

TOWN OF ALABAMA

ZONING LAW



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**TOWN OF ALABAMA
ZONING LAW**

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TOWN OF ALABAMA
ZONING LAW

ARTICLE I **ENACTING CLAUSE, TITLE, PURPOSES, APPLICATION**
VALIDITY

SECTION 101 **ENACTING CLAUSE**

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Alabama hereby adopts and enacts as follows:

SECTION 102 **TITLE**

This Local Law shall be known as the “Zoning Law of the Town of Alabama”:

SECTION 103 **PURPOSES**

This Local Law is adopted for the protection and promotion of the public health, safety, morals and general welfare of the community as follows:

A. To guide the future growth and development of the Town in accordance with a comprehensive land use and population density that represents the most beneficial and convenient relationships among the residential, non-residential and public areas within the Town, considering the suitability of each area for such uses, as indicated by existing conditions; trends in population and mode of living, and having regard for the use of land, building development and economic activity, considering such conditions and trends both within the Town and with respect to the relation of the Town to areas outside thereof.

B. To provide adequate light, air and privacy, to promote safety from fire, flood and other danger, and to prevent over-crowding of the land and undue congestion of the population.

C. To protect and conserve the value of the land throughout the Town and the value of buildings appropriate to the various districts established by this Local Law.

D. To protect the character and the social and economic stability of all parts of the Town, and to encourage the orderly and beneficial development of all parts of the Town of Alabama to bring

about the gradual conformity of the uses of land and buildings through the comprehensive zoning plan set forth in this Local Law, and to minimize the conflicts among the uses of land and buildings.

E. To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard to the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian traffic movement appropriate to the various uses of land and buildings throughout the Town.

F. To provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the Town.

G. To limit concentrated development to an amount equal to the availability and capacity of public facilities and services.

H. To prevent pollution of streams and ponds, to safeguard the water table, and to encourage the wise use and sound management of the natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.

SECTION 104 APPLICATIONS OF REGULATIONS

No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purpose except in conformity with this Local Law. No buildings, structure, or premises shall be used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind, that is noxious by reason of the emission of odor, dust refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the health or safety of the community.

In interpreting and applying this Local Law, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public safety, health, morals and general welfare. This Local Law shall not be deemed to affect in any manner whatsoever any easements, covenants or other agreements between parties; however, where this Local Law imposes greater restrictions than are imposed by other ordinances, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, then the provisions of this Local Law shall prevail.

This Local Law shall not apply to uses which were legal, prior, existing, non-conforming uses as defined here.

Nothing herein contained shall require any change in plans or construction of a building for which a zoning permit has been issued.

All buildings under construction at the time this Local Law is adopted shall conform to the Zoning Ordinance in effect at the time construction was commenced.

ARTICLE II **DEFINITIONS**

SECTION 201 **INTERPRETATIONS OF TERMS AND WORDS**

Except where specifically defined herein, all words used in this Local Law shall carry their customary meanings. Words used in the present tense shall include the future tense and the plural includes the singular, the word “lot” includes the word “plot,” the word “building” includes the word “structure,” the word “shall” is always mandatory, the words “occupied” or “used” shall be construed to mean and shall be considered as though followed by words “or intended, arranged or designed to be used or occupied”.

SECTION 202 **DEFINITIONS**

Accessory Building: A building situated on a lot, subordinate to the main building on the same lot, and used for purposes customarily incidental and subordinate to said main building.

Accessory Use: Use customarily incidental and subordinate to the principal use of buildings, and located on the same lot (i.e. a garden is accessory to a residence). For the purposes of this Zoning Law a Family Day Care Home, Group Family Day Care home, Roadside Stand and Home Occupation (as defined herein) shall be considered accessory uses to a principal use on a lot, however, they and other accessory uses may be subject to additional requirements and review provisions set forth in this Zoning Law (i.e. a Home Occupation II requires issuance of a special use permit).

Accessory Structure: A structure the use of which is incidental to the principal use of the main structure and which is attached thereto or located on the same lot.

Adult Care: The provision of temporary or long term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29, and 31 of the Mental Hygiene Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

Adult Care Facility: A facility other than a Family Type Home, which provides adult care. For the purposes of this Zoning Law an Adult Care Facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult-care facility as defined by NYS Department of Social Services Chapter II, Subchapter D, Part 485.

Adult Uses: The definitions associated with adult uses are contained in Section 613.

Agricultural Use: Any parcel of land containing at least five (5) acres used for the raising of food products or other useful or valuable growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other generally accepted agricultural practices, where the same is carried on as a business or otherwise for profit.

Such uses shall include the establishment of necessary farm structures within the prescribed limits, and the storage of equipment used in connection therewith.

Agricultural uses shall exclude the raising of furbearing animals, riding academies, public stables or dog kennels.

Alteration: Structural changes, rearrangements, change of location or addition to a building, other than repairs and modifications in building equipment.

Amusement Game: Any mechanical, electric or electronic device used or designed to be operated for entertainment or as a game by the insertion of a coin, slug, token, plate, disc, key or any other article into a slot, crevice, or other opening or by paying money to have it activated. Not included are rides, bowling alleys, any device maintained within a residence for the not-for-profit use of occupants thereof and their guests, any gambling device or juke boxes.

Animal Shelter: Building or land used for the temporary harboring of stray or homeless dogs, cats, and other similar household pets, together with facilities for the provision of necessary veterinary care and adoption of the harbored animals.

Animal Waste Storage Facility: Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

Antenna: An arrangement of wires or metal rods used in transmitting or receiving electromagnetic waves.

Apartment House: See Dwelling, Multi-Family

Area Variance: The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this Zoning Law.

Arterial Highway: A highway which collects and distributes traffic to and from minor highways. For the purposes of the Zoning Law, the following highways shall be considered arterial highways within the Town: NYS Routes #63 and 77.

Bed and Breakfast: An owner-occupied one-family dwelling in which a room or rooms are rented on a nightly basis for periods of less than two (2) weeks. Meals may or may not be provided.

Bio-Remediation: The use of an ex-situ bio remediation process for the treatment of petroleum contaminated soils.

Boarding House: Owner-occupied dwelling wherein more than three (3) non-related, non-transient people are sheltered for profit.

Buffer Strip: See Section 402.

Building: Any structure having a roof supported by columns or by walls, and intended for the shelter, housing or enclosure of persons, animals, machinery, equipment or other material.

Building, Front Line Of: The line of that face of the building nearest the street line, or if there are street lines on two (2) or more sides of the building, it is the line of that face of the building fronting on that street line, where the principal entrance is located. This face includes decks and porches but does not include steps.

Building, Height Of: The vertical distances measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof.

Building Permit: A permit issued by the Code Enforcement Officer, stating that the plans for the proposed construction of a building are in conformance with the Uniform Fire Prevention and Building Code.

Building, Temporary: A “temporary building” or “temporary structure” erected, constructed or placed upon the premises, for a period not exceeding nine (9) months. All other buildings or structures shall be deemed permanent for the purposes of this Zoning Law.

Neighborhood Business: A small commercial establishment, containing no more than 2,500 square feet in gross floor area, catering primarily to nearby residential areas or tourists and providing convenience and/or specialty goods and services including but not limited to grocery store, gift shop, beauty salon and barber shop. That is visually integrate themselves into the existing rural setting in a comfortable compatible manner using high quality building materials. Residence on the property is not required for such a business.

Campground: Land on which is located one or more cabins, trailers, shelters, houseboats or other accommodation for seasonal or temporary living purposes, excluding mobile homes.

Certificate of Compliance: A certificate issued by the Zoning Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building or land. Said certificate shall acknowledge compliance with all the requirements of this Zoning Law only and any adjustments thereto granted by the Board of Appeals.

Certificate of Occupancy: A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of the New York State Uniform Fire Prevention and Building Code.

Child Day Care: Shall mean care for a child on a regular basis provided away from the child’s residence for less than twenty-four (24) hours per day by someone other than the parent, stepparent,

guardian or relative within the third degree of consanguinity (blood relationship) of the parents or stepparents of such child.

Child day care does not refer to care provided in:

- (1) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;
- (2) A facility providing day service under an operating certificate issued by the NYS Department of Social Services.
- (3) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or
- (4) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or
- (5) A kindergarten, pre-kindergarten or nursery school for children three (3) years of age or older, or a program for school-age children three (3) years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

Child Day Care Center: Shall mean a program or facility in which child day care is provided on a regular basis to more than six (6) children for more than three (3) hours per day per child for compensation or otherwise, except those programs operating as a group family day care home, a family day care home, or school-age child care program, as defined in this Section.

Club: An organization established pursuant to the New York Not-For-Profit Corporation Law for a social, educational, or recreational purpose, catering exclusively to members and their guests, whose activities are not conducted primarily for profit.

Cluster Development: A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, while maintaining the overall density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

Commercial Communication Tower: A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

Commercial Excavation (Mining): A lot or part thereof used for the purpose of excavation processing or sale of sand, gravel, or clay, or other natural mineral deposits or the quarrying of any kind of rock formation, and exclusive of the process of grading a lot preparatory to the construction of a building for which a building permit application has been filed. Commercial excavation shall be divided into categories based on the scale and type of operation as follows:

1. Major Excavation: All excavations requiring a New York State Mined Land Reclamation Permit shall be considered major excavations.

2. Minor Excavation: All excavations not requiring a New York State Mined Land Reclamation Permit shall be considered minor excavation.

Commercial Wind Energy System – A wind energy system that is operated primarily (51% or more) to put energy into the electric grid, and/or has a nameplate capacity of more than 50 kilowatts (kW), and/or a total height of 195 ft. or less. Other minimum building/structure height restrictions within other sections of this Zoning Law are not applicable.

Community Center: Meeting Hall or place of assembly, not operated primarily for profit.

Community Residence: A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than fourteen (14) individuals and provides client supervision on a 24-hour basis. For the purposes of this Zoning Law an approved community residence as defined herein is considered a one-family dwelling.

Contractor's Yard: Businesses engaged in construction of buildings and structures, remodeling and repairs to existing buildings and structures, electrical services, plumbing services, excavation and grading services, roofing and siding services, masonry services, paving services, well drilling, sewage disposal system installation and services, and other similar services.

Convalescent Home or Extended Care Facility: See "Hospital".

Coverage: That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations, which change could lead to increased flood damage, excluding normal maintenance to farm roads.

Disposal: The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste, radioactive, hazardous waste, or wastewater into or on any land or water so that such solid waste, radioactive, material, hazardous waste, or wastewater will remain on the land or water and will not be removed.

Disposal Transfer Station: A solid waste management facility, other than a Recyclable Handling and Recovery Facility exclusively handling non-putrescible recyclables, that can have a combination of

structures, machinery, or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

Drive in Business: A drive-in business includes drive-in restaurant, refreshment stand, bank, car wash and the like where patrons are typically served in, or near, their motor vehicles.

Dwelling: A building, including a modular home, designed or used exclusively as permanent living quarters for one or more families; the term shall not be deemed to include automobile court, hotel/motel, boarding house, mobile home, tourist home, tent or recreational vehicles.

Dwelling unit: A building, or portion thereof, providing complete housekeeping facilities (kitchen, bath, living and sleeping areas) for one family.

Dwelling, One Family: A building containing one dwelling unit only. [Double-wide or triple wide mobile homes designed and built at the factory to be combined on site and with a minimum width of twenty feet (20) and minimum area of seven hundred twenty (720) square feet shall be deemed to be one-family dwellings for purpose of this Zoning Law].

Dwelling, Two- Family: A dwelling containing two dwelling units only.

Dwelling, Multi-Family: A dwelling containing three or more dwelling units.

Dwelling Unit, Primary: A dwelling, or portion thereof, providing complete living facilities for one family, and which occupies a space equal to or greater than fifty percent (50%) of the total available living space within a structure.

ECHO (Elderly Cottage Housing Option) Unit: A separate, detached, temporary dwelling unit, with its own cooking, sanitary and sleeping facilities, accessory to a single family dwelling, for the use of and occupied by the elderly relatives of the occupants of the one-family dwelling. Such unit shall be constructed and installed in accordance with the requirements of Chapter B if the NYS Uniform Fire Prevention and Building Code and shall not be a mobile home.

Electromagnetic Interference (EMI): The interference to communication systems created by the scattering of electromagnetic signals.

Family: One or more persons who live together in one dwelling unit and maintain a common household. May consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

Family Day Care Home: Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, as provided for and registered by NYS Department of State. The Name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered.

Family-Type-Home: Adult care operated and provided for the purpose of providing long-term residential care, room, board and personal care, and/or supervision to four (4) or fewer adult persons unrelated to the operator. For the purposes of this Zoning Law a family-type home shall be considered a home occupation.

Farm: See Agricultural use.

Fence: An artificially constructed barrier of wood, masonry, stone, wire, metal or any other manufactured material or combination of material, or natural plantings (i.e. living fence) other than temporary uses such as snow fences or rabbit fences.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas, resulting from the overflow of inland waters and/or the unusual and rapid accumulation of, or runoff of, surface waters from any source.

Flood Insurance Rate Map (FIRM): Means an official map of the community, on which the FEMA has delineated the area of special flood hazard and the risk premium zones applicable to the community.

Flood Plain Overlay Zone: That area of the Town identified on the Flood Insurance Rate Map (FEMA Community Number 3610G7C) as being subject to flood and/or mudslide hazards, which area is delineated on the Zoning Map and for which special flood plain management requirements and criteria are enumerated in the Town's Flood Damage Prevention Local Law.

Flood Area of a Building: The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Floor, Lowest: Floor of lowest enclosed level including basement, crawl space, or garage.

Frontage: The extent of a building or a lot along one public street as defined herein measured along the front property line.

Game Room: A building or place containing five (5) or more amusement games as defined herein (see Amusement).

Garage, Private: An enclosed space for the storage of one (1) or more motor vehicles, provided that no business, occupation or service is conducted for profit therein, nor is space for more than two (2) cars leased to a nonresident of the premises.

Garage, Public: Any garage, other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, adjusting or equipping of automobiles or other motor vehicles.

Gasoline, Station: Any building or land used for sale of motor fuel, oil and motor vehicle accessories, which may include facilities for lubricating, washing or servicing motor vehicles, but not painting or body repairs.

Gasoline Station-Market (Convenience Store): A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market, food or grocery market, or a commercial use which provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

Grade, Finished: Natural surface of the ground, or the surface of the ground, lawn, walks or roads after the completion of any change in contour.

Group Family Day Care: Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise, as provided for and registered by NYS Department of State. The name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered.

Habitable Floor Space: Any floor usable for living purposes, which includes working sleeping, eating, cooking or recreation or combination thereof. A floor used only for storage purposes is not “habitable”.

Hazardous Waste: A waste, or combination of wastes, which are identified or listed as hazardous pursuant to 6 NYCRR Part 371, Identification and Listing of Hazardous Wastes. Hazardous waste, because of its quantity, concentration, or physical, chemical, or infectious characteristics poses a significant hazard to human health or safety if improperly treated, stored, transported, disposed of, or otherwise managed.

Home Business: An accessory use, other than a “Home Occupation” as defined herein, that is conducted within an occupied dwelling or an attached or detached accessory structure (including a barn) for gainful employment and involved the manufacture, provision or sale of goods and/or services principally on the premises.

Home Occupation: An accessory use of a dwelling unit for gainful employment involving the manufacture, provision or sale of goods, and/or services. Home occupations are further classified as being either category I or II, depending upon on whether or not non-resident individuals are working on-site and whether more than one customer visit is expected at a time (see descriptions below).

In particular, a home occupation may include, but is not limited to, the following: Art studio; barber shop/beauty parlors (limited to two work stations); cleaning services, contractors, computer programmer; cook; day nursing; direct sale product distribution (Amway, Avon, Tupperware, etc.); draftsman; dressmaker or tailor; electrical/radio/television repair; financial planning and investment services; insurance agent; musician; photographer; professional offices of a physician, dentist, lawyer,

accountant, engineer, or architect; real estate office; teaching or tutoring (limited to two students at one time); telephone answering; upholsterer; school-age child care and family-type home.

However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and kennels, restaurants or furniture refinisher (involving “dip tanks” or stripping).

Home Occupation I: A home occupation which employs on-site, only resident members of the family and which expect not more than one customer visiting the site at any given time.

Home Occupation II: Any home occupation which is not considered a Home Occupation I as set forth above.

Hospital: An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities.

Hospital, Animal: An establishment for the medical and/or surgical care of animals.

Hotel/Motel: A building providing overnight accommodation for more than four (4) transient people, which building need not be owner occupied and may provide eating, restaurant and related facilities.

Indoor Recreation: Includes, but is not limited to, health club, bowling alley, tennis court, table tennis, pool hall, skating rink, gymnasium, swimming pool, hobby workshop, and similar places of indoor recreation.

Industrial Park: A large tract of land that has been planned, developed and operated as an integrated facility for a number of individual industrial uses, with special attention to circulation, parking, utility needs, aesthetics, and compatibility.

Junkyard: Outside storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or otherwise, for the purpose of disposing of the same or for any other purposes, such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together equal in bulk two or more such vehicles. In addition, a junkyard shall include any land or structure used for collecting, storage or sale of waste paper, rags, scrap metal, pallets, other discarded material, or ten or more used and unmounted tires other than within a fully enclosed building. The term junkyard shall include salvage operations, second-hand parts collection and areas for the processing or recycling of second-hand or used materials.

Kennel: Building or land used for harboring six (6) or more dogs over six (6) months old.

Landfill Sanitary: The depositing of refuse in a natural or man-made depression or trench, or dumping it at ground level, then compacting to the smallest practical volume, and covering with earth or other material in a systematic and sanitary manner.

Light Industrial: The processing, fabrication, assembly or packaging of previously prepared or refined materials.

Lot: Land occupied or which may be occupied by a building and its accessory uses, together with required open spaces, having not less than minimum area, width and depth required for a lot in the district in which such land is situated and having frontage on a street, or other means of access as may be determined by the Planning Board to be adequate as a condition for issuance of a building permit.

Any land included in a public road, street or highway right-of-way shall not be considered part of the lot for zoning purposes.

Lot Area: Total area within property lines. Any land included in a public road, street or highway right-of-way shall not be included in calculating lot area.

Lot Corner: A lot located at the junction of and fronting on two or more intersecting streets (also definition "Lot Line Front").

Lot Depth: Mean horizontal distance from street right-of-way line of the lot to its opposite rear line measured at right angles to the street right-of-way line.

Lot, Frontage: The horizontal distance between the side lot lines, measured at the street right-of-way line.

Lot Width: The horizontal distance between the side lot lines, measured at right angles to the lot depth.

Lot Lines: The property lines bounding a lot as defined herein.

Lot Line, Front: In the case of a lot abutting upon only one street, the line separating the lot from the street right-of-way; in the case of a lot abutting more than one street, each street line shall be considered a front lot line.

