosion and stormwater and sediment control measures and facilities shall be properly maintained and the landowner shall permit periodic inspection by the Town at reasonable intervals and after major storm events to ensure such maintenance.
- (6) Visual protection and landscaping.
- (a) No principal or accessory structure in the SP-2 and SP-3 Subdistricts shall exceed a building height of 25 feet.
 - (b) All structures shall be sited to avoid, to the greatest extent practical, occupying or obstructing public views of land that is located within the SP District. Public views shall be determined by conducting a viewshed analysis as required by SEQR using the SEQR Visual Environmental Assessment Form Addendum (VEAF) contained in 6 NYCRR 617.20 Appendix B. Visibility shall be measured using a condition of no leaves on trees. Viewshed analyses shall be required only to the extent necessary to ensure compliance with this subsection.
 - (c) Existing vegetation shall be preserved to the maximum extent practical and shall be used as much as possible to buffer and screen new buildings.
 - (d) Noninvasive native vegetation shall be maintained or planted to screen structures and other improvements from public roads, parks, or other public places.
 - (e) Vegetation shall also be used as a backdrop to reduce the prominence of the structure.
 - (f) Views from a structure shall be opened up only by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.
 - (g) Clearing of vegetation shall be minimized at the edge of road shoulders, clearing only as much as is necessary to create a driveway entrance with adequate sight distance. Curves in the driveway shall be used to increase the screening of buildings. This shall not apply to roadside clearing to maintain views of the valley from existing Town, county, or state roads.
 - (h) Structures and other development, including drainage structures, shall blend in with natural surroundings through use of materials such as stone or natural wood siding and shall avoid the use of reflective materials and bright colors that contrast dramatically with the colors of the land and vegetation around them.
 - (i) Structures shall be constructed and maintained so that predominant exterior wall colors (including the colors of basement walls on the downhill side of the structure) and roof surfacing materials repeat the colors found most commonly in the land and vegetation around such structures.
- (7) Avoidance of forest fragmentation and protection of habitats.

- (a) Development of land, alteration of the landscape, and forestry activities shall be conducted in a manner that minimizes the fragmentation of contiguous forest habitats and other ecologically significant areas.
 - (b) For major subdivisions, determination of the location of such habitats or areas shall be made in consultation with a qualified ecologist, biologist, and/or forester, following any applicable guidelines or standards established by the State of New York, as identified by the Planning Board or its consultants.
 - (c) For major subdivisions in the SP-2 or SP-3 Subdistricts, the Planning Board shall refer the proposed plan to the New York Natural Heritage Program for its review and recommendations. The Planning Board may also refer the proposed plans to any other agencies or officials of the Town, county, state, or federal government as the Board may deem appropriate. If there is no response from any agency to which a referral is made within the time frame required for a decision, the Planning Board may proceed with its decision in the absence of a response.
- (8) Forest management.
[Amended 11-6-2008 by L.L. No. 6-2008]
- (a) Timber harvests and clear-cutting in excess of 2,000 square feet of land per year are allowed only by special permit from the Planning Board, provided that:
 - [1] Such activities minimize clear-cutting and comply with the most recent versions of Timber Harvesting Guidelines for New York and Best Management Practices, as promulgated by the New York State Department of Environmental Conservation (DEC) and available from the Town's Building Department.
 - [2] Such cutting is part of a forest management or wildlife habitat improvement plan prepared by a DEC certified forester and approved by the DEC or other professional or organization deemed acceptable by the Planning Board; and/or
 - [3] Such cutting is necessary to prevent an imminent threat to life, public safety or property; and/or
 - [4] Such cutting is necessary to ameliorate damage arising from severe natural occurrences, such as ice, wind, or insect damage.
 - (b) In addition to complying with this § **220-16**, timber harvests shall also comply with all relevant provisions of § **220-32**, including the requirement to obtain a timber-harvesting permit from the Building Inspector after receiving a special permit from the Planning Board. The timber-harvesting permit shall include all conditions imposed by the Planning Board as part of its special permit approval. In case of any conflict between the requirements of §§ **220-16** and **220-32**, the more restrictive requirement shall control.
- (9) Lighting.
- (a) Exterior lighting shall be controlled in both height and intensity so that the light level at any lot line shall not exceed 0.2 foot-candle, measured at ground level.
 - (b) Floodlights shall not be used to light any portion of a principal or accessory structure facade, and all outdoor light sources mounted on poles or buildings or trees to illuminate driveways, sidewalks, walkways, parking lots, or other outdoor areas shall use fully shielded light fixtures pointed downward.
 - (c) For purposes of this section, a "fully shielded light fixture" is one in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted. All such fixtures shall be installed or shielded so that no part of the light source is visible beyond the property boundaries.