Lot Line, Rear: The lot line which is generally opposite the front lot line. If the rear lot line is less than ten (10) feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line, not less than ten (10) feet long, lying wholly within the lot and farthest from the front lot line.

Lot Line, Side: The property line or lines extending from the front lot line to the rear lot line, except in the case of corner lots which have no rear lot line.

Manufacturing: Establishments engaged in the mechanical or chemical transformation of materials of substances into new products including the assembling of component parts, the

manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

Mass Vehicle Storage: A commercial enterprise comprised primarily of the temporary storage of four (4) or more whole and saleable motor vehicles. Such uses do not include motor vehicle dismantling or permanent disposal (such as a junkyard), or the retail sale of motor vehicles from the premises.

Mobile Home: A structure, whether occupied or not, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. For the purposes of this Zoning Law, an unoccupied mobile home shall be considered the same as an occupied unit.

Mobile Home Park: A parcel which has been improved for the rental or lease of two or more lots and the provision of services for mobile homes for non-transient residential use.

Motel: See Hotel.

Motor Vehicle Repair Shop: Any building or land used for gain, wholly or partially, engaged in the business of service, repair or diagnosing motor vehicle malfunctions or repairing bodies, fenders or other components damaged by accidents or otherwise.

Non-commercial wind energy systems – A wind energy system that is operated primarily (51% or more) for on-site (may be more than one (1) parcel) consumption, and has a nameplate capacity of 50 kW or less, and/or a total height of 195 feet or less.

Non-Conforming Building: A building legally existing at the time it was created which in its design or location upon a lot does not conform to the current regulations of this Zoning Law for the district or zone in which it is located.

Non-Conforming Lot: A lot of record legally existing at the date of passage of this Zoning Law which does not have the minimum frontage or contain the minimum area for the zone in which it is located.

Non-Conforming Use: Use of building or of land legally existing at the time it was created, but not conforming to the current zoning regulations of the district which it is located.

Nursing Home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

Office Building: A building used primarily for conducting the affairs of a business, profession, service, industry, or government, or like activity, that may include ancillary services for office works such as a restaurant, coffee shop, newspaper or candy stand.

Outdoor Recreation: Includes, but is not limited to, golf courses, golf driving range, trap, skeet and archery range, swimming pool, skating rink, tennis court, recreation stadium, baseball and softball fields, skiing facility, hunting preserve, and similar places of outdoor recreation.

Outdoor Solid Fuel Burning Device: A solid fuel burning device designed and intended for installation outside of the primary building on a lot, and used to produce heat for transfer to the primary or accessory building(s) on such lot.

Owner: An individual or individuals, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

Parking Space: An off-street space available for the parking of one (1) motor vehicle on a transient basis and having a width of ten (10) feet, and an area of not less than two hundred (200) square feet, exclusive of passageways and driveways and having access to a street. Handicapped parking spaces may be larger and therefore require more space, however, regardless of their size; such space shall constitute a single parking space.

Personal Services: Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

Planning Board: The officially designated Town of Alabama Planning Board as established by the Town Board in accordance with Section 271 of the Town Law.

Pond: A body of water (other than a swimming pool) created through construction or other similar method, having a depth of two (2) or more feet.

Public Street/Road: A thoroughfare which has been dedicated or deeded to the public for public use, and which has been improved in accordance with municipal standards.

Recreational Vehicle: A unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own power or is mounted on or drawn by a motor vehicle (see also Sport Recreational Vehicle). The basic entities are:

A. Travel Trailer: A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motor vehicle.

B. Camp Trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by a motor vehicle.

C. Truck Camper: A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck campers are of two basic types:

1. Slide-in camper: A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.

2. Chassis-mount camper: A portable unit designed to be affixed to a truck chassis.

D. Motor Home: A vehicular unit built on a self-propelled motor vehicle chassis.

Recyclables Handling and Recovery Facility: Recyclables handling and recovery facility means a solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected and which is regulated by 6 NYCRR Part 360.

Religious Institution: Church, temple, parish house, convent, seminary and retreat house.

Residential Care Facility: A residential facility operated by either a public or private agency and regulated by the NYS Department of Social Services, exercising custody of dependent, neglected, abused, maltreated, abandoned or delinquent children, homes or shelters for unmarried mothers, residential programs for victims of domestic violence, or adult care facilities.

Restaurant: Any establishment, however designed, at which food is sold for consumption on the premises to patrons seated within an enclosed building and where the taking of food and drink from said building is incidental. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground, play field or park operated for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

Retail Trade: Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Roadside Stand: Structure of a nonpermanent nature (movable and temporary) located on the owner's property utilized during the harvest season for the sale of agricultural products grown primarily by the owner.

Satellite Dish: A structure which is designed and/or intended to receive, relay or send television signals to or from orbiting or geostationary satellites.

School: Schools shall include parochial, private and public institutions providing New York State approved educational services, including preschool and vocational programs, together with private and public schools and colleges and universities.

School-Age Child Care Program: Care provided on a regular basis to more than six school-age children under 13 years of age or who are incapable of caring for themselves where such children attend a school higher than kindergarten or attend full day (at least six hours) kindergarten at a public or private school whether such care is provided for compensation or otherwise.

Self-Service Storage Facility: A building or group of buildings divided into separate units or compartments used to meet the temporary storage needs of businesses and residential users. A warehouse operated for a specific commercial or industrial establishment shall not be considered a self storage facility.

Shadow Flicker: The alternating pattern of sun and shade caused by wind tower blades casting a shadow.

Shopping Center: A group of businesses occupying adjoining structures, having adequate space for loading and unloading and adequate off-street parking.

Sign: Any structure or part thereof, or any device attached to a structure or painted or represented on a structure, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or

advertisement. A sign includes any billboard, but does not include the flag, pennant, or insignia of any nation, or group of nations, or of any state, city or other political unit or of any political, educational, charitable, philanthropic, civic, professional, religious, political or like campaign, drive, movement or event. However, a sign as designed herein shall not include a similar structure or device located within a building.

Business Sign: A sign which directs attention to a business, profession and/or industry conducted or to products manufactured or sold upon the same lot.

Directional Sign: A sign limited to providing information on the location of an activity, business or event.

Off-Premise Advertising Sign: A sign which advertises an establishment, merchandise, service or entertainment, which is not sold, produced, manufactured or furnished at the property on which said sign is located (e.g. “billboards” or “outdoor advertising”).

Portable Sign: A sign, whether on its own trailer, wheels, or otherwise, designed to be movable and not structurally attached to the ground, a building, a structure or another sign.

Temporary Sign: A sign related to a single activity or event having duration of no more than sixty (60) days.

Sign Area: The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines the said sign.

Site Plan: A rendering, drawing or sketch prepared to specifications containing necessary elements, as set forth in this Zoning Law, which shows the arrangement, lay-out and design of the proposed use of a single parcel of land as shown on such plan.

Sketch Plan – A sketch of a proposed non-commercial wind energy system showing information specified in SECTION 622 NON-COMMERCIAL WIND ENERGY SYSTEMS of this Zoning Law to enable the applicant and the Planning Board to expeditiously reach general agreement as to the form of the layout and objectives of this Zoning Law.

Special Use Permit: A specially designated use that would not be appropriate generally without restriction in a zoning district, but which, if controlled as to number, area, location, relation to the neighborhood, or otherwise, in the opinion of the Authorizing Board, promotes the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity and/or the general welfare.

Sporting Club: A Club (see definition) or business involved in the organized use of property for trap shooting, skeet shooting, sporting clay shooting, and archery and fishing.

Stable, Private: A building in which horses or other livestock are kept for private use and not for hire, remuneration, or sale.

Stable, Public: A building in which horses or other livestock are kept for remuneration, hire or sale.

Stabling of Agricultural Animals: A concentration of animals, permitted under agricultural use, private stable and public stable, within a building, structure or other defined area for the purpose of housing or feeding.

Street/Road Right-of-Way Line: The line determining the limit of the highway rights of the public, either existing or contemplated.

Street/Road Grade: The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

Structure: Anything constructed or erected, the use of which requires location on or in the ground, or attachment to something having location on or in the ground.

Swimming Pool: A structure intended for bathing, swimming or diving purposes, made of concrete, masonry, metal or other impervious materials, provided with a recirculating and/or controlled water supply with a depth of greater than two (2) feet.

Temporary Use: An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this Zoning Law. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

Total Height – The vertical distance from ground level to the top of a wind turbine blade when the tip is at its highest point or, if blades are contained, to the highest point of the housing.

Town Board: Shall mean the Town Board of the Town Of Alabama, New York.

Trailer: Trailer shall include any towed vehicle used for carrying goods, equipment, and/or machinery.

Use: The specific purposes, for which land, water, structure or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

Use Variance: The authorization by the Zoning Board of Appeals for use of land for a purpose which is not allowed or is prohibited by this Zoning Law.

Utility, Public: Any person, firm, corporation or governmental subdivision, duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television, or other similar service.

Warehouse: A building used primarily for the storage and/or distribution of goods and materials.

Wind Energy Conversion System: Production model equipment installed for primarily farm use that converts and then stores or transfers energy from the wind into usable forms of energy in which the output is primarily consumed within the farm operation. The system includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire substation, maintenance or control facility, or other component used in the system.

Wind Energy System: Equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities, or other component used in the system.

Wind Farm System: A wind energy system that includes more than one wind tower.

Wind Tower: The monopole, freestanding, or guyed structure that supports a wind turbine generator.

Yard: An unoccupied open space, on the same lot with any principal or accessory buildings or structures.

Yard, Front: The unoccupied, open space within and extending the full width of the lot from the front lot line to the front line of the principal building which is nearest to such front lot line.

Yard, Rear: The unoccupied, open space within and extending the full width of the lot from the rear lot line to the part of the principal building which is nearest to such line.

Yard, Side: The unoccupied, open space within the lot extending the full distance from the front yard to the rear yard and from the side lot line to the part of the principal building which is nearest to such side lot line.

Zoning Board of Appeals: That board appointed by the Town Board, specifically to hear all appeals as provided by the regulations and other duties specifically set forth in this Zoning Law, NYS Town Law or as assigned to it by the Town Board.

Zoning Enforcement Officer: The Zoning Enforcement Officer of the Town of Alabama as appointed by the Town Board.

Zoning Permit: A permit issued by the Zoning Officer, stating that the purpose for which a building or land area is to be used is in conformance with the uses permitted and all other requirements of this Zoning Law.

ARTICLE III **ESTABLISHMENT OF ZONING DISTRICTS**

SECTION 301 **ZONING DISTRICT CLASSIFICATION**

The Town of Alabama is hereby divided into the following zoning districts and overlay zones:

- R** Residential District
- A-R** Agricultural-Residential District
- C** Commercial District
- I** Industrial District
- LC** Land Conservation
- FP** Flood Plain Overlay District
- PUD** Planned Unit Development District

SECTION 302 **ZONING MAP ESTABLISHED**

Said zoning districts are bounded and defined as shown in a map entitled “Zoning Map of the Town of Alabama, NY.” The official copy of the zoning map is hereby made a part of this Local Law and is on file with the Town Clerk.

SECTION 303 **INTERPRETATION OF ZONING DISTRICT BOUNDARIES**

Where uncertainty exists as to the location of any boundaries shown on the zoning map, the following rules shall apply:

A. Zoning district boundary lines are intended to follow streets, right-of-way, water courses or lot lines, or be parallel or perpendicular thereto, unless such district boundary lines are fixed by dimensions, as shown on the zoning map.

B. Where zoning district boundaries are indicated as following approximate streets, right-of-way, or water courses, the center lines thereof shall be construed to be such boundaries.

C. Where zoning district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs or other bodies of water, mean high water lines thereof shall be construed to be the zoning district boundaries.

D. Where zoning district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.

E. If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine the location of said lines.

SECTION 304 **OVERLAY DISTRICTS**

A. In an overlay zoning district, property is placed simultaneously in two districts and the requirements of both districts apply.

B. The requirements of the overlay zone modify those of the basic district.

SECTION 305 **LOTS IN TWO OR MORE DISTRICTS**

Where a zoning district boundary line divides a lot in single ownership at the effective date of this Local Law, leaving part subject to permissive regulations and part subject to prohibitive regulations, the Zoning Board of Appeals after public hearing may permit an extension of the use of that lot into the district where it is prohibited provided the extension does not extend more than fifty (50) feet into that district. Furthermore, the Board may impose conditions of that extension as protection to neighboring property.

SECTION 306 **RESIDENTIAL USES ON PRE-EXISTING LOTS**

A single-family dwelling, customary accessory building(s) and structure(s) on lots or parcels created on and after the effective date of this Zoning Law if altered or constructed shall be in compliance with the minimum area requirements for lot size, lot width, front, side and rear yard setbacks listed in Table I, Row C below.

If the lot or parcel was created between 6/8/87 and the effective date of this Zoning Law a single-family dwelling, customary accessory building(s) and structure(s) if altered or constructed shall conform to Table I, Row C for lot size, lot width, front, side and rear yard setbacks if all said requirements can be met; otherwise, said alteration or construction shall meet all the area requirements in Table I, Row B.

If the lot or parcel was created prior to 6/8/87, a single-family dwelling, customary accessory building(s) and structure(s) if altered or constructed shall conform to Table I, Row C for lot size, lot width, front, side and rear yard setbacks if all such requirements can be met, otherwise, said alteration or construction shall meet all the area requirements in Table I, Row A.

The date upon which all lots or parcels were created shall be governed by the date the same was filed in the Office of the Genesee County Clerk. It shall be the responsibility of the applicant to provide the Zoning Enforcement Officer with adequate verification as to when a specific lot was created and all applicable Genesee County Health Department Approvals.

Compliance with the current area requirements for maximum building height and maximum lot coverage shall be required regardless of the creation date of the lot. The setback requirements for accessory buildings and structures for a single-family dwelling are further addressed in Section 403.

TABLE I

ROW	LOT CREATION DATE	ZONING DISTRICT	MINIMUM AREA REQUIREMENTS				
			Lot Size (Sq. Ft.)	Lot Width (Feet)	Yard Setback (ft.)		
					Front	Side	Rear
A	Prior to 6/8/87	R & A-R	20,000	100	40	15	40
B	6/8/87 to the effective date of the current Zoning Law	R	20,000	100	75	15	35
		A-R	40,000	150	75	25	50
C	Effective date of the current Zoning Law forward	R	40,000	200	75	15	35
		A-R	40,000	200	75	25	50

SECTION 307 ENTRANCES AND EXITS ONTO HIGHWAYS

A. Written Permission Required

If otherwise required by applicable law, rule or regulation, no person, firm or corporation shall, after the effective date of this Zoning Law, cut, construct or locate any driveway entrance into or exit from a highway in the Town of Alabama without having first received written permission to do so from the Highway Department having jurisdiction, namely the NYS Department of Transportation, Genesee County Highway Department or the Town of Alabama Highway Department. Three (3) copies of such written permission shall be submitted, one to each of the following: Town of Alabama Highway Superintendent, Town Zoning Enforcement Officer, and Town Clerk. If the proposed driveway is in a designated DEC wetland, protected Federal Wetland or Flood Hazard Zone as designated by the Federal Emergency Management Agency (FEMA) then the appropriate respective permits shall also be required and three (3) copies provided as above.

B. Standard Driveway Entrance and Exit Requirements – Town Highways

The standards set forth herein below are considered the minimum acceptable for installation of a new driveway on a Town Highway. The Highway Superintendent of the Town of Alabama may impose any “Special Requirements” which the particular situation at the location where such driveway is sought to be located requires in his judgment under the circumstances.

1. The applicant shall furnish all material and bear all costs of construction within the Town highway right-of-way, pay the cost of all work done and materials furnished as required to meet the conditions of any permit issued by the Town Highway Superintendent.
2. No alteration or addition shall be made to any driveway or be relocated without first securing a new permit from the Town Highway Superintendent.
3. No more than two driveways to a single commercial establishment entering on one highway shall be permitted.
4. The maximum width for a single combined entrance to exit shall be no more than 60 feet for commercial use and shall be thirty (39) feet for residential use. The maximum width for each driveway when two or more are permitted shall not be more than sixty (60) feet.
5. The angle of the driveway with respect to the pavement shall not be less than 45 degrees.
6. No driveway will be permitted where sight distance at pavement edge is less than 350 feet in each direction.
7. No driveway shall be permitted within 50 feet of any public highway intersection boundary line.
8. A fully dimensioned plan of the proposed driveway shall be attached to each application for a permit required hereunder.
9. Any culvert pipe required to be installed at such driveway entrance or exit shall be of a shall be of a type (i.e. corrugated metal, solid plastic core, etc.), specifications and diameter determined by the Town Highway Superintendent and a minimum of 30 feet in length.
10. No head walls above surface of driveway shall be permitted.
11. No concrete surface closer to the traveled highway than the edge of the highway property lines.
12. Asphalt concrete may connect with traveled roadbed under strict directions of the Highway Superintendent.

13. A culvert pipe shall be placed so as to allow it to run full without spilling out onto the highway either on the high or low side of the pipe.

ARTICLE IV GENERAL REGULATIONS

The provisions of this Local Law shall be subject to such exceptions, additions or modifications as herein provided by the following general supplementary regulations. The dimensions and restrictions set forth in Schedule A are incorporated herein and made a part of this Local Law.

SECTION 401 BUILDINGS, USES AND LOTS

A. One Principal Building and Use Per Lot - There shall not be more than one (1) principal use on any one lot in the Agricultural-Residential (A-R), and the Residential (R) Districts except as provided for in the following:

1. An approved multifamily dwelling project,
2. A single family dwelling accompanying a non-residential use, or uses, permitted on a lot in Agricultural-Residential (A-R) and Residential (R) Districts, provided there is only one use of a commercial nature on the lot, or
3. A single family dwelling accompanying a non-residential use, or uses, requiring a Special Use Permit in Agricultural Residential (A-R) and Residential (R) Districts, if approved by the Planning Board as part of the Special Use Permit Application Process, provided there is only one use of a commercial nature on the lot.

B. Yard and Open Space for Every Building - No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building. Also, no yard or any other open space on one lot shall be considered as a yard or open space for a building on any other lot.

C. Subdivision of a Lot - Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation shall be effected so as not to violate any of the requirements of this Local Law with respect to the existing building, including yards and other required spaces in connection therewith. No zoning permit shall be issued for the erection of a building on the new lot this created unless there is full compliance with all the provisions of this Local Law.

D. Irregularly Shaped Lots - Where a question exists as to the proper application of any of the requirements of this Local Law to a particular lot or parcel because of the peculiar or irregular shape of the lot or parcel, the matter shall be referred to the Zoning Board of Appeals and dealt with in accordance with the applicable provisions of Section 807.

E. Lots Under Water or Subject to Flooding

1. No more than twenty five (25) percent of this may be met by land which is under Water or subject to periodic flooding.
2. Land which is under water and is open to use by persons other than the owner shall be excluded from the computation of the minimum area of a lot.
3. Land in the bed of a stream not exceeding five (5) feet in width at mean water level, and land in a pond not exceeding one hundred fifty (150) square feet in area shall not be considered as under water for the purpose of computing lot area.
4. Where any part of a lot is separated by the main body of water, such separate land shall not be included in computing lot area.

F. Required Road Frontage - No zoning permit shall be issued for any structure unless the lot upon which that structure is to be built has the required frontage on a road, as defined herein, which frontage provides the actual access to such structure and which road shall have been suitably improved to Town Board standards or a bond posted therefore to the satisfaction of the Town Board or Planning Board, as provided in Section 280a of the Town Law.

G. Parts of Lot Not Counted Toward Area Requirements - No part of such lot less in width than one-half of the minimum requirements for the district in which it is located shall be counted as part of the minimum required lot area.

H. Adjacent Lots - Where two or more adjacent lots are at the time of the effective date of this Local Law in the same ownership, they shall not be considered a single lot, unless they are described as one parcel in a deed recorded at the Genesee County Clerk's Office.

I. Yards on Corner Lots - Any yard adjoining a street shall be considered a front yard for the purpose of this Zoning Law and shall comply with all requirements for a front yard in the District in which it is located. The remaining yards shall be considered side yards.

SECTION 402 **SUPPLEMENTARY YARD REGULATIONS, STRIPPING, AND EXCAVATIONS**

A. Porches and Decks - shall be considered part of a building insofar as yard requirements are concerned. A porch shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

B. Projecting Horizontal Architectural Features – Architectural features, such as window sills, belt courses, chimneys, cornices, eaves or bay windows, shall not project more than three (3) feet into any required yard.

C. Fire Escapes – Open fire escapes may extend into any required yard.

D. Visibility at Intersections - On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three feet in height, shall be erected, placed or maintained within the triangular area formed by the intersecting road lines and a straight line joining said road lines at points which are forty (40) feet in distance from the point of intersection, measured along said road lines. This paragraph shall not apply to existing trees, provided that no branches are closer than six (6) feet to the ground.

E. Swimming Pools - Swimming pools shall be considered accessory structures within the provisions of Section 403 of this Zoning Law, and shall be set back from lot lines at least the minimum distance required for other buildings and structures. Swimming pools shall be enclosed with adequate fencing and gates as required by the NYS Uniform Code.

F. Buffer Strip - Wherever a buffer strip is required by this Local Law, it shall meet the following standards:

1. Be at least ten (10) feet in width along any business or industrial lot line abutting a lot in a Residential or Agricultural-Residential District.

2. Be of evergreen planting of such type, height and spacing as, in the judgment of the Planning Board, will screen the activities on the lot from view of a person standing at street level on the adjoining residential lot. The plans and specifications for such planting shall be filed with the approved plan for the use of the lot.

3. A wall or fence of which the location, height, and design has been approved by the Planning Board, may be substituted for the required planting.

G. Open Space-Commercial and Industrial Districts - Where a Commercial or Industrial District abuts a Residential or Agricultural-Residential District, there shall be at least one hundred (100) feet of open space within the Commercial or Industrial District along such abutting line, which open space shall include a buffer strip pursuant to the provisions of Subsection F of this Section.

H. Top Soil - No person shall within a distance of five hundred (500) feet of any road, strip, excavate or otherwise remove topsoil for sale or for use other than on the premises from which the topsoil was taken, except in connection with the construction or alteration of a building or structure on such premises and excavating or grading incidental thereto.

I. Excavation during Construction - In any construction, open excavations shall be limited to a maximum of sixty (60) days, with appropriate fencing, barricades or covering.

SECTION 403

LOCATIONS OF ACCESSORY BUILDINGS AND STRUCTURES

A. Accessory Buildings are permitted as follows:

1. One-story accessory buildings having a total floor area of one hundred fifty (150) square feet or less and a building height of not more than nine (9) feet shall not be located closer than eight (8) feet to the rear and sides lot lines in the rear yard areas. Accessory buildings shall not be located in front of the principal building, i.e. the front yard.

2. The location of accessory buildings having a total floor area greater than one hundred fifty (150) square feet or a building height of greater than nine (9) feet shall be located in compliance with the required yard areas of the respective districts and shall not be located in front of the principal building, i.e. the front yard.

B. Accessory Structures (other than buildings) are permitted as follows:

1. Accessory structures (other than buildings) equal to or less than Fifteen (15) feet in height, including satellite dishes with a diameter of forty (40) inches to thirteen (13) feet, shall not be located closer than fifteen (15) feet to the side and/or rear lot line and shall not be located within the minimum required front yard. Satellite dishes less than forty (40) inches in diameter may be located anywhere on a lot and may be installed without the issuance of a zoning permit.

2. Accessory structures (other than buildings) greater than fifteen (15) feet in height, including production model Wind Energy Conservation Systems (windmills), antennas and satellite dishes greater than thirteen (13) feet in diameter, shall be located in compliance with the required yard area of the respective district and shall be located in the rear yard.

SECTION 404

NONCONFORMING USES, STRUCTURES AND LOTS

A. Lawful Existing Uses or Structures

Except as otherwise provided in this Section, the lawful use of land or structures existing at the effective date of this Local Law may be continued, although such use or structure does not conform to the regulations specified in this Local Law for the zone in which such land or structure is located, provided, however:

1. That no conforming lot shall be further reduced in size.
2. That no nonconforming building shall be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance.
3. That no nonconforming use may be expanded.
4. No existing conforming use shall be changed to a nonconforming use.

B. Abandonment

A nonconforming use shall be abandoned when there occurs a cessation of any such use or activity and a failure on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuance.

C. Restoration and Repair

Nothing in this Local Law shall prevent the restoration and repair or continuation of use of a nonconforming building destroyed or partly destroyed by a disaster, provided that restoration is commenced within eight (8) months after date of destruction and is completed within sixteen (16) months after date of destruction.

D. Reversion

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

E. Alterations

A nonconforming building may not be structurally altered during its life to an extent exceeding, in aggregate cost, fifty percent (50%) of the assessed value of the building unless said building is changed to conform to the requirements of this Local Law.

F. District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein or created thereby.

SECTION 405 **USES NOT PERMITTED**

Uses which are not allowed by this Local Law are prohibited.

SECTION 406 **MINIMUM HABITABLE FLOOR AREA**

A. One-family dwellings shall have a minimum enclosed living area (not including garage but also not limited to only habitable floor area) of at least seven hundred and fifty (750) square feet.

B. Two-family dwellings shall have a minimum enclosed living area of at least seven hundred and fifty (750) square feet for the first unit and the second as follows:

C. Multiple family dwellings shall have a minimum enclosed living area per unit as follows:

<u># of Bedrooms Per Unit</u>	<u>Minimum Square Footage</u>
Efficiency	300
1 Bedroom	550
2 Bedroom	650
3 Bedroom	800
4 Bedroom	1,000
5+ Bedroom	As determined by Planning Board

SECTION 407 DWELLING FRONT YARD GRADE

Surface grade of front yards of dwellings measured at the midpoint of the front wall, shall be at least one foot above the elevation of the road’s center line, unless adequate site drainage is provided otherwise and approved by the Highway Department(s) which has responsibility for the highway(s) involved.

SECTION 408 STABLING FARM ANIMALS

A. Outside of a NYS Ag. & Markets Agricultural District there shall be no stabling of farm animals or storage of manure, fertilizer, or similar odor or dust producing substance within the R District. Such stabling or storage shall be permitted in the A-R, C or I Districts provided the following restrictions are observed.

1. No such stabling or storage shall take place within five hundred feet of an R District.
2. No such stabling or storage shall take place within one hundred feet of a lot containing a dwelling or other residence.

SECTION 409 HEIGHT MODIFICATIONS

A. Height Exceptions

1. District building height regulations shall not apply to flagpoles, radio or television antennae, transmission towers or cables, spires or cupolas, chimneys, elevator or stair bulkheads, penthouses, parapets or railings, water tanks or cooling towers, or any similar structures, provided that such structures are located on the roof and in their aggregate coverage occupy no more than ten percent (10%) of the roof area of the building.

2. District building height regulations shall not apply to radio or television antennas and commercial communications towers.

3. Public and quasi-public buildings, schools, churches and other similar permitted uses may exceed the maximum height specified for the zone district provided that the minimum front, side and rear yard setbacks are increased by two (2) feet for each one (1) foot of such additional height

up to a maximum height of fifty (50) feet and provided that on-site fire protection facilities approved by the local fire company are installed.

4. The Authorizing board may require avoidance lighting on towers and other structures which exceed district height limits, as it deems necessary to protect the public health and safety.

SECTION 410 **MINIMUM DIMENSIONAL CRITERIA**

All one (1) and two (2) family dwelling units located on individual lots shall have a minimum outside width of at least twenty (20) feet. This provision shall not prohibit the construction of smaller additions or projections from larger units (less than twenty (20) feet wide) provided a twenty (20) foot minimum width is clearly established for the overall unit.

SECTION 411 **FENCES**

The installation, or replacement, of a fence does not require a permit provided the following criteria are met:

A. All Fencing

1. All fencing must be installed, or replaced, in conformance with the NYS Uniform Code. Fencing shall be located on an individual’s own property and not on adjoining property or directly upon a property line.

2. No fencing shall be installed, or replaced, which poses a potential hazard to either pedestrians or motorists by restricting vision.

3. The “finished” (or “good”) side of the fence shall face the adjoining properties.

4. It shall be the responsibility of the property owner whose land contains a fence to maintain that fence so that it remains structurally sound and does not aesthetically detract from neighboring properties. The property owner is also responsible to see that any vegetation (i.e. grass, weeds) around a fence is regularly mowed. Failure on the part of a property owner to maintain his fence in accordance with these provisions shall constitute a violation of this zoning ordinance.

B. Fencing - Front Yard

1. Fencing located within front yards shall be located not closer than one (1) foot to the edge of the right-of-way of a public highway.

2. Fencing located in the front yard shall not exceed three (3) feet in height for closed fencing, or four (4) feet for open fencing. For the purposes of this Section, the term open fencing shall refer to fencing which is at least 75% open (i.e. chain link type fencing), fencing which is less than 75% open shall be considered closed fencing.

3. Plantings and bushes used in lieu of a man made fence as set forth above (i.e. a hedge) shall not exceed three (3) feet in height.

C. Fencing – Side and Rear Yards

Fencing located in side or rear yards shall not exceed six (6) feet in height.

SECTION 412 **OUTSIDE SOLID FUEL BURNING DEVICES**

Outside solid fuel burning devices shall not be installed in an R District or within 500 feet of such district. When installed outside the R District (and the required 500 foot buffer), such units shall be installed and operated in accordance with the manufacturer’s instructions so as to not allow smoke or fumes to enter buildings on surrounding properties.

ARTICLE V **ZONING DISTRICT REGULATIONS**

SECTION 501 **AGRICULTURAL-RESIDENTIAL DISTRICT A-R**

The Agricultural-Residential District is designed to accommodate primarily agricultural uses in order to preserve the Town’s agricultural base and maintain its rural nature, but residential uses are permitted therein. It is recognized, however, that agricultural and residential uses have a number of inherent conflicts between them. Individuals who plan to develop residential uses within the A-R District should be aware of such inherent conflicts and that residences are a secondary use.

A. Permitted Uses

The following uses are permitted in the Agricultural-Residential District:

1. Farms and all usual agricultural operations.
2. One and two-family dwellings.
3. Single mobile homes in accordance with the provisions of Section 701.
4. Churches and other places of worship, parish houses, convents, rectories and parsonages.
5. Schools, public parks, playgrounds, libraries, municipal buildings and water systems and similar public uses.
6. Farm water supply, conservancy and fire protection ponds located not less than one hundred (100) feet from any street or property lines.
7. Private stables.

8. Home Occupation I (see Section 610).
9. Roadside stands (see Section 615).
10. Accessory uses and buildings.
11. Contractor's Yard.
12. Non-Commercial Wind Energy Systems (See Section 622)

B. Uses Requiring Special Use Permit

The following uses are permitted in an Agricultural-Residential District upon the issuance of a special use permit authorized by the Planning Board (see Section 808):

1. Multi-family dwelling(s).
2. Home occupation II (see Section 610).
3. Outdoor recreation facility.
4. Indoor recreation facility.
5. Club.
6. Airport landing strip.
7. Dog/Board Kennel.
8. Motor vehicle repair shop (see Section 604).
9. Community center.
10. Professional offices.
11. Nursing home.
12. Public utility (see Section 605).
13. Public stable.
14. Commercial greenhouse.
15. Mobile home park.

16. Junkyard (see Section 609).
17. Cluster residential development (see Section 608).
18. Animal shelter.
19. Adult care facility.
20. Animal waste storage facility outside NYS Ag. & Markets Agricultural Districts (see Section 616).
21. Child day care center.
22. Self-service storage facility.
23. Commercial communication tower (see section 614)
24. Home Business Class I or II (see Section 617)
25. Recreational vehicles and campgrounds (see Section 611).
26. ATV, Snowmobile, Go-Kart, Motorcycle Race Courses (see Section 612).
27. Sporting club (see Section 618).
28. Landscaping and topsoil business (excluding stripping of topsoil from premises).
29. Bio remediation (see Section 619).
30. Commercial Wind Energy Systems (see Section 621)
31. Neighborhood Business (see Section 623)

SECTION 502 **RESIDENTIAL DISTRICT - R**

The Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 50,000 square feet. The purpose of this district is to encourage residential growth in areas of the Town which have existing concentrations of residential uses. The residential district will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A. Permitted Uses

The following uses are permitted in the Residential District.

1. One family dwelling.

2. Churches and other places of worship, parish houses, convents, rectories, and parsonages.
3. Schools, public parks, playgrounds, libraries, municipal buildings and water systems and similar public uses.
4. Farms and all usual agricultural operations, excluding stabling of farm animals.
5. Roadside stands (see Section 615).
6. Accessory uses and buildings.
7. Non-Commercial Wind Energy Systems (see Section 622)

B. Uses Requiring Special Permit

The following uses are permitted in a Residential District upon issuance of a special use permit authorized by the Planning Board (see Section 808).

1. Two family dwellings.
2. Multi-family dwellings.
3. Wind Energy Conversion System-Production Model.
4. Home occupation I or II (see Section 610).
5. Outdoor recreation facility.
6. Temporary mobile homes in accordance with the provisions of Section 701.
7. Professional office.
8. Community center.
9. Nursing home.
10. Public utility (see Section 605).
11. Adult care facility.
12. Child day care facility.
13. Cluster residential development (see Section 608)

14. Home Business Class I or II (See Section 617)
14. Neighborhood Business (See Section 623)

SECTION 503 **COMMERCIAL DISTRICT - C**

The Commercial District is designed to accommodate commercial uses.

A. Permitted Uses

1. Retail uses and services.
2. Restaurant.
3. Motel.
4. Commercial greenhouse.
5. Professional office.
6. Personal service business.
7. Wholesale trade.
8. Offices, banks.
9. Adult uses (see Section 613).
10. Non-Commercial Wind Energy Systems (See Section 622)

B. Uses Requiring Special Use Permit

The following uses are permitted in the Commercial District upon issuance of a special use permit authorized by the Planning Board (see Section 808)

1. Drive-in business.
2. Motor vehicle repair shop (see Section 604).
3. Gasoline station (see Section 604).
4. Gasoline station-market (see Section 604).
5. Indoor recreation facility.
6. Light industry limited to assembly operations and warehousing.

7. Motor vehicle sales (see Section 604).
8. Recreational vehicle and mobile home sales and service.
9. Public utility (see Section 605).
10. Contractor's yard.
11. Child day care center.
12. Recyclables handling and recovery facility.
13. Self-service storage facility.
14. Commercial Communication tower (see Section 614).
15. Bio remediation (see Section 619).

SECTION 504 **INDUSTRIAL DISTRICT - I**

The Industrial District is designed to accommodate industrial uses.

A. Permitted Uses

The following uses are permitted in the Industrial District.

1. Manufacturing industries.
2. Warehouse or wholesale use.
3. Public utility (see Section 605).
4. Machinery and transportation equipment, sales, service and repair.
5. Freight and/or trucking terminal.
6. Motor vehicle repair shop (see Section 604).
7. Adult use (see Section 613).
8. Non-Commercial Wind Energy Systems (See Section 622)

B. Uses Requiring Special Use Permit

The following uses are permitted in the Industrial District upon issuance of a special use permit authorized by the Town Board (see Section 809).

1. Commercial excavation (see Section 607).
2. Contractor's yard.
3. Recyclables handling and recovery facility.
4. Self-service storage facility.
5. Commercial communication tower (see Section 614).
6. Junkyard (see Section 609).
7. Bio remediation (see Section 619).
8. Mass Vehicle Storage (see Section 620).
9. Commercial Wind Energy Systems (see Section 621)

SECTION 505 **LAND CONSERVATION - LC**

The purpose of the Land Conservation District is to delineate the Federal and State wildlife refuge areas and other areas where substantial development of the land is prohibited because of natural conditions which might threaten structures or humans, and the lack of proper facilities or improvements for development. For permitted uses, appropriate lot and building regulations set forth in the A-R District shall apply.

A. Permitted Uses

1. Wildlife refuge areas.
2. Farms and related farming activities provided that no off-premise manure shall be stored within one hundred (100) feet of a property boundary.
3. Farm water supply, conservancy and fire protection ponds located not less than one hundred (100) feet from any street or property line.
4. Accessory uses and buildings incidental to and on the same lot as the principal use, as follows:
 - a. Customary farm buildings for the storage of products or equipment located on the same parcel as the primary use.

- b. Customary farm buildings for housing farm animals shall not be located less than one hundred (100) feet from an adjoining zone.
5. Outdoor recreation.

SECTION 506 PLANNED UNIT DEVELOPMENT – PUD

The purpose of the Planned Unit Development District is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities, to provide harmonious land uses which offer a high level of amenities, to permit a mixture of residential and/or non-residential uses, and to preserve natural and scenic qualities of the site during the development process.

A. Procedure for Creation of a PUD District

1. The owner of any tract of land in the Town of Alabama consisting of a minimum of five (5) contiguous acres, may petition the Town Board through the Planning Board to designate the property described in the petition as a PUD District.
2. The petition shall contain the exact name and address of the petitioner and reference records in the office of the Genesee County Clerk at which the deed conveying the property in question to the petitioner is recorded.
3. A PUD District may be created by the Town Board in accordance with the procedures detailed in Subsection B of this Section.

B. Procedure for Approval

1. Pre-Application Conference

Before submission of a preliminary application for approval as a Planned Unit Development, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of his application before entering into any binding commitments or incurring substantial expenses of site plan preparation.

2. Preliminary Plan (Rezoning)

- a. Planning Board Review and Approval – A preliminary plan application shall be submitted to the Planning Board at least fifteen (15) days prior to a regularly scheduled meeting. Within forty-five (45) days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board. Failure by the Planning Board to act within the required time period shall constitute approval and the application shall be forwarded to the Town Board.

b. Submission Requirements – The applicant shall submit four (4) sets of such plans, and drawings. These four (4) sets shall be submitted to the Zoning Enforcement Officer.