- (10) Location of residential units outside of SP-3. No residential units may be built in the SP-3 Subdistrict, unless the entire parcel proposed for development is located within the SP-3 Subdistrict. For purposes of this Subsection **F(10)**, the word "parcel" shall mean all contiguous land owned or controlled by the same person or entity, or by related persons or entities, regardless of tax parcel or existing lot or parcel boundaries.
- (11) Water and sewer facilities.
 - (a) Sewage disposal facilities are permitted by special permit only within the SP-1 Subdistrict.
 - (b) Central sewage systems, water supply facilities, and central water systems are permitted only by special permit within the SP-1 and SP-2 Subdistricts.
 - (c) All such facilities shall comply with applicable requirements of state and county regulatory authorities and with the standards in this § **220-16**. They shall be designed, sited, and constructed in a manner which does not produce odors and which minimizes land disturbance and excavation in environmentally sensitive areas.
 - (d) To the extent feasible, priority shall be given to the use of systems which recharge groundwater using subsurface discharge, and/or which contribute positively to the SP District's ecological and landscape character, such as the use of constructed wetlands. Facilities which are necessary and do not enhance landscape character shall be screened to the maximum extent practical.
 - (e) All water and sewer facilities described above shall be owned and operated by municipal water or sewer districts and shall not be owned or operated by transportation corporations.

G. Conservation easement.

- (1) Except as provided in Subsection **G(2)** and **(3)** below, a conservation easement, as described in § **220-21C**, shall be required by the Planning Board in connection with any approval in the SP-2 or SP-3 Subdistrict in order to ensure compliance with the requirements of this § **220-16**, including the protection and buffering of views and significant habitats.
- (2) This requirement of a conservation easement may be satisfied in an open space subdivision with the conservation easement required by § **220-21C**. For minor subdivisions or special permits, a recorded declaration of covenants and restrictions enforceable by the Town may be substituted for a conservation easement if the Planning Board determines that a conservation easement is unnecessary.
- (3) A conservation easement shall not be required in connection with a special permit for a single-family dwelling in the SP-2 Subdistrict.

H. Conflicts with other provisions. In case of any conflict between the requirements of this § **220-16** and any other provisions of the Town of Gardiner Zoning Law, Subdivision Law,^[1] or other local law, ordinance, or regulation, the requirements of this section shall control. The provisions of Article **VI**, Nonconforming Uses, Structures and Lots, shall be fully applicable in the SP District.

[1] *Editor's Note: See Ch. 188, Subdivision of Land.*

I. SP-2 and SP-3 Use Table.

[Amended 2-11-2020 by L.L. No. 1-2020]

Use Table			
SP-2 and SP-3 Subdistricts — Principal/Accessory Uses			
		SP-2	SP-3
Principal Uses			
1.	Agriculture (only if located within a county-certified agricultural district)	P	P
2.	Timber harvesting (over 2,000 square feet of land)	S	S

Use Table			
SP-2 and SP-3 Subdistricts — Principal/Accessory Uses			
		SP-2	SP-3
3.	Public parks and playgrounds	S	S
4.	Single-family dwellings	S*	S*
5.	Two-family dwellings	–	–
6.	Low-impact recreation and nature preserves (special permit required if parking lot is built)	P	P
7.	Religious, educational, or cultural uses (libraries, houses of worship, museums, art galleries, schools and similar uses)	–	–
<p>Note:</p> <p>* Additions to existing dwellings in the SP-2 and SP-3 Subdistricts which do not exceed a cumulative total of 750 square feet shall not require a special permit.</p>			
Accessory Uses			
1.	Residential accessory structures (garages, guest cottages, sheds, tennis courts, pools, and other customary facilities)	S	S
2.	Buildings for sale of agricultural products	–	–
3.	Keeping of domestic animals* (horses, cows, sheep, chickens, goats, ducks, geese, etc.)	P	P
4.	Home occupation	S	S
5.	Noncommercial kennels (over 4 dogs)	S	–
6.	Municipal sewage disposal facility	–	–
7.	Municipal central sewage system	S	–
8.	Municipal water supply facility; central water system	S	–
<p>Note:</p> <p>* Keeping of household pets is permitted in all subdistricts as a customary residential accessory use.</p>			

Legend/Key

P = Permitted use

S = Special permit required

– = Not permitted