The preliminary plans shall be accompanied by a detailed justification for the proposal including such maps, charts and written material necessary for the Board to make an impartial judgment on the suitability and impact of the proposed PUD on the Town. Such material shall include, but not be limited to the following:

(1) A mapped preliminary development plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multi-family housing areas, commercial and open space areas, etc.), the number of residential structures and dwelling units within each residential area, the approximate square footage of non-residential use within each non-residential area and the amount of open space.

(2) A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall Town development and the effect on this Zoning Law.

(3) Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices, of the units, and square feet of non-residential floor area including the approximate selling and/or rental price, the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.

(4) Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the Town. Such material shall include, but not be limited to: the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the applicant intends to provide needed facilities, a fiscal impact statement including a summary of new costs and revenues to the Town due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.

c. Review Considerations – In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by this Zoning Law, and the protection of the established and permitted uses in the area. It shall consider: the location of main and accessory buildings and their relation to one another, the circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental effects of the proposed development on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the Town; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.

d. Town Board Review and Approval – Upon receipt of the Planning Board’s recommendation, the Town Board may, after a public hearing and forwarding the proposed zone change to the County Planning Board for review, amend the Zoning Law so as to establish and define the boundaries of the Planned Unit Development. If the rezoning request is approved to the PUD, such action does not authorize improvements to the rezoned land.

3. Final Plan

a. Ownership – Before final approval of the PUD, the applicant must show evidence of the full legal ownership in the land.

b. Planning Board Review and Approval – Upon approval of the zone change, the applicant has one year in which to submit a final plan to the Planning Board for review and recommendation to the Town Board. This submittal must be presented at least fifteen (15) days prior to the next regularly scheduled meeting of the Planning Board. Within forty-five (45) days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board.

c. Submission Requirements – The applicant shall submit detailed site plans comparable to the requirements for final approval of a subdivision plat.

d. Town Board Review and Approval – The Town Board shall make final approval in accordance with official Town development policies and may impose reasonable conditions relating to that plan.

C. Design Standards

1. Area Requirements

Area, yard, coverage, height, density and supplementary regulation requirements shall be comparable to minimum requirements in appropriate zoning districts for each specific use, except where Planning Board finds that it is in the public interest to modify these requirements.

2. Traffic and Circulation

All proposed public roads should meet municipal design and construction specifications.

Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.

3. Common Open Space

All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:

- a. Public dedication
 - b. Establishment of a Home Owners Association
 - c. Retention of responsibilities, control and maintenance by the developer
4. Performance and Maintenance Bonds

Performance and maintenance bonds may be required at the discretion of the Town Board.

SECTION 507 FLOOD PLAIN OVERLAY ZONE – FPO (Information only)

The Flood Plain Overlay Zone is shown on the zoning map of the Town of Alabama for information purposes only to identify potential areas of special flood hazard, to insure coordinated review of zoning and flood damage prevention regulations, and to minimize the threat of flood damages. Exact boundaries of the special flood hazard areas can be found on the Federal Emergency Management Agency’s (FEMA) most current Flood Insurance Rate Map (FIRM), or equivalent map for the Town of Alabama (Community Number 3610G7C).

In addition to the Zoning Law, areas within special flood hazard areas are regulated by the ECL Article 36, 6 NYCRR Part 500 Flood Plain Management Regulations Development Permits which are administered by the New York State Department of Environmental Conservation. These requirements are in addition to those contained in the underlying zoning district.

ARTICLE VI SUPPLEMENTARY REGULATIONS

SECTION 601 OFF-STREET PARKING SPACE REQUIREMENTS

For every building hereafter erected, altered or changed in use, there shall be provided at least the minimum number of off-street parking spaces set forth under this Section. All off-street parking shall be designed in such a manner as to allow vehicles to exit onto a road without backing out onto it.

A. Residential Uses

- 1. One and two-family dwellings: Two (2) parking spaces for every dwelling unit.
- 2. Multiple family dwelling: Five (5) parking spaces for every three (3) dwelling units.

3. Home occupations: The number of parking spaces required of the existing residential uses (see above), plus whatever additional parking spaces deemed necessary by the Planning Board.

B. Motel

Three (3) parking spaces, plus one (1) space for every guest room.

C. Places of Public Assembly

One (1) parking space for every five (5) seats or one (1) parking space for every one hundred (100) square feet of floor area.

D. Professional Offices

Two (2) parking spaces, plus one (1) space for every two hundred (200) square feet of office space.

E. Commercial

One (1) parking space for every motor vehicle used directly in the business, plus one (1) parking space for every two hundred (200) square feet of business area.

F. Restaurant, Eating and Drinking Establishment (other than drive-in)

One (1) parking space for every one hundred (100) feet of floor area.

G. Industrial, Wholesale, Warehouse, Storage, Freight, and Trucking Uses

One (1) parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.

H. Unspecified Uses

As required by the Planning Board, based upon use intensity, turnover, customers, employees, and vehicles used.

SECTION 602 **OFF-STREET LOADING SPACE REQUIREMENTS**

Every building occupied for the purpose of business or industry shall provide adequate space for off-street loading and unloading of vehicles.

SECTION 603 **MODIFICATION OF PARKING AND LOADING REQUIREMENTS**

The Planning Board, under its powers of site plan review and approval, may modify requirements for parking and loading spaces.

SECTION 604 **GASOLINE STATION, GASOLINE STATION/MARKET, MOTOR VEHICLE REPAIR SHOP, DRIVE-IN BUSINESS**

A. Gasoline stations, gasoline station/markets, motor vehicle repair shop, motor vehicle sales agencies and drive-in businesses shall comply with the following:

1. Lots containing such uses shall not be located within three hundred (300) feet of any lot occupied by a school, playground, library, or religious institution. Measurement shall be made between the nearest respective lot lines.
2. Lot size shall be at least forty thousand (40,000) square feet.
3. Lot frontage shall be at least two hundred (200) feet.
4. Lot depth shall be at least one hundred fifty (150) feet.
5. Pumps, other service devices, and fuel and oil storage shall be located at least thirty (30) feet from all lot lines.
6. Automobile parts and dismantled vehicles are to be stored within the building and no major repair work is to be performed outside the building.
7. There shall be no more than two (2) access driveways from any street. Maximum width of each access driveway shall be thirty (30) feet.

SECTION 605 **PUBLIC UTILITY FACILITY**

Public utility installations shall comply with the following:

- A. Such facility shall be surrounded by a fence approved by the Planning Board.
- B. The facility shall be landscaped in a manner approved by the Planning Board.
- C. To the extent practicable, equipment shall be stored so as not to be visible from surrounding properties.
- D. Any other requirements as determined by the Planning Board.

SECTION 606 **SIGNS**

A. General Standards

Every sign shall be designed, attached, supported, and located in such a manner as to:

1. Not impair public safety.
2. Not restrict clear vision between a sidewalk and street.
3. Not be confused with any traffic sign or signal.
4. Not prevent free access to any door, window, or fire escape.

Signs may be illuminated by a steady light provided that lighting does not illuminate adjacent property. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare.

B. Off Premise Signs

Off-premise advertising signs are not permitted in any district.

C. Exempt Signs (Require No Permits)

1. Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material; and emblems installed by governmental agencies, religious or nonprofit organizations not exceeding six (6) square feet.

2. Flags and insignia of any government, except when displayed in connection with commercial promotion.

3. On-premise directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits and similar signs, internally illuminated or non-illuminated, not exceeding four (4) square feet per face and six (6) feet in height. Business names and advertising messages shall not be allowed.

4. Non-illuminated warning, private drive, posted or no trespassing signs, not exceeding two (2) square feet per face.

5. Number and name plates identifying residents, mounted on house, apartment or mailbox, not exceeding one (1) square foot in area.

6. Lawn signs identifying residents, not exceeding one (1) square foot (per side). Such signs are to be non-illuminated except by a light which is an integral part of a lamp post if used as a support, with no advertising message thereon.

7. Private-owner merchandise sales signs for garage sales and auctions, not exceeding four (4) square feet for a period not exceeding seven (7) days.

8. Temporary non-illuminated “For Sale”, “For Rent”, real estate signs and signs of similar nature, concerning the premises upon which the sign is located. In a residential or agricultural-residential zoning district, one sign not exceeding four (4) square feet per side and located not less than ten (10) feet from a lot line. In a commercial or industrial zoning district, one sign not exceeding thirty-two (32) square feet set back at least fifteen (15) feet from all property lines. All such signs shall be removed within three (3) days after the sale, lease or rental of the premises.

9. One (1) sign identifying a farm not exceeding twenty (20) square feet in area and located not less than ten (10) feet from a lot line.

10. One (1) sign identifying a school, church, public park or public building, not exceeding forty (40) square feet in area on any one side and located not less than ten (10) feet from a lot line.

11. Signs necessary for public safety or welfare.

12. Temporary signs – A sign used on a temporary basis to identify or announce an activity or function such as a construction project and the specialists concerned, elections, sporting events, carnivals, meetings, etc. Such signs shall not exceed sixteen (16) square feet and shall not be located closer than five (5) feet to any lot line. Temporary signs shall be removed within ten (10) days after the activity or function ends.

13. Holiday decorations, including lighting.

14. Signs required by Federal, State, County or Town regulations (i.e. NYS registered motor vehicle shop and NYS inspection stations).

D. Signs Permitted in Residential and Agricultural-Residential Districts

The following signs are permitted in R and A-R Districts upon issuance of a zoning permit.

1. One (1) home occupation sign not exceeding six (6) square feet in area and located no closer than ten (10) feet to any lot line.

2. Two (2) farm product signs not exceeding six (6) square feet in area and located no closer than ten (10) feet from any lot line.

3. One (1) sign identifying a mobile home park, not exceeding six (6) square feet in area and not located less than ten (10) feet from any lot line.

4. One (1) sign identifying an apartment complex or nonresidential use allowed by special use permit as listed in Sections 501-B and 502-B. The sign shall not exceed six (6) square feet in area and shall not be located closer than ten (10) feet to any lot line.

E. Signs Permitted in Commercial and Industrial Districts

The following signs are permitted in C and I Districts upon issuance of a zoning permit.

1. Two (2) on-premise signs, one of which may be free standing, shall be allowed for each permitted use. If attached, such signs shall not exceed a total area of one hundred (100) square feet or an area equal to ten (10) percent of the wall area of the building or portion thereof devoted to such use or activity, whichever is less. No sign shall project more than one (1) foot from the façade of the building.

2. Free-standing signs shall be permitted. Such signs shall conform to the following provisions relating to their number and size:

a. Each commercial or industrial use may have one free-standing sign. Such free-standing sign shall have an area of not more than twenty-five (25) square feet nor be more than twenty-five (25) feet in height, and located not less than ten (10) feet from any lot line.

b. In a shopping center or industrial park there may be one (1) directory sign at any location thereon which shall not exceed five (5) square feet in area for each acre of land in the shopping center or industrial park provided that no such sign shall exceed thirty (30) square feet in area. No individual free-standing sign shall be allowed in a shopping center.

F. Non-Conforming Signs

1. Non-conforming signs shall be removed at the expense of the owner when any use of the property on which the sign is located is discontinued. This shall include both temporary and permanent signs.

2. Non-conforming signs may not be enlarged, extended, relocated or altered in any way, except to make them conform to provisions of this Zoning Law. This provision shall not restrict routine maintenance of non-conforming signs involving replacement of electrical parts and repainting.

G. Prohibited Signs

The following types of signs are prohibited and shall not be permitted, erected, or maintained in any zoning district and the owner thereof shall upon written notice of the Zoning Enforcement Officer forthwith, in the case of immediate danger and in any case within not more than ten days make such sign conform with the provisions of this chapter or shall remove it. If within ten (10) days the order is not complied with, the Zoning Enforcement Officer may cause said sign to be removed at the expense of the owner.

1. Any sign which by reason of its size, location, content, coloring or manner of illumination constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstruction or detraction from the visibility of any traffic control device on public streets and roads shall be prohibited.

2. No person shall erect or maintain a sign which obstructs free ingress to or egress from a required door, window, fire escape or other required exit way.

3. Signs which make use of words such as “STOP,” “LOOK,” “DANGER,” and other words, phrases, symbols, or character in such a manner as to interfere with, mislead or confuse traffic shall be prohibited.

4. Any sign which has any visible moving part, visible revolving parts or visible mechanical movement of any description (except time and temperature revolving signs as allowed) or other apparent visible movement achieved by electrical or kinetic means, including intermittent electrical pulsations, or by action of normal wind current shall be prohibited.

5. It shall be unlawful for any person to display upon a sign or other exterior advertising structure any obscene, indecent, or immoral matter.

SECTION 607 COMMERCIAL EXCAVATION

Except when incidental to the construction of a building on the same lot, the excavation, processing or sale of topsoil, earth, sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation, hereafter, may be permitted as special permit uses in the Industrial District upon the approval of a special use permit by the Town Board.

In its consideration of an application for a permit the Town Board shall find that such excavation will not endanger the stability of adjacent land or structures or constitutes a detriment to public health, safety, convenience, or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition. In granting a permit the Board shall specify any reasonable requirement including the following:

A. State Permit

The applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law when applicable.

B. Minimum Lot Area

The minimum lot area for any such case shall be ten (10) acres.

C. Minimum Setback Requirements

All buildings shall be located not less than one hundred (100) feet from any street or property lines. The toe of the slope of all excavation operations shall be located or shall occur not less than one hundred (100) feet from any street or property line. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one (1) public notice sign identifying the use of the property, fencing, berms, buffers, access roads and parking.

D. Slope

During mining the banks of all excavations shall be maintained at a slope not to exceed the normal angle of repose of such material.

E. Drainage

All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc. from flowing onto public roads to adjacent property or into any stream. Excavation areas shall be planned and graded to avoid spasmodic collection of stagnant water.

F. Dust

All storage areas, yards, service roads, or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust or other wind blown air pollutants.

G. Roadside Landscape

Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented for the depth of the roadside setback for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back over-burden around the perimeter of the excavation site to create a "berm" for the purpose of screening and noise reduction. No berm shall be constructed within twenty-five (25) feet of any right-of-way line or other property boundaries.

H. Fencing

Fencing may be required depending upon the existence of an earthen berm, the nature of the operations, distance from developed area, distance from property lines, depth of a pit water and slope of pit walls.

I. Topsoil

All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the restoration plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams, or adjacent property. This provision shall be applied to all operations except that of topsoil removal.

J. Erosion

The applicant shall include a plan for the control of soil erosion.

K. Hours of Operation

All operations shall be conducted between the hours of seven o'clock in the morning (7:00 a.m.) and six o'clock in the evening (6:00 p.m.) with no Sunday or holiday operations, except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.

L. Required Plans

The applicant shall submit the following three plans:

1. Life of Mine Plan: means the applicant's plan for the ultimate use of the entire site.
2. Mining Plan: means the applicant's proposal for mining, including a graphic and written description of the mine, the affected land and the mining method.
3. Reclamation Plan: means the applicant's proposal for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation.

Where feasible, restoration shall be a continuing operation. Grading, topsoil replacement and replanting of the area designated for restoration shall continue during the permit period. All reclamation work shall be complete within one (1) year after the termination of operations, at the expense of the operator.

M. Performance Bond

A performance bond or some other financial guarantee shall be required to assure that the conditions stipulated in the approval of the special use permit are carried out. This requirement may be waived if the NYS Department of Environmental Conservation requires a performance bond for the same operation.

N. Duration of Permit

The permit for operation of the excavation area shall be for a period of one year, subject to annual review and recertification by the Town Board based on a written request for continuance.

If on-site mining or processing operations are not carried out continuously for one year, the site shall be considered abandoned, and, prior to any further excavation or processing, a new permit shall be required.

Cluster residential development of one-family dwellings may be permitted, as specified in the New York State Cluster Enabling Act, Chapter 963, of the Laws of 1963, in the A-R and R Districts of the Town, provided that the following conditions are observed:

A. The project shall encompass a minimum land area of ten (10) acres.

B. The developer shall dedicate all subdivided lands to permanent open space. In no case shall such lands be less than twenty-five (25) percent of the total project area. All such lands shall be suitable, in the opinion of the Planning Board, for the intended use. Such lands shall be offered for dedication of the Town Board of the Town of Alabama.

C. The developer shall have received informal conditional approval of the Planning Board of the design and arrangement of streets, lots, open spaces, and other elements of the project prior to filling the special use permit application.

D. The requirements of this Local Law insofar as overall density, minimum front, side and rear yard areas for the outer boundaries of the entire project, maximum building height and maximum lot coverage are as specified in the zoning of this Local Law. All other area requirements of this Local Law may be modified by the Planning Board.

SECTION 609 JUNKYARDS

A. Establishment

No person shall establish, operate, or maintain a junkyard until he has obtained a special use permit in compliance with Section 809.

B. Location Requirements

Said use shall not be located within two hundred (200) feet from any highway, right-of-way; one hundred (100) feet from any body of water or property line; or five hundred (500) feet from any existing dwelling (excluding a dwelling on the lot), church, school, hospital, public building, or place of public assembly.

In reviewing this special use application, the Town Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

C. Aesthetic Considerations

The Town Board shall also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its

citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the Town Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barrier protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junkyard.

Required yards shall be mowed as needed and shall be kept free of unsightly growth. The planting of trees and shrubs to naturally screen the junkyard shall be encouraged.

D. Fencing

Before use, a new junkyard shall be completely surrounded with a fence at least eight (8) feet in height which substantially screens said area and shall have a suitable gate which shall be closed and locked except during the working hours of said use. Such fence shall not be erected nearer than two hundred (200) feet from the right-of-way of a public highway, nor closer than one hundred (100) feet to any other property line. All materials stored or deposited at the site shall be kept within the enclosure of the fence and below the top of the fence, except during transportation of same in the reasonable course of business. All storage, wrecking, or other work shall be accomplished within the area enclosed by the fence.

Where the topography, land forms, natural growth of trees or other considerations accomplish the purpose of this section in whole or in part, the fencing requirements hereunder may be reduced by the Board, provided, however, that such natural barrier conforms with the purpose of this Section.

E. Existing Junkyards

All junkyards existing at the time of the adoption of this Zoning Law shall be limited to the size, area, and scale of the present use and operation unless a permit is authorized in accordance with these regulations.

F. Annual Review and Recertification

Pursuant to Section 809, the Zoning Enforcement Officer shall inspect at least annually the operation of a junkyard to make sure it complies with the provisions of this Zoning Law and any and all conditions prescribed by the authorizing board when issuing the special use permit.

The permit for operation of the junkyard shall be for a period of one (1) year, subject to annual review and recertification by the Town Board based on a written request for continuance.

SECTION 610 **HOME OCCUPATIONS**

A. Purpose

The purpose of this provision is to allow for home occupations which are compatible with the neighborhoods in which they are located.

Some home occupations by the extent of the investment required therefore and/or the nature of their operation, have a tendency of increasing beyond the scope of a home occupation and thereby violating the use provisions of the zoning district in which such home occupation exists and adversely affecting surrounding property values.

B. Process

An applicant shall apply to the Zoning Enforcement Officer for a determination as to whether his/her proposed home occupation is a Category I or II. Home occupations classified as Home Occupation I are considered permitted uses in the A-R and C Districts and may be issued a zoning permit by the Zoning Enforcement Officer. In the R District a Home Occupation I shall require the issuance of a special use permit by the Planning Board. Home Occupation II uses shall require the issuance of a special use permit in all Districts where home occupations are allowed. Expansion of an existing Home Occupation I use to a Home Occupation II shall require the issuance of a special use permit by the Planning Board.

C. Conditions

The following conditions are intended to insure both that the home occupation is secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. The home occupation shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.
3. Nonresident family members shall not be employed in any Home Occupation I and no more than two (2) nonresident persons shall be employed actually on-site at the residence in a Home Occupation II.
4. Not more than 25% of the floor area of the principal dwelling may be used for the home occupation and the total floor area to be utilized (not including accessory buildings and structures) shall not exceed five hundred (500) sq. ft.
5. There shall be no exterior advertising of the home occupation, except for a sign no larger than six (6) square feet for which a permit has been obtained pursuant to the provisions of Section 606.
6. There shall be no exterior storage of materials used in the home occupation.

7. No home occupation shall result in:

a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the buildings in which such use is conducted.

b. Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or ground water.

c. Radiation or interference with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

8. Adequate parking shall be provided as set forth in Section 601. Such off-street parking shall be located not less than ten (10) feet from any property line.

9. No residential lot shall contain more than one (1) home occupation. No residential lot shall contain a home occupation together with a skilled trade shop or any other non-residential use requiring a special use permit.

SECTION 611 **RECREATIONAL VEHICLES AND CAMPGROUNDS AND/OR RECREATIONAL VEHICLE PARKS**

A. Recreation Vehicles

1. Recreation vehicles may be occupied as a dwelling only as follows:

a. As provided in Subsection 611-B of this Zoning Law.

b. For not more than two separate periods, per year, not exceeding two weeks each, one recreational vehicle may be used as temporary lodging while parked on the same lot with a dwelling.

c. With a temporary permit, issued by the Planning Board, one recreational vehicle may be used for a period of six (6) months each and subject to the following conditions:

(1) Approval shall be granted by the Genesee County Health Department.

(2) Any connections must be removed and the recreational vehicle moved to an approved parking location upon expiration of such permit.

2. One unoccupied recreational vehicle may be stored on a lot and then only in the side or rear yard areas of a lot no closer than five (5) feet from any lot line. When so stored, no connections shall be permitted.

B. Campgrounds/Recreational Vehicle Parks

1. Location

A campground/recreational vehicle park shall be located and maintained only in an A-R District upon issuance of a special use permit and in accordance with the standards set forth in this Zoning Law.

2. Existing Campgrounds/Recreational Vehicle Parks

All existing campgrounds/recreational vehicle parks of record shall be exempt from this Zoning Law, except that they shall comply with this Section whenever they are sold or any addition, expansion or alteration of the use or operation is proposed. Within six (6) months after the adoption of this Zoning Law, the Zoning Enforcement Officer shall notify existing campgrounds/recreational vehicle parks of this provision.

3. Standards and Requirements for the Construction of Campgrounds and/or Recreational Vehicle Parks

Before a special use permit for a campground/recreational vehicle park is issued under Section 808, the Planning Board shall determine that the proposed use is designed and arranged in accordance with the following standards:

(a) Site

The campground/recreational vehicle park shall be located on a well-drained site which is properly graded to insure rapid drainage and be free at all times from stagnant pools of water.

(b) Lots

Each campground/recreational vehicle park shall be marked off into lots. The total number of lots in such campground/recreation vehicle park shall not exceed twelve (12) per gross acre. Each lot shall have a total area of not less than two thousand five hundred (2,500) square feet with a minimum dimension of thirty (30) feet. Only one recreational vehicle or tent shall be permitted to occupy any one lot.

(c) Setbacks

All recreational vehicles or tents shall not be located nearer than a distance of:

- Twenty-five (25) feet from an adjacent property line, except residential property.
- One hundred (100) feet from any adjacent residential property line.
- One hundred (100) feet from the right-of-way of a public street or highway.
- Ten (10) feet from the nearest edge of any roadway located within the park.

d. Recreational Vehicle/Tent Site

Each residential vehicle/tent site shall have a stand of sufficient size and durability to provide for the placement and removal of recreational vehicles and for the retention of each recreational vehicle in a stable condition. The stand shall be suitably graded to permit rapid surface drainage.

e. Accessibility

Each campground/recreational vehicle park shall be easily accessible from an existing public road with entrances and exits designed and strategically located for the safe and convenient movement into and out of the campground/recreational vehicle park and with minimum conflicts with the movement of traffic on a public road. All entrances and exits shall be at right angles to existing public roads and all entrances and exits shall be of sufficient width to facilitate the turning movements of recreational vehicles.

f. Street System

1. Each campground/recreational vehicle park shall have improved streets to provide convenient access to all lots and other important facilities within the campground/recreational vehicle park.

2. The street system shall be so designed to permit safe and convenient vehicular circulation within the campground/recreational vehicle park.

3. All streets shall have the following minimum width:

- One-way traffic movement - twelve (12) feet.
- Two-way traffic movement – twenty (20) feet.

4. Except in cases of emergency, no parking shall be allowed on such streets.

5. Adequate access shall be provided for each lot. Such access shall have a minimum width of nine (9) feet.

g. Utilities

All sewer and water facilities provided in each campground/recreational vehicle park shall be in accordance with the regulations of the Genesee County Department of Health and the New York State Department of Environmental Conservation.

h. Open Space

Each campground/recreational vehicle park designed for twenty (20) or more sites shall provide a common open area suitable for recreation and play purposes. Such open space shall be conveniently located. The open space area shall be at least ten (10) percent of the gross land area of the campground /recreational vehicle park but not less than one (1) acre.

i. Improvements

Lighting, landscaping and buffer areas may be required by the Planning Board and shall be in keeping with surrounding development, the unique features of the site and the health and safety of occupants of the campground /recreational vehicle park.

j. Management

Every campground/recreational vehicle park shall be managed from an office located on the premises. The management shall maintain the campground /recreational vehicle park in such a manner so as to protect the health, safety and comfort of all persons accommodated in the campground/recreational vehicle park in a clean and attractive manner.

k. Removal of Wheels

Unless special consent be given by the Planning Board, it shall be unlawful to remove wheels from any recreational vehicle or otherwise permanently affix such recreational vehicle to the ground. Such removal shall be grounds for the revocation of the permit for such campground/recreational vehicle park.

l. Campground/Recreational Vehicle Park Special Use Permits

1. Pursuant to Article VIII, the Zoning Enforcement Officer shall inspect at least annually the operation of a campground/recreational vehicle park to make sure it complies with provisions of this Zoning Law and any and all conditions prescribed by the Planning Board when issuing the special use permit.

2. Before receiving a special use permit for a campground/recreational vehicle park, the owner thereof shall make an adequate showing that the subject property complies with the provisions of this Section.

SECTION 612

ALL TERRAIN VEHICLES, SNOWMOBILES, GO-CARTS, MOTOR CYCLES, AND MOTOR VEHICLE RACE TRACKS AND COURSES

A. Establishment

No person shall establish or operate a racetrack or course for all terrain vehicles, snowmobiles, go-karts, motorcycles, dirt bikes, or motor vehicles until he has obtained a special use permit in compliance with Section 808.

B. Definitions

1. Race Track or Course – Shall mean any ground, area, track, or course upon which vehicles are used for conducting races, contests, or demonstrations of skill or stunts, or engine/vehicle testing for the paid or unpaid enjoyment or entertainment of the public or for the gratification of the contestants.

2. Track or Course Operator – Shall mean any person who allows the paid or unpaid use of real property by vehicles.

3. Vehicles – Shall mean all terrain vehicles, snowmobiles, dirt bikes, go-karts, motorcycles, or other vehicles propelled by a force other than human energy.

C. Location Requirements

1. Said use shall not be located within two hundred (200) feet from any highway, right-of-way, body of water or property line; or one thousand (1,000) feet from any existing dwelling, church, school, hospital, public building, or place of public assembly.

2. In reviewing this special use application, the Planning Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, dust, fumes, smoke, odors, traffic, erosion, siltation, or other conditions.

D. Minimum Lot Area

The minimum lot area shall be five (5) acres.

E. Operation of Race Track or Course

1. No person shall operate or permit the operator of a race track or course in

such manner as to cause unreasonably loud or disturbing noises of such a character, intensity, or duration as to be detrimental to the peace, welfare, or good order of the people of the Town of Alabama or in such a manner as to cause disturbing, noisy, riotous, or tumultuous conduct within the Town. Loudspeakers, announcing devices, horns, and other noise producing devices shall not at any time be operated in such a manner as to disturb the occupants of the premises in the vicinity of the race track and

shall be so toned down, muffled or subdued that the sound therefrom shall not carry more than two-thousand, five-hundred (2,500) feet from the perimeter of the track in all directions.

2. No person shall operate or allow to be operated a race track or course in such a manner as to allow the creation and dispensing through the air to the adjoining areas of the town of noxious odors, fumes, smoke, or dust of such density or concentration as to be detrimental to the health, peace, welfare, and good order of the people of the Town or as to hurt, destroy, or deface the property of the inhabitants of the Town. If any event is being conducted at any time upon a race track when the ground or surface of the track or of the approaches thereto is so dry as to cause dirt or dust to be stirred up either by the racing vehicles or by vehicles transporting spectators to or from the race track or course and to be blown or to drift to adjacent areas, the operator shall sprinkle the track and its approaches with water or other substance so as to settle such dust or dirt.

F. Operation of Vehicles on Race Tracks or Courses Prohibited During Certain Hours

1. No person shall operate and no owner of a vehicle shall permit the operation thereof on a race track or course before the hour of nine o'clock in the morning of any day, except Sunday, when no person shall operate or permit to be operated vehicles on a race track or course within the Town of Alabama before the hour of one o'clock in the afternoon.

2. No person shall operate a vehicle on a race track or course after the hour of nine o'clock in the evening on any day, except on Friday and Saturday, when no person shall operate a vehicle on a race track after the hour of eleven in the evening within the Town of Alabama.

3. No owner of real property and no race track or course operator shall permit real property owned by him or under his control to be used for operation of a vehicle after the hour of nine (9) o'clock in the evening of any day, except Friday and Saturday, when no vehicle shall be permitted to be operated after the hour of eleven in the evening within the Town of Alabama.

G. Operation of Vehicles without Mufflers Permitted

1. No person shall operate, allow to be operated, or lease or rent a vehicle for operation on property within the Town of Alabama unless it is equipped with an adequate muffler properly maintained to prevent any excessive or unusual noise.

2. No owner of real property and no vehicle track or course operator owning or having control of real property in the Town of Alabama shall permit the operation of a vehicle thereon without a muffler in constant operation adequate to prevent any excessive or unusual noise.

H. Duration of Permit

The permit for operation of the race track or course shall be for a period of one (1) year, subject to annual review and recertification by the Planning Board based on a written request for continuance.

SECTION 613 **ADULT USES**

A. Purposes

The Town of Alabama conducted a study of the potential secondary effects posed by adult establishments. This study, along with other similar studies, has shown buildings and establishments operated as adult establishments pose secondary effects which may have a detrimental and harmful to the health, safety, morals and general welfare of a community. In order to promote the health, safety, morals and general welfare of the residents of the Town of Alabama, this Section is intended to control those secondary effects of adult establishments by restricting such uses to non-residential areas of the Town, and otherwise regulating their operation.

B. Definitions

As used in this Section, the following terms shall have the meanings indicated:

1. Adult Establishment – A commercial establishment including but not limited to adult book store, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:

a. An adult bookstore is a bookstore which has as a “substantial portion” (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined as any one or more of the following:

1. Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical area;” or,

2. Photographs, films, motion pictures, videocassettes, slides or other visual representations, which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”.

b. An adult eating or drinking establishment is an eating or drinking establishment that regularly features any one or more of the following:

1. Live performances which are characterized by an emphasis upon the depiction or description of “specified anatomical areas” or “specified sexual activities”; or,

2. Films, motion pictures, videocassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of “specified anatomical areas” or “specified sexual activities”, and

3. Employees who as part of their employment, regularly expose to patrons “specified anatomical areas”, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

c. An adult theater is a theater that regularly features one or more of the following:

1. Films, motion pictures, videocassettes, slides, or other visual representations which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”; or,

2. Live performances that are characterized by an emphasis upon the depiction or description of specified anatomical areas or specified sexual activities, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.

d. An adult motel is a motel which makes available to its patrons in their room, films, slide shows, video tapes or other visual representations with an emphasis on matter depicting, describing or related to specified sexual activities or specified anatomical areas.

e. An adult massage establishment is any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barber shops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

f. A nude model studio is any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of New York State.

g. Any other adult commercial establishment is a facility – other than an adult bookstore, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio or commercial studio, or business or trade school – which features employees who as part of their employment, regularly expose to patrons “specified anatomical areas”

and which is not customarily open to the general public during such features because it excludes minors by reason of age.

For the purpose of defining adult establishments, “specified sexual activities” are: (i) human genitals in a state of sexual stimulation or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

“Specified anatomical areas” are: (i) less than completely or opaquely concealed (a) human genitals, pubic region, (b) human buttock, anus or (c) female breast below a point immediately above the top of the areola; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

For the purpose of determining whether a “substantial portion” of an establishment includes an adult bookstore the following factors shall be considered: (1) the amount of floor area and cellar space accessible to customers and allocated to such uses; and (2) the amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment.

For the purpose of determining whether a bookstore has a “substantial portion” (equal to or greater than 25%) of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered: (1) the amount of such stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area and cellar space accessible to customers containing such stock; and (3) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.

2. Person – A person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

3. Substantial – For the purposes of the Section the term “substantial” shall mean an amount equal to or greater than 25 percent of the total.

C. Restrictions Affecting Adult Establishments

Adult establishments, including but not limited to adult bookstore, adult eating or drinking establishments, or adult theater shall be permitted subject to the following restrictions:

1. No such adult establishment shall be within one hundred (100) feet of another existing adult establishment.

2. No such adult establishment shall be located within one hundred (100) feet of the boundaries of any Residential or Agricultural-Residential zoning district or within five hundred (500) feet of any existing residential use located on another lot.

3. No such adult establishment shall be located within one thousand (1,000) feet of a pre-existing school, place of worship or children’s playground.

4. No such adult establishment shall be located in any zoning district except the Commercial (C) or Industrial (I) Districts.

5. Only one adult establishment shall be permitted on a zoning lot.

D. Prohibition Regarding Public Observation

No adult establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

SECTION 614 **COMMERCIAL COMMUNICATION TOWERS**

No commercial communication tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

A. Shared Use of Existing Towers and/or Structures

At all times, shared use of an existing tower and/or structure (i.e. another commercial communications tower, water tower, building, etc.) shall be preferred to the construction of a new commercial communication tower. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower. The installation of a commercial communications antenna(s) on an existing structure located within the A-R, C and I Districts shall be considered a permitted accessory use not subject to Site Plan Review, provided the following criteria are met:

1. The existing structure is not increased in height or otherwise modified so as to change its visual appearance.

a. The antenna(s) do not extend above such structure more than ten (10) feet, and

3. The applicant provides the necessary documentation to the Zoning Enforcement Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code.

4. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.

B. New or Altered Towers and/or Structures

The authorizing board may, in its sole discretion, consider a new or altered (including tower or structure which are modified, reconstructed, or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the authorizing board that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

The applicant shall be required to submit a site plan in accordance with Section 808 (Site Plan Review provisions need to be added) for all commercial communication towers that are proposed to be erected, moved, reconstructed, changed or altered. Site Plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section. In addition to Section 808, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

The authorizing board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF – SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The authorizing board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

Where shared usage of an existing tower or other structure is found to be impractical, as determined in the sole discretion of the authorizing board, the applicant shall investigate shared usage of an existing tower or other structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection B of this Section. Any new commercial communication tower approved for a site with an existing tower or other structure site shall be subject to the standards of Subsections F through N of this Section.

E. New Tower at a New Location

The authorizing board may consider a new commercial communication tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the authorizing board, and submits a report as described in Subsection B of this Section.

F. Future Shared Usage of New Towers

The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived provided that the applicant demonstrates, in the sole discretion of the authorizing board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

1. The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
2. The kind of tower site and structure proposed;
3. The number of existing and potential licenses without tower spaces;
4. Available spaces on existing and approved towers; and
5. Potential adverse visual impact by a tower designed for shared usage.

G. Setbacks for New Towers

All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve privacy of adjoining residential properties.

1. All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the authorizing board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this paragraph may be increased in the sole discretion of the authorizing board, or it may be decreased, again, at the sole discretion of the authorizing board, in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Town Engineer and the authorizing board.

2. Accessory structures must comply with minimum setback requirements in the underlying district.

H. Visual Impact Assessment

The authorizing board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to those guidelines and criteria listed below that the authorizing board, in its sole discretion, deems appropriate at the pre-submission conference.

1. Assessment of the “before and after” views from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately-owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers.

2. Assessment of alternative tower designs and color schemes, as described in Subsection I below.

3. Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

I. New Tower Design

Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:

1. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the authorizing board.

2. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae).

3. The authorizing board may request a review of the application by the Town Engineer, or other engineer selected by the authorizing board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.

4. Accessory facility shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

5. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.

6. The applicant shall provide documentation acceptable to the authorizing board that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.

7. Space on communication towers shall be made available for public safety purposes (i.e. Genesee County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground) shall take place prior to approval of the special use permit. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be permitted.

K. Screening

Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from the public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

L. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking

Parking shall be provided in accordance with Section 601. No parking space shall be located in any required yard.

N. Fencing

Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the authorizing board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.

O. Maintenance and/or Performance Bond

Prior to approval of any application, the authorizing board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to

cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the authorizing board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the authorizing board in supplying all necessary construction and maintenance data to the authorizing board prior to approval of any application to accomplish the foregoing.

P. Removal of Obsolete/ Unused Facilities

Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

SECTION 615 **ROADSIDE STANDS**

1. Roadside stands may be located in the A-R, R and C Districts when operated by the family residing on the lot.
2. Goods sold shall primarily be home grown.
3. There shall be a front yard setback of at least twenty (20) feet and side yard setbacks of at least twenty-five (25) feet each.
4. Stands shall be of a portable nature and must be removed when not in use.
5. Off-street parking shall be provided for a minimum of two (2) vehicles with additional provisions if traffic warrants.
6. One sign of not more than six (6) square feet each may be permitted, located not less than ten (10) feet from a lot line. Such sign shall be removed when the roadside stand is not operating and/or open for business.

SECTION 616 **ANIMAL WASTE STORAGE FACILITIES**

All proposals for installation and/or modification of animal waste storage facilities and associated facilities located outside of a NYS Ag & Markets Agricultural District shall require a special use permit and shall be designed, constructed and operated in compliance with the following U.S. Natural Resource Conservation Service (NRCS) Conservation Practice Standards: Waste Management System NY312, Waste Storage Facility NY 313, Nutrient Management (Supplement) NY 590, Record Keeping NY 748 and Manure Pile Area NY 749. If a proposal located outside of an Ag & Markets Agricultural District meets these standards then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

All proposals for installation and/or modification of animal waste storage facilities and associated facilities located within a NYS Ag & Markets Agricultural District shall be considered a permitted use and shall be located a minimum of one hundred (100) feet from any well.

SECTION 617 **HOME BUSINESS**

A. **HOME BUSINESS CLASS I**

The Planning Board may approve a special use permit for Home Businesses in any district where residences are permitted, provided that the following standards and provisions are maintained:

1. **Intent**

The purpose of this section is to provide opportunities for the economic advancement among residents of the Town and to protect the character of residential and agricultural areas of the Town. All businesses established pursuant to this section are expected to blend in with the existing character of the area in which it is located.

2. **Type of Business**

A variety of commercial and manufacturing uses may be permitted, provided that the requirements of this section are met.

3. **Neighborhood Character**

a. The appearance of the structure shall not be altered and the business shall not be conducted in a manner that would cause the premises to differ from its' existing residential/agricultural character, either by colors, material, construction, lighting, signs, or emission of sounds, noises or vibrations.

b. The use shall not generate noise, dust, vibration, smell, smoke, glare, odors or electrical interference, fire hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the applicable zoning district.

4. **Operation and Employees**

a. The operator of the Home Business shall reside in the Dwelling located on the same lot as the Home Business.

b. No more than two (2) persons, other than members of the immediate family occupying such dwelling shall be employed in such home business at any time.

5. Floor Space

a. No more than 40% of the gross floor area of a dwelling shall be used for the conduct of a home business, up to a maximum of 1,000 square feet, provided that the portion of the dwelling used for residential purposes shall comply with all applicable laws and codes.

b. No more than 1,000 square feet of gross floor area of no more than one (1) detached accessory structure may also be permitted for use of a home business in addition to space within the dwelling.

6. Outdoor Storage and Materials

a. No outside storage of material used in the Home Business shall be permitted except in the AR District. In the AR District, any outside storage shall be adequately screened from view from public streets and neighboring property. Such screening may consist of vegetation, fencing or a combination.

b. A maximum of two (2) pieces of equipment, other than commercial vehicles, may be parked outdoors on the lot. Such equipment shall be operable and necessary for the conduct of the Home Business.

c. Outdoor storage of equipment used for the Home Business shall only be permitted in the rear yard. Such equipment shall be completely screened from view of neighboring properties and public roads.

7. Outdoors Display of Goods

No outdoor display of goods for sale shall be permitted unless approved by the Planning Board. A sketch of location, size and number of proposed display items shall be included in the site plan.

8. Signage

Refer to SECTION 606-D, "Signs", of the Town of Alabama Zoning Law.

9. Commercial Vehicles

In the R District, no more than two (2) licensed Commercial Vehicles may be used in connection with a Home Business. Such vehicles may be parked outside but at the rear of the structure.

10. Number of Clients

With the exception of family day care, the Home Business shall be conducted in such a manner that at one time, the maximum number of vehicles of clients, customers, and others (except for employees) at the site of the Home Business is not greater than off-road parking spaces provided for under Sections 601, 602, and 603 of the Town of Alabama Zoning Law.

11. Hours of Operation

The Home Business shall be conducted in such a manner that all clients, customers and others coming to do business shall arrive and depart between the hours of 7:00 a.m. and 9:00 p.m. (Exceptions may be made in the case of family day care when a dependent must be dropped off or picked up outside of those specified hours).

12. Number of Home Businesses Permitted

More than one (1) Home Business may be permitted for each residential property, provided that the combined impact of such Home Business does not exceed any of the thresholds established by this section.

13. Parking and Access

a. Off-street parking shall be permitted as long as adequate space is provided with a turn-around area so that the vehicles do not have to back out into a public roadway. The off-street parking for the Home Business shall be in addition to the parking required for the employees and residents. Off-street parking shall be provided in accordance with Sections 601, 602, and 603 of the Town of Alabama Zoning Law.

b. No Home Business shall be permitted where access is provided only by a shared private road.

14. Setbacks

Any accessory building used in connection with the Home Business, shall be set back in compliance with the existing regulations of the Zoning Districts in which it is located.

15. Deliveries

No Home Business shall be permitted that requires tractor-trailer deliveries on a regular basis, (i.e. more than once a week) unless the Planning Board determines that the site can provide an adequate access and turning around space.

16. Motor vehicle repair shops shall not be deemed Home Businesses.

B. HOME BUSINESS CLASS II

The Planning Board shall permit Home Businesses (Class II) with a special use permit provided the following requirements and conditions are maintained:

The Zoning Enforcement Officer shall review, for compliance, the premises operating under the Special Use Permit, a minimum of once every five (5) years, and within six (6) months of a change of ownership.

1. Intent

The purpose of this section is to provide opportunities for the economic advancement among residents of the Town and to protect the character of residential and agricultural areas of the Town. Each business established pursuant to this section is expected to blend in with the existing character of the area in which it is located.

2. Type of Business

A variety of commercial and manufacturing uses may be permitted, provided that the requirements of this section are met. Several businesses are listed as uses that require special use permits in multiple districts. Those that are included only in the Commercial or Industrial Zoning Districts may not be permitted as Home Business.

3. Neighborhood Character

a. The appearance of the structure shall not be altered, and the business shall not be conducted in a manner that would cause the premises to differ from its existing residential/agricultural character.

b. The use shall not generate noise, dust, vibration, and smell, smoke, glare, odors, smoke or electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the applicable zoning district.

4. Operation and Employees

a. The operator of the Home Business shall reside in the dwelling located on the same lot as the Home Business. However, the Planning Board may waive this requirement.

b. No more than eight (8) persons, other than members of the immediate family occupying such dwelling shall be employed in such home business at any time.

5. Floor Space

a. No more than forty (40) percent of the gross floor area of a dwelling shall be used for the conduct of a home business provided that the portion of the dwelling used for residential purposes shall comply with all applicable laws and codes.

b. No more than two (2) detached accessory structures may also be permitted for use in a Home Business in addition to space within the dwelling. The total gross floor area of the detached accessory structures used for the Home Business shall not exceed 7,500 square feet.

6. Outdoor Storage and Materials

a. Outdoor storage of material used in the Home Business may be permitted. Such storage shall be adequately screened from view from public streets and neighboring property. Such screening may consist of vegetation, fencing or a combination of plantings and fencing.

b. Outdoor storage of equipment used for the Home Business shall only be permitted in the rear yard. Such equipment shall be operable and necessary for the conduct of the Home Business.

7. Outdoor Display of Goods

Outdoor display of goods may, at the discretion of the Planning Board, be permitted, provided that the goods are displayed in a neat and orderly fashion. The area displayed in must be limited to 200 square feet, and shall be 70 feet from the road right-of-way and 50 feet from the nearest property.

8. Signage

Refer to SECTION 606-D, SIGNS, of the Town of Alabama Zoning Law.

9. Commercial Vehicles

Licensed commercial vehicles used in connection with the Home Business may be parked outside, but must comply with the setbacks in SECTION 601, Off-street Parking Space Requirements, item G of this section. The Planning Board may require appropriate screening to minimize the visual impact of such vehicles on neighboring properties.

10. Number of Clients

With the exception of family day care, the Home Business shall be conducted in such a manner that at one time, the maximum number of vehicles of clients, customers, and others (except for employees) at the site of the Home Business is not greater than off-road parking spaces provided under SECTIONS 601, 602, and 603 of the Town of Alabama Zoning Law.

11. Hours of Operation

The Home Business shall be conducted in such a manner that all clients, customers and others coming to do business shall arrive and depart between the hours of 7:00 a.m. and 9:00 p.m. (Exceptions may be made in the case of family day care when a dependent must be dropped off or picked up outside of those specified hours).

12. Number of Home Businesses Permitted

More than one (1) Home Business may be permitted for each residential property, provided that the combined impact of such Home Businesses does not exceed any of the thresholds established by this section.

13. Parking and Access

Off-street parking shall be provided in order to safely require all vehicles to safely enter and leave the premises. Adequate parking and turning space must be displayed in a site plan review, which also includes location of structures and spaces utilized for storage, etc. The off-street parking for the Home Business shall be in addition to the parking for the employees and residents. Off-street parking shall be provided in accordance with Sections 601, 602, and 603 of the Town of Alabama Zoning Law.

14. Setbacks and Frontage

Any accessory building used in connection with the Home Business shall be set back in accordance with Section 403, page 26, of the Town of Alabama Zoning Law.

15. Deliveries

Tractor-trailer deliveries shall be permitted, unless the Planning Board determines that the site does not provide adequate access and/or turning around space.

SECTION 618 **SPORTING CLUB**

The purpose of this provision is to allow for operation of sporting clubs within the A-R District. It is recognized that operation of such uses without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

A. Process

An applicant shall apply to the Planning Board for a special use permit to establish a sporting club in an A-R District. Such applicant must be organized as a Club (see Section 202) or as a recognized business.

B. Conditions

The following conditions are intended to insure both that the sporting club is secondary to the residential use and that it is compatible with the residential character of the neighborhood.

1. All operations must be set back not less than 500 feet from all property lines and from edge of highway.
2. Days and hours of operation may be regulated by the special use permit not to exceed from 9:00 a.m. to 8:00 p.m., but not to exceed legal sunset.

3. Natural or man-made berms will be required to protect the public welfare and provide for normal and/or acceptable noise abatement and control projectiles.

SECTION 619 **BIO REMEDIATION**

The purpose of this provision is to allow for use of bio remediation for the treatment of petroleum contaminated soils within the C, I, and A-R Districts. It is recognized that operation of such uses without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

A. Process

An applicant shall apply to the authorizing board for a special use permit to establish a bio remediation cell(s) in a C, I, or A-R District.

B. Conditions

The following conditions are intended to insure the use of bio remediation will not adversely affect surrounding land uses or pose unnecessary risks to residents and the environment.

1. All operations must be set back not less than 1,000 feet from any neighboring residential use or place(s) of public assembly.

2. All contaminated soils to be treated must have originated from within the Town of Alabama. No contaminated soils from property located outside of the Town of Alabama shall be used in a bio remediation process located within the Town.

3. Prior to approval of any special use permit, the authorizing board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk, a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the clean up and/or remediation said bio remediation cell(s) during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the authorizing board, based upon the unique characteristics of the bio remediation cell(s) and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the authorizing board in supplying all necessary construction, sampling, maintenance and reclamation data to the authorizing board prior to approval of any application to accomplish the foregoing.

SECTION 620 **MASS VEHICLE STORAGE**

A. Establishment

No person shall establish, operate, or maintain a mass vehicle storage business or operation until he has obtained a special use permit in compliance with Section 809.

B. Location Requirements

The authorizing board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors of smoke, or other causes.

C. Aesthetic Considerations

The authorizing board shall take into account the clean, wholesome, attractive environment, which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection, the authorizing board may consider collectively the type of road servicing the mass vehicle storage facility, or from which this facility may be seen, the natural or artificial barrier protecting the facility from view, the proximity of the proposed mass storage vehicle facility to established residential and recreational areas, or main access routes thereto, as well as the reasonable availability of other suitable sites for the mass vehicle storage facility.

D. Fencing

Although no specific fencing requirement will be mandated, the authorizing board shall consider whether or not fencing, screening, the planting of trees and shrubs or other landscaping shall be necessary to promote the aesthetic considerations set forth herein.

E. Other Conditions and Considerations

The authorizing board shall consider other factors as necessary to impose any other allowable conditions pursuant to Section 809 D, including, but not limited to, the maximum number of vehicles to be allowed for temporary storage.

F. Annual Review and Recertification

Pursuant to Section 809, the Zoning Enforcement Officer shall inspect at least annually the operation of a mass vehicle storage facility to make sure it complies with the provisions of this Zoning Law and any and all conditions prescribed by the authorizing board when issuing the special use permit.

The permit for operation of the mass vehicle storage facility shall be for a period of one (1) year, subject to annual review and recertification by the Town Board based on a written request for continuance.

SECTION 621 **COMMERCIAL WIND ENERGY SYSTEMS**

The purpose of this Section is to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system and to allow for

the orderly development of land, protect property values, and aesthetic conditions. This section does not repeal, annul, impair, or interfere with any existing ordinance or local law.

It is unlawful for any person to construct, install, maintain, modify, or operate a wind energy system that is not in compliance with this Section or with any condition contained in a Special Use or Zoning Permit issued pursuant to this Zoning Law.

A. Permit Requirements

1. Special Use Permit. A Special Use Permit is required for a wind farm system and for any commercial wind energy system, or a component thereof.
2. Zoning Permit. A Zoning Permit and Site Plan Review are required for the installation of a wind tower that is part of any commercial wind energy system or for commercial wind energy systems considered a part of a farm operation.
3. Expiration. A permit issued pursuant to this Zoning Law expires if:
 - a. the commercial wind energy system is not installed and functioning within 2 years from the date the permit is issued; or
 - b. the commercial wind energy system is out of service or otherwise unused for a continuous 12-month period.
4. Fees. The application for a Special Use Permit for a commercial wind energy system must be accompanied by the fee required for a Special Use Permit.
5. Financial Assurance. The owner of a commercial wind energy system must provide a Performance bond, completion bond, or other financial assurance that guarantees the performance of the complete restoration of the land developed for the commercial wind energy system.

B. Restoration Requirement. (see also Restoration Section under Agricultural Mitigation)

1. A commercial wind energy system that is out of service for a continuous 12-month period or any commercial wind energy system found to be unsafe by the Code Enforcement Officer and not repaired by the owner to meet federal, state and local safety standards within six months will be deemed to have been abandoned. The Zoning Enforcement Officer may issue a Notice of Abandonment in the form of a letter to the owner of a commercial wind energy system that is deemed to have been abandoned. The Zoning Enforcement Officer will withdraw the Notice of Abandonment if the owner provides information within 30 days from the date of the Notice that causes the Zoning Enforcement Officer to determine that the wind energy system has not been abandoned.
2. The owner of a commercial wind energy system must provide the Zoning Enforcement Officer with a written Notice of Termination of Operations if the operation of a commercial wind energy system is terminated.

3. Within 3 months of receipt of Notice of Abandonment or within 6 months of providing Notice of Termination of Operations, the owner of a commercial wind energy system must:

- a. remove all wind turbines, aboveground improvements, and outdoor storage;
- b. remove all foundations, pads, and underground electrical wires to a depth of 4 feet below the surface of the ground; and
- c. remove all hazardous material from the property and dispose of the hazardous material in accordance with federal and state law;
- d. all disturbed area will be decompacted and the topsoil will be replaced to original depth reestablishing original contours where possible.

C. Special Use Permit or Zoning Permit Requirements. In addition to those criteria set forth under other Sections of this Zoning Law, the Town shall consider the following factors when setting conditions upon Special Use Permits or Zoning Permits issued for all commercial wind energy systems and may hire a professional engineer or consultant to assist in the review of an application at the applicants expense:

1. Proposed ingress and egress.
2. Proximity to transmission lines to link the system to the electric power grid.
3. Number of wind turbines and their location.
4. Nature of land use on adjacent and nearby properties.
5. Location of other wind energy systems in the surrounding area.
6. Surrounding topography.
7. Proximity to residential structures, residential zoning districts, or areas Identified for future residential use.
8. Design characteristics that may reduce or eliminate visual obtrusiveness.
9. Possible adverse effects on migratory birds, and other animals and wildlife.
10. Possible adverse effects of stray voltage, interference with broadcast signals, shadow effect, and noise.
11. Impact on the orderly development, property values, and aesthetic conditions.
12. Recommendations of the Town Board.

13. Any other factors that are relevant to the proposed system.

D. Standards.

1. Location.

a. A commercial wind energy system may only be located in areas that are zoned Agricultural-Residential (A-R) and Industrial (I).

b. A wind tower may not be located within one-quarter mile (1,320 ft.) of any State Forest, public park, or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a State, Federal, or local government designation; or within 1,000 feet of a State-identified wetland.

2. Set Backs. A wind tower in a commercial wind energy system and each wind tower in a wind farm system must be set back (as measured from the center of the base of the tower):

a. from the property line of the parcel on which the wind tower is located by a minimum distance equal to twice the total height of the wind tower, unless waived in writing by the abutting landowner.

b. from any residence or building that is on any parcel by a minimum distance of 1,200 feet, unless waived in writing by the owner of such structure.

c. from any public building that is on any parcel by a minimum distance of 1,200 feet.

d. from the right-of-way of any public road by a minimum distance of 1,000 feet or twice its total height, whichever is greater.

E. Spacing and Density. A wind tower must be separated from any other wind tower, or adjacent wind farm system by a minimum distance equal to twice the height of the wind tower and by a sufficient distance so that the wind tower does not interfere with the other wind tower.

F. Structure. A wind tower must be of monopole construction to the extent practicable. If monopole construction is not practicable, a wind tower must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a wind tower may be guyed as long as it is a single turbine and not a part of a Wind Farm System.

G. Height. The total height of a wind energy system must be 195 feet or less. Other minimum building/structure height restrictions within other sections of this Zoning Law are not applicable.

H. Clearance. The vertical distance from ground level to the top of a wind turbine blade when the blade is at its lowest point must be at least 30 feet.

I. Access and Safety.

1. Security. A wind tower, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence may be required.
2. Climbing Aids. Monopole wind towers shall have all climbing aids and any platforms locked and wholly inside the tower.
3. Operational Safety. Wind towers shall have an automatic braking, governing or other feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure rotor blades and turbine components.
4. Lightning. All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.
5. Access Roads. All commercial wind energy systems shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.

J. Electrical Wires.

1. Location. All electrical wires associated with a commercial wind energy system must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices (see also Construction Section under Agricultural Mitigation).
2. Transmission Lines. All commercial wind energy systems shall combine transmission lines and points of connection to local distribution lines.
3. Substations. All commercial wind energy systems shall connect the facility to existing sub-stations, or if new substations are needed, minimize the number of new substations.

K. Lighting. A wind tower and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.

L. Building and Outdoor Storage. Any ancillary buildings and any outside storage associated with a commercial wind energy system must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping, that will blend the facility into the natural setting and existing environment (i.e. in an agricultural setting accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from roads and adjacent residences.

M. Aesthetics.

1. Appearance, Color, and Finish. The exterior surface of any visible components of a commercial wind energy system must be a nonreflective, neutral color. Wind towers and turbines that are located within view, or within one mile of each other must be of a uniform design, including tower type, color, number of blades, and direction of blade rotation.

2. Visual Impact Assessment. The applicant shall complete a Visual Environmental Assessment Form (Visual EAF – SEQR), as well as a visual impact assessment of any proposed commercial wind energy systems or any proposed modifications to existing commercial wind energy systems. The visual impact assessment shall include:

a. “Before and after” photos or computer simulations from key view-points both inside and outside the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. A balloon test may also be requested by the Planning Board.

b. Alternative tower designs.

c. Assessment of visual impact from abutting properties and streets of the tower base, accessory buildings and any other element of the commercial wind energy system identified by the Planning Board.

d. A viewshed map of the proposed commercial wind energy system with a radius of seven (7) miles from any portion of the commercial wind energy system.

e. An inventory of all aesthetic resources in the viewshed defined in item d.

3. Visual Impacts Offset Plan. The applicant may be required to prepare and implement a visual impacts offset plan to mitigate negative impacts on aesthetics of a proposed commercial wind energy system. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.

N. Signs. No wind turbine, tower, building, or other structure associated with a commercial wind energy system may be used to advertise or promote any product or service. A weather resistant sign plate no greater than 2 sq. ft. in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or one the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other word or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a commercial wind energy system so as to be visible from any public road.

O. Agricultural Mitigation. The following shall apply to construction areas for commercial

wind energy systems located in County-adopted, State-certified Agricultural Districts. The applicant is encouraged to coordinate with the New York State Department of Agriculture and Markets (Ag. And Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. For larger projects, the applicant shall hire an Environmental Monitor to oversee the construction and restoration in agricultural fields at the applicant's expense.

1. Siting.

- a. Minimize impacts to normal farming operations by locating structures along field edges where possible.
- b. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
- c. Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.
- d. All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoid or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

2. Construction.

- a. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
- b. Where necessary, culverts and waterbars shall be installed to maintain natural drainage patterns.
- c. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and laydown area. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.
- d. Topsoil from work areas (tower sites, parking area, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.
- e. In cropland, hayland and improved pasture a minimum depth of 48

inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of thirty-six inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to forty-eight inches, the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.

f. All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and, when applicable, the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.*

g. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.

h. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.*

i. Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.

j. Excess concrete will not be buried or left on the surface in active Agricultural areas. Concrete trucks will be washed outside of active agricultural areas.* Concrete trucks will not be cleaned or dumped along public highways within the Town.

*Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

3. Restoration.

a. Restoration scheduling will be consistent with the seasonal Limitations identified by Ag. And Markets and will be incorporated into the project's Agricultural District Notice of Intent (if applicable) as well as the Stormwater Management Plan (general permit).

b. Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four (4) inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four (4) inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1st, unless approved on a site-specific basis by the landowner in consultation with Ag. And Markets. All parties involved should be cognizant that areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.

c. All access roads will be regarded to allow for farm equipment

crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.

d. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

e. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.

f. Following restoration, all construction debris will be removed from the site.

4. Two Year Monitoring and Remediation.

a. The applicant will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.

b. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and Ag. and Markets.

c. Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.

d. When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the applicant's responsibility to fully redress all project impacts.

e. Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate

equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the designed mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

P. Noise. Audible noise due to the operation of any part of a wind energy system shall not exceed 50 dBA for any period of time, when measured at any residence, school, hospital, church, public park or public library.

Q. Insurance. Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Planning Board in consultation with the Town's insurer and attorney, upon which the Planning Board will make a referral and recommendation to the Town Board, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.

R. Shadow Flicker.

1. Shadow Flicker Maps. Maps shall be prepared showing projected annual hours of shadow flicker impact for all sensitive areas/locations within the project area including, but not limited to, any residence, school hospital, church or public library.

2. Shadow Flicker Duration. Shadow flicker for all sensitive areas/locations within the project area shall be limited to 30 hours per year and shall not exceed 30 minutes per day.

S. Electromagnetic Interference (EMI). All commercial wind energy systems shall be properly sited, filtered and/or shielded in order to avoid any interference with electromagnetic communications, such as radio, telephone or television signals caused by any commercial wind energy system or the applicant shall mitigate any such interference.

SECTION 622 **NON-COMMERCIAL WIND ENERGY SYSTEMS**

The purpose of this section is to preserve and protect public health and safety without significantly increasing the cost of decreasing the efficiency of a wind energy system and to allow for the orderly development of land, protect property values, and aesthetic conditions.

It is unlawful for any person to construct, install, maintain, modify, or operate a non-commercial wind energy system that is not in compliance with this Section or with any condition contained in a Special Use or Zoning Permit issued pursuant to this Zoning Law.

A. Permit Requirements

1. Zoning Permit. A Zoning Permit and Sketch Plan review are required for the installation of a Non-Commercial Wind Energy System or any component thereof. The property owner, or designated agency, shall submit the following to the Town Planning Board for sketch plan review prior to installation.

2. Completion of Part I of Short Environmental Assessment Form (EAF) in accordance with 6 NYCRR PART 617.

3. Fees. The application for a Zoning Permit for each Non-Commercial Wind Energy System must be accompanied by the Fee required for a Zoning Permit, upon review of the Planning Board.

B. Zoning Permit Requirements. The following sets forth the information required for Sketch Plan Review of Non-Commercial Wind Energy Systems:

1. Sketch of the Parcel on a location map (e.g., tax map) showing boundaries and dimensions of the parcel involved and identifying contiguous properties and any known easements or rights-of-way and roadways. Show the existing features of the site including land and water areas, water or sewer systems, utility lines, and the approximate location of all existing structure on or immediately adjacent to the site.

2. Show the proposed location and arrangement of small wind energy production facilities to the site.

3. Include copies of plans or drawings prepared by the manufacturer.

4. Provide a description of the project and a narrative of the intended use of the proposed wind energy production facility, including any anticipated changes in the existing topography and natural features of the parcel to accommodate the changes. Include the name and address of the applicant and any professional advisors. If the applicant is not the owner of the property, provide authorization of the owner.

5. List safety measures to prevent unauthorized climbing on the tower.

6. Prescribe requirements for automatic braking, governing, or feathering system to prevent uncontrolled rotation of the rotor blades and turbine components.

7. The wind tower be setback the combined height, plus 50%, of each tower and blades, from existing structures and property not owned by the applicant.

C. Standards

1. Setbacks. Each tower in a non-commercial wind energy system must be set back the combined height, plus 50%, of each tower and blades, from existing structures and property not owned by the applicant.

2. Height. The total height of a non-commercial wind energy system must be 195 feet or less.

Roof mounted turbines extending to a height of less than or equal to 13 feet above the roof line are permissible.

3. Electromagnetic Interference. Non-commercial wind energy Systems shall be properly sited, altered and/or shielded in order to avoid any interference with electromagnetic communications, such as radio, television or television signals caused by a non-commercial wind energy system or the applicant shall mitigate any such interference.

4. Clearance. The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least 30 feet unless the blades are enclosed within a housing, with the exception of roof mounted turbines.

5. Safety.

a. Operational Safety. Wind towers shall have an automatic braking governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

b. Lightning. All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.

c. Lighting. Lighting shall be consistent with requirements of the Federal Aviation Administration, FAA.

6. Signs. No wind tower, turbine, building, or other structure associated with a Non-commercial Wind Energy System may be used to advertise or promote any product or service. A weather resistant sign plate no greater than 2 square feet in size containing the name of the current owner or operator, emergency phone number, and current address of such owner/operator may be located on that exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other word or graphic representation other than manufacturer's original markings or appropriate warning signs may be placed on a wind turbine, tower, building, or other structure associated with a Non-commercial Wind Energy System so as to be visible from any public road.

7. Noise. Audible noise due to the operation of any part of a Non-Commercial Wind Energy System shall not exceed 50 decibels (dBA) for more than 5 minutes out of any one-hour time period, when measured at any neighboring property line not owned by the applicant.

8. Code Compliance. All non-commercial wind energy systems, including tower, shall comply with all applicable State Construction and Electrical Codes, and the National Electric Code.

9. Installation Requirements. In conformity with the New York State Uniform Fire Prevention and Building Code.

10. Expiration. A permit issued pursuant to this Zoning Law expires if:

a. The Non-commercial Wind Energy System is not installed and functioning within two (2) years from the date the permit is issued, unless project requires more time, due to grant money issues, (proof required) and not to exceed three (3) years. The extended timeframe for two (2) to three (3) years to be determined by the Zoning Enforcement Officer.

b. The Non-commercial Wind Energy System is out of service or otherwise unused for a continuous twelve month period.

SECTION 623

NEIGHBORHOOD BUSINESS

1. Intent

The purpose of this section is to provide opportunities for the economic advancement among residents of the Town and to protect the character of residential and agricultural areas of the Town. All businesses established pursuant to this section are expected to blend in with the existing character of the area in which it is located.

2. Type of Business

A variety of small commercial establishments may be permitted, provided that the requirements of this section are met.

3. Neighborhood Character

a. The appearance of the structure shall not be altered and the business shall not be conducted in a manner that would cause the premises to differ from its' existing residential/agricultural character, either by colors, material, construction, lighting signs, or emission of sounds, noises or vibrations.

b. The use shall not generate noise, dust, vibration, smell smoke, glare, odors or electrical interference, fire hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the applicable zoning district.

4. Signage

Refer to SECTION 606-d "Signs", of the Town of Alabama Zoning Law.

5. Hours of Operation

The Neighborhood Business shall be conducted in such a manner that all clients, customers and others coming to do business shall arrive and depart between the hours of 7:00 a.m. and 9:00p.m.

6. Number of Neighborhood Businesses Permitted

No more than one (1) Neighborhood Business may be permitted for each residential property.

7. Parking and Access

a. Off-street parking shall be permitted as long as adequate space is provided with a turn-around area so that the vehicles do not have to back out into a public roadway. The off-street parking for the Neighborhood Business shall be in addition to the parking required for the employees and residents. Off-street parking shall be provided in accordance with Section 601, 602, and 603 of the Town of Alabama Zoning Law.

8. Setbacks

Any accessory building used in connection with the Neighborhood Business, shall be set back in compliance with the existing regulations of the Zoning Districts in which it is located.

9. Deliveries

Tractor-trailer deliveries shall be permitted, unless the Planning Board determines that the site does not provide adequate access and/or turning around space.

ARTICLE VII **MOBILE HOMES AND MOBILE HOME PARKS**

SECTION 701 **SINGLE MOBILE HOMES**

A. Single Mobile Homes-Permanent Residence

1. Criteria

A single mobile home may be permanently occupied as a one-family residence on any lot in an A-R District provided the following criteria are met and a zoning permit is issued:

a. The mobile home unit shall comply with the current Construction and Safety Standards set forth by the United States Department of Housing and Urban Development, and have a minimum floor area of seven hundred and fifty (750) square feet exclusive of any porches, additions or other extensions, and shall meet all other requirements of this Zoning Law for dwelling units (i.e. Section 410, Minimum Dimensional Criteria).

b. Placement of the mobile home must comply with the minimum area requirements for a one-family dwelling in the A-R District, including, but not limited to: lot size and width, yard areas, parking, minimum dimensional criteria and finished grade.

B. Single Mobile Homes – Temporary Residence

1. Restrictions

Single mobile homes may be temporarily occupied as a one family residence on any lot in an R or AR District for a maximum period of two (2) years under the following circumstances and upon the issuance of a special use permit.

a. Home Building – If the owner of a vacant lot has been issued an active, valid zoning permit by the Town of Alabama for the construction of a private dwelling on the lot in question.

b. Fire or Other Disaster – The existing dwelling on the lot has been damaged in such a manner as to make it uninhabitable.

2. Criteria

Mobile homes occupied as temporary residences shall meet the following criteria:

a. The mobile home units shall comply with the current Construction and Safety Standards set forth by the United States Department of Housing and Urban Development, and have a minimum floor area of seven hundred and fifty (750) square feet exclusive of any porches, additions or other extensions.

b. Placement of the mobile home must comply with the minimum area requirements for a one-family dwelling in that district, including, but not limited to: lot size and width, yard areas, parking and finished grade.

c. Mobile homes in the Town of Alabama shall not be relocated within the Town without compliance with this Section.

d. Additions, alterations and extensions to existing mobile homes and those permitted under this Section shall require a zoning permit.

e. The applicant shall provide documentation from the Genesee County Health Department that the proposed water supply and wastewater treatment systems are acceptable.

SECTION 702 MOBILE HOME PARKS

A mobile home park may be located in the A-R District provided the following criteria are met and a special use permit is issued.

A. Standards and Requirements for the Construction of Mobile Home Parks

Condition of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the mobile home park occupants. The site shall not be exposed to objectionable smoke, dust, noise, odors or other adverse influences, and no portion subject to predictable sudden flooding, or erosion and shall not be used for any purpose which would expose person or property to hazards.

1. Site, Size, Density and Setback Requirement

a. The minimum size for mobile home parks shall be five (5) acres.

b. The maximum number of mobile home spaces shall not exceed five (5) per gross acre.

c. Each mobile home park shall set aside ten (10) percent of the total acreage of the site as open space and recreation area.

d. A setback of sixty (60) feet shall be observed from the right-of-way of any public road bordering the site to any mobile home in the park.

e. A setback of thirty (30) feet shall be observed from any property line excluding the right-of-way of any public road to any mobile home in the park.

f. The site shall be located and laid out so that no mobile home shall be closer than one hundred (100) feet to any existing single family or two family dwelling.

2. Lot Size, Density and Setback Requirements

a. The minimum lot in a mobile home park shall be eight thousand (8,000) square feet, with a minimum width of seventy (70) feet and a minimum depth of one hundred (100) feet.

b. A mobile home having a width of (24) feet or more shall be located on a lot having an area of at least ten thousand (10,000) square feet with a minimum width of eighty (80) feet.

c. No mobile home shall be closer than thirty (30) feet to another mobile home or other structure in the park.

d. Each mobile home located in a mobile home park shall have a front yard, a rear yard and two side yards. No side yard or rear yard space shall be less than fifteen (15) feet in depth and no front yard shall be less than twenty-five (25) feet in depth.

e. There shall be a minimum setback of twenty-five (25) feet observed from an abutting park street to any mobile home in the park.

f. Maximum height for buildings shall be twenty-five (25) feet.

3. Site Layout and Design Requirements

a. Streets

All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means. Each mobile home space in a park shall have direct access to a street.

All mobile home parks containing twenty (20) or more mobile home sites shall have access from two points along a single public road, or if bordering on two roads, access can be one for each road, as long as such access points are separated by at least one hundred (100) feet.

Entrances to mobile home parks shall have direct connections to a public road and shall be designed to allow free movement of traffic on such adjacent public road. No parking shall be permitted on the entrance street for a distance of one hundred (100) feet from its point of beginning.

The street system should provide convenient circulation by means of minor streets and properly located collector streets. Dead-end streets shall be limited in length to five hundred (500) feet and their closed end shall be provided with an adequate turn around sixty-five (65) feet in diameter cul-de-sac.

All streets shall be provided with a smooth, hard and dense all-weather surface which shall be durable and well drained under normal use and weather conditions. The surface shall be maintained free of cracks and holes and its edges shall be protected by suitable means to prevent traveling and shifting of the base. The base course for the street shall consist of 12" R-0-B gravel laid in two lifts. Street construction shall be approved by the Town Highway Superintendent.

Grades of all streets shall be sufficient to insure adequate surface drainage, but should not be more than eight (8) percent. Short runs with a maximum grade of ten (10) percent may be permitted, provided traffic safety is insured.

Street intersections should generally be at right angles and in no case shall any angle or intersection be less than seventy-five (75) degrees.

Park entrances and exits shall be so located to provide a minimum of sight distance on the adjacent public road in both directions from the interior road at the point of intersection of not less than three hundred (300) feet.

b. Parking

Two (2) car parking spaces shall be provided for each mobile home to meet the needs of occupants of the mobile home park and their guests without interference with normal movement of traffic.

At least one parking space be situated on each unit, and the remainder may be located in adjacent parking bays along the park streets. Parking may be in tandem.

Each parking space shall have dimensions of at least ten (10) feet by twenty (20) feet and shall have all weather surfacing.

c. Storm Water Drainage

All mobile home parks shall be well drained and constructed so as to eliminate the accumulation of standing surface water for extended periods of time. The drainage system shall consist of buried corrugated steel pipe to carry storm water only.

OR

A series of well-constructed and properly maintained open ditches to carry surface runoff to off-site drainage channels or on-site drywell(s).

The drainage system shall be designed to adequately handle at least that storm water generated by the site during a ten (10) year storm as determined by the U.S. Army Corps of Engineers. It must be certified by the Genesee County Soil and Water Conservation District Office that the off-site downstream drainage system is capable of handling the run-off generated by the park during a ten (10) year storm.

4. Lot and Mobile Home Requirements

- a. Each lot shall front on an approved interior street.
- b. Interior lots shall not be permitted to front on more than one street.
- c. No more than one (1) mobile home may be placed on any lot.
- d. No mobile home shall be located within a park except in an authorized space.
- e. All mobile homes shall comply with the current Construction and Safety Standards as set forth by the United States Department of Housing and Urban Development and have a minimum habitable floor area of six hundred (600) square feet, exclusive of any porches, additions or other extensions.
- f. Mobile homes shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code.
- g. No addition shall be made to a mobile home except for a canopy and/or porch open on three sides.
- h. One (1) accessory building, not to exceed one hundred (100) square feet in dimension, may be located on each lot.
- i. Each lot shall be provided with approved connections for water and sewer in accordance with the regulations of the Genesee County and New York State Departments of Health.
- j. All utilities shall be underground.
- k. No front or side yard shall be used for storage.

5. Required Site Improvements

- a. Water Supply System – All water supply systems shall be approved by the Genesee County Health Department.
- b. Sewerage Disposal and Treatment – All sewerage disposal systems shall be approved by the Genesee County Health Department and/or NYS Department of Environmental Conservation.

6. Electrical Systems

- a. Except as otherwise permitted or required by this standard, all electrical installations in mobile home parks shall be underground, residential distribution designed and

constructed in accordance with local electric utility and with the National Electrical Code. The point of the electrical connection for the mobile home shall be within the area of the mobile home stand.

b. The mobile home park secondary electrical distribution system to mobile home lots shall be single phase, 120/240 nominal.

c. For the purpose of this section, where the park service exceeds two hundred forty (240) volts, transformers and secondary distribution panel boards shall be treated as services.

Mobile home lot feeder circuit conductors shall have adequate capacity for the load supplied, and shall be rated at not less than one hundred (100) amperes at 120/240 volts.

d. Provisions may be made for connecting a mobile home power supply assembly by a permanent wiring method, and the mobile home service equipment may provide for installation for at least one (1) fifty (50) ampere receptacle.

Mobile home service equipment may also be provided with a means for connecting a mobile home accessory building or structure or additional electrical equipment located outside a mobile home by a permanent wiring method.

7. Gas Distribution System

Gas equipment and installations within a mobile home park shall be designed and constructed in accordance with the applicable codes adopted by the local utility. Where the state or other political subdivision does not assume jurisdiction, such installations shall be designed and constructed in accordance with the appropriate provisions of the current edition of the American National Standard-National Fuel Gas Code.

8. Service Buildings

Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the New York State Uniform Fire Prevention and Building Code and the New York State Sanitary Code and/or all other applicable ordinances and statutes regulating buildings, electrical installations, and plumbing and sanitation systems.

9. Refuse Disposal

The park owner is responsible for provision of refuse pick-up and disposal.

10. Mobile Home Park Special Use Permits

a. Pursuant to Section 809, the Zoning Enforcement Officer shall inspect at least annually the operation of a mobile home park to make sure it complies with the provisions of this Local Law and any and all conditions prescribed by the Planning Board when issuing the special use permit.

b. Before receiving a special use permit for a mobile home park, the owner thereof shall make an adequate showing that the subject property complies with the provisions of this section.

ARTICLE VIII **ADMINISTRATION AND ENFORCEMENT**

SECTION 801 **ENFORCEMENT**

The duty of the administering and enforcing the provisions of this Zoning Law is hereby conferred upon the Zoning Enforcement Officer, who shall have such powers as are conferred upon him by this Zoning Law and as reasonably may be implied. He shall be appointed by the Town Board and shall receive compensation, as the Town Board shall determine.

SECTION 802 **DUTIES OF THE ZONING ENFORCEMENT OFFICER**

A. Inspection and Review. It shall be the duty of the Zoning Enforcement Officer, or his duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this Zoning Law. He shall have the right to enter any building or premises during reasonable hours in the course of his duties with the permission of and in the presence of the owner or manager.

B. Violations and Written Orders. Where the Zoning Enforcement Officer, in the course of his duties, determines that any plans, buildings or premises are in violation of the provisions of this Zoning Law, he shall order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered and may specify the time permitted for such action, the penalties and remedies which may be invoked by the Town and the violator's rights of appeal, all as provided by this Zoning Law.

C. Appearance Ticket.

The Zoning Enforcement Officer may issue an appearance ticket to any person who fails to respond to a notice of violation and written order to correct the violation.

D. Revocation of Certificate of Compliance.

On the serving of notice by the Zoning Enforcement Officer to the owner of any violation of any of the provisions of this Zoning Law, the Certificate of Compliance for such buildings or use shall be held null and void. A new Certificate of Compliance shall be required for any further use of such building or premises.

E. Records.

The Zoning Enforcement Officer shall maintain a permanent record of all matters considered and all action taken by him. Such records shall form a part of the records of his office and

shall be available for the use of the Town Board and other officials of the Town. The records to be maintained shall include at least the following:

1. Application File. An individual permanent file for each application for a permit provided by this Zoning Law shall be established at the time the application is made. Said file shall contain one (1) copy of the application and all supporting documents and plans; notations regarding pertinent dates and fees, and the like; as appropriate, one (1) copy of the resolution of the Planning Board and/or Zoning Board of Appeals in acting on the application; and the date the permit applied for was issued or denied by the Zoning Enforcement Officer.

2. Monthly Report. The Zoning Enforcement Officer shall prepare a monthly report for the Town Board. Said report shall cite all actions taken by the Zoning Enforcement Officer, including all referrals made by him; all permits and certificates issued and denied; and all complaints of violations received and all violations found by him, and the action taken by him consequent thereon. A copy of this monthly report shall also be transmitted by the Zoning Enforcement Office to the Tax Assessor, Planning Board and Board of Appeals at the same time it is transmitted to the Town Board.

SECTION 803 **CERTIFICATES AND PERMITS**

The certificates and permits enumerated herein are hereby established for the equitable enforcement and administration of the provisions of this Zoning Law.

A. Zoning Permit. The Zoning Enforcement Officer is hereby empowered to issue a zoning permit for any plans regarding the construction or alteration of any building or structures or part of any building, or the change in the use of any land or building or part thereof, where he shall determine that such plans are not in violation of the provision of this Zoning Law.

B. Temporary Use Permit. Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue a temporary use permit. A temporary use permit shall only be effective for a period not to exceed twelve (12) months; such permit may be extended by the Zoning Enforcement Officer not more than once for an additional period not to exceed six (6) months.

C. Emergency Housing. The Zoning Enforcement Officer may grant a non-renewable temporary housing permit for a period of time not exceeding ninety (90) days in conformance with Section 701.B.1.b.

D. Special Use Permit. Upon written direction of the authorizing board, the Zoning Enforcement Officer is hereby empowered to issue any special use permit provided for by this Zoning Law.

E. Certificate of Compliance. The Zoning Enforcement Officer is hereby empowered to issue a certificate of compliance, which shall certify that all provisions of this Zoning Law have been complied with in respect to the location and use of the building, structure or premises in question.

SECTION 804 **APPLICATION PROCEDURES**

A. Application. Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be built upon, the size and location of all buildings or structures proposed as well as those that shall remain, the intended use of each building or structure, and any such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this Zoning Law. Three (3) copies of applications, together with a layout sketch shall be submitted. The Zoning Enforcement Officer shall carefully consider the application and supporting documents for compliance with this Zoning Law and either issue or deny the zoning permit applied for.

B. Issuance of Zoning Permit. The Zoning Enforcement Officer shall issue a zoning permit only after all required variances and special use permits have been obtained.

C. Installation of Foundation. The Zoning Enforcement Officer shall be notified that the site is prepared for installation of the foundation of a structure, and shall inspect the site to check the location of the structure.

D. Initiation of Construction. If a zoning permit is not obtained by the applicant within ninety (90) days after final approval, such approval shall be void.

E. Completion of Construction. A permit shall be void if construction is not substantially completed within a period of one (1) year from the date of said permit. The Zoning Enforcement Officer may issue a six-month extension of a permit for good cause shown. Two such extensions of a permit will be allowed.

F. Location Permit. The zoning permit shall be located in a place readily visible to the public during construction activities.

SECTION 805 **FEES FOR PERMITS, AMENDMENTS, VARIANCES, SPECIAL USE PERMITS, OTHER ADMINISTRATIVE AND/OR ENFORCEMENT ACTIVITIES**

Fees may be charged for permits issued, and processing of applications for amendments, variances, special use permits and other costs associated with administration and enforcement of this Zoning Law. The fee schedule shall be set by resolution of the Town Board and may be changed from time to time in the same manner.

SECTION 806 **CERTIFICATES OF COMPLIANCE**

No land shall be used or occupied and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of compliance has been issued by the Zoning Enforcement Officer in accordance with the provisions of this Zoning Law.

SECTION 807 **BOARD OF APPEALS**

A. Organization

The Town Board shall appoint members to the Zoning Board of Appeals as authorized by the provisions of Section 267 of the Town Law. The Town Board shall also designate the Chairperson thereof. In the absence of a chairperson the Board of Appeals may designate a member to serve as Acting Chairperson. The present Board of Appeals consists of five (5) members; any future changes by the Town Board to the number of members shall comply with the provisions of NYS Town Law Section 267 and/or any other applicable laws.

B. Meetings, Minutes and Records

Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals 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, decisions and other official actions.

C. Filing Requirements

Every rule, regulation, amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record.

D. Hearing Appeals

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the Zoning Enforcement Officer. The concurring vote of a majority of the entire Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer, or to grant a use or area variance. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Zoning Board of Appeals is necessary to override a County Planning Board recommendation of disapproval or approval with modification. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.

E. Time of Appeal

Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer or Town Clerk. The cost of sending or publishing any notice relating to such appeal shall be borne by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer from whom the appeal is taken, certifies to the Zoning Board of Appeals, after notice of appeal shall have been filed with the Zoning Enforcement Officer, that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the Zoning Enforcement Officer from whom the appeal is taken and undue cause shown.

F. Public Hearing Notice and Referrals

A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal, such public hearing shall be advertised in accordance with Section 813 of this Zoning Law. When required by the provisions of Section 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.

At least thirty (30) days before the date of the public hearing, unless such time limit is waived by the Planning Board, the secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing and all pertinent information for those appeals involving a use variance. The Planning Board shall inform the Zoning Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify no recommendation on the application.

G. Time of Decision

The Zoning Board of Appeals shall decide upon an appeal within sixty-two (62) days after the conduct of the public hearing. Prior to rendering its decision the Board shall first complete the SEQR process. Said time of decision may be extended by mutual consent of the applicant and Zoning Board of Appeals. All decisions shall be in writing, stating the decision, the facts found and the reasons for the decision.

H. Filing of Decision and Notice

The decision of the Zoning Board of Appeals on an appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant by regular mail.

I. Permitted Action by the Zoning Board of Appeals

1. Interpretations, Requirements, Decisions and Determinations

The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made.

2. Use Variances

The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this Zoning Law.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every use allowed under the zoning regulations for the particular district where the property is located:

- a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d. That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area Variances

The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of this Zoning Law.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- c. Whether the requested area variance is substantial;

d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and

e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of Conditions

The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

J. Solar Access

Pursuant to Chapter 742 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Zoning Law the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

K. Rehearing

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reviewed may be made by any members of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

SECTION 808 **PLANNING BOARD**

A. Organization

The Planning Board shall consist of five (5) members appointed by the Town Board as provided for in Section 271 of the Town Law. The Town Board shall designate a member of said Planning Board to act as chairperson thereof, and upon its failure to do so; the Planning Board shall elect a chairperson from its own members. The Planning Board shall elect such other officers as necessary to conduct its business.

B. Powers and Duties

1. Site Plan Review

Review of site plans in accordance with NYS Town Law Section 274-a as set forth in Subsection C of this Section, for any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings unless specifically exempted by this Zoning Law.

2. Special Use Permits in A-R, R and C Districts

Granting of special use permits in A-R, R and C Districts in accordance with NYS Town Law Section 274-b as set forth in this Zoning Law based upon the criteria set forth in Section 809 of this Zoning Law.

3. Review Use Variances

Review use variance applications referred to the Planning Board in accordance with Section 807.F and make a recommendation to the Zoning Board of Appeals.

4. Temporary Uses and Structures

Grant permits for temporary uses and structures only as follows.

a. Except as otherwise provided in Section 803.C, the Planning Board may direct the Zoning Enforcement Officer to issue a temporary use permit for a period of time not exceeding twelve (12) months, for incidental nonconforming uses and structures as follows:

1. Temporary uses incidental to a construction project.
2. Temporary real estate sales office incidental to a subdivision.
3. Other similar temporary incidental uses which:

a. Do not have a detrimental effect upon the lawful use of land and activities normally permitted in the district in question, and

b. Contribute materially to the welfare and well being of the Town.

b. Temporary use permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.

c. Temporary use permits may be reissued only once for an additional consecutive period not exceeding six (6) months.

C. Site Plan Review

The Planning Board, at a regular or special meeting, shall review and approve, approve with modifications, or disapprove a site plan in connection with any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings.

1. Notice and Public Hearing

The Planning Board may, in its sole discretion, hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for site plan review is received by it and such public hearing shall be advertised in accordance with Section 813 of this Zoning Law. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

2. Submission of Site Plan and Data

The applicant shall submit to the Town Clerk ten (10) copies of a site plan and supporting data in a form satisfactory to the Planning Board, including, but not limited to, the following information presented in graphic form and accompanied by a written text.

a. Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, rights-of-way, zoning and ownership of surrounding property.

b. Layout sketch showing proposed lots, blocks, building locations and land use area.

c. Traffic circulation, parking and loading spaces, and pedestrian walks.

d. Landscaping plans including site grading, landscape design, open space and buffer zone.

e. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.

f. Preliminary engineering plans, street improvements, storm drainage, water supply and sanitary sewer facilities and fire protection.

- g. Engineering feasibility study of any anticipated problem which may arise from the proposed development, as required by the Planning Board.
- h. Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
- i. Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
- j. Together with any other information requested by the Planning Board.

3. Site Plan Review Criteria

The Town Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:

- a. Harmonious relationship between proposed uses and existing adjacent uses.
- b. Maximum safety of vehicular circulation between the site and street, including emergency vehicle access.
- c. Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.
- d. Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.
- e. Adequacy of municipal facilities to serve the proposal including streets, water supply and wastewater treatment systems, storm water control systems, and fire protection.

4. Area Variances

Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one (1) or more features which do not comply with the zoning regulations, applications may be made to the Zoning Board of Appeals for an area variance pursuant to NYS Town Law Section 274.a, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

5. Modifications and Conditions

The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making changes or additions.

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.

6. Waiver of Requirements

The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

7. Reservation of Park Land on Site Plans Containing Residential Units

a. Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Planning Board or Zoning Law, a park or parks suitably located for playground or other recreational purposes.

b. Land for park, playground or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.

c. In the event the Planning Board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property.

d. Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to NYS Town Law Section 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of park land or money donated in lieu thereof.

8. Performance Bond or Letter of Credit as a Condition of Site Plan Approval

The planning Board may require, as a condition of site plan approval, that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.

9. Performance Standards

In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may in its discretion reject any uses if it determines that insufficient evidence has been submitted to show compliance with these environmental standards. However, final responsibility for compliance with all environmental laws and regulations lies with the applicant.

10. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Article are submitted to the Town Clerk. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a site plan review is subject to review under General Municipal Law Section 239.m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

11. Changes and Revisions

Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

SECTION 809 **SPECIAL USE PERMIT**

The authorizing board (Planning Board or Town Board, depending on the zoning district involved) at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those which are compatible with the general spirit of the Zoning Law if certain standards and conditions are met. Each such use is listed in this Zoning Law as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Law shall be followed and the authorizing board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the authorizing board as set forth in Subsection D of this Section.

A. Application

Applications for special use permits shall be made in writing on the appropriate form obtained from the Zoning Enforcement Officer. Four (4) copies of each application, including site plan, shall be submitted to the Zoning Enforcement Officer, who shall review the application for completeness prior to forwarding it to the Town Clerk and the authorizing board. One (1) copy shall be retained by the Zoning Enforcement Officer. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this Zoning Law. In those instances when the Town Board is the authorizing board, a special use permit shall not be subject to the site plan review process set forth in Section 808. When the Town Board is the authorizing board, it shall refer all special use permit applications to the Planning Board for its informal recommendation. Failure of the Planning Board to render such informal recommendation within thirty (30) days after requested shall mean the Planning Board has no such recommendation on the proposal.

B. Area Variance

Where a proposed special use permit contains one (1) or more features which do not comply with the Zoning Law, application may be made to the Zoning Board of Appeals for an area variance pursuant to Section 274.b of Town Law, without the necessity of a decision or determination of the Zoning Enforcement Officer.

C. Notice of Public Hearing

The authorizing board shall hold a public hearing as part of the special use permit review process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for a special use permit is received by it and such public hearing shall be advertised in accordance with Section 813 of this Zoning Law. When necessary under Section 239 of the General Municipal Law, the authorizing board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

D. Conditions

The authorizing board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said special use permit, any such conditions must be met in connection with the issuance of the special use permit by the Zoning Enforcement Officer.

E. Waiver of Requirements

The authorizing board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

F. Decisions

The authorizing board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the public hearing. Such time may be extended by mutual consent of the authorizing board and the applicant. Prior to rendering its decision, the authorizing board shall first complete the SEQR process. In those instances where due to the location of the affected property, a special use permit request is subject to review under General Municipal Law Section 239.m, a majority plus one (1) vote of the entire authorizing board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the authorizing board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

G. Abandonment of Special Use Permit

A special use permit shall expire when there occurs a cessation of such use or activity, for which said special use was originally issued, for a period of one (1) year. Upon evidence that a special use permit has been abandoned the Zoning Enforcement Officer shall issue a notice of abandonment to the owner of record for the property by registered mail. If after sixty (60) days the owner has not provided satisfactory proof that the special use did not cease, the authorizing board shall revoke the special use permit.

H. Standards Applicable for all Special Use Permits

When the Planning Board is the authorizing board, it may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this Zoning Law. When the Town Board is acting as the authorizing board, it may use the following standards and conditions as guidelines but may include other issues it finds relevant.

1. The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous and shall be in harmony with the orderly development of the district.

2. The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.

3. The operation of any such use shall not be more objectionable to nearby properties than would be operation of any permitted use.

4. The proposed use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact on adjacent properties.

5. When a commercial or industrial special use abuts a residential property the authorizing board may find it necessary to require screening of sufficient height and density (i.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.

6. Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.

7. The proposed use shall meet the off-street parking and loading requirements of similar uses.

8. Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.

9. Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards.

10. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a minimum.

11. A special use permit shall not be issued for a use on a lot where there is an existing violation of this Zoning Law unrelated to the use which is the subject of the requested special use permit, as determined by the authorizing board.

12. As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.

13. In addition to the general standards for special permits as set forth herein, the authorizing board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements, it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this Zoning Law.

14. The above standards are not intended to apply to uses whose regulation has been preempted by the State or Federal government, i.e. mining.

I. Annual Review by Zoning Enforcement Officer

The Zoning Enforcement Officer shall at least annually inspect the use of the property in question to insure compliance with conditions that have been imposed by the authorizing board in issuing such special use permit and other applicable provisions of this Zoning Law.

J. Revocation of a Special Use Permit

1. A special use permit may be revoked by the authorizing board, which has issued said permit. Said board shall hold a public hearing to consider whether or not the special use permit grantee has violated the terms and conditions of said special use permit. Said public hearing shall be

held only after the permit grantee has been notified by the Zoning Enforcement Officer of said violations, and has failed to correct said violations within the time period established by the Zoning Enforcement Officer to be not less than fifteen (15) days.

2. At least ten (10) days before said public hearing, a legal notice of said hearing shall be published in a newspaper of general circulation in the Town. Written notice of said hearing shall be mailed to the special use permit grantee by certified mail, return receipt requested, and by regular first class mail, directed to the last known address of the permit grantee.

SECTION 810 VIOLATION AND PENALTY

A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any building, structure or land or part thereof in a manner not permitted by an approved zoning permit or certificate or compliance.

B. It shall be unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.

C. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, repair or use of any building to violate any of the applicable provisions of this Zoning Law, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.

D. Any violation of this Section and/or this Zoning Law shall be punishable as set forth in Section 268 of the Town Law as amended.

E. The Zoning Enforcement Officer may request that the Town Attorney initiate the legal action necessary to enforce provisions of this Zoning Law. (amended 12/13/2010)

F. In addition to the foregoing remedies, the Town of Alabama may maintain an action for injunction to restrain, correct or abate any violation of this Zoning Law and/or maintain an action at law for damages sustained as a result of any violation of this Zoning Law. Damages may include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

SECTION 811 COMPLAINT OF VIOLATION

Whenever a violation of this Zoning Law occurs, any person may file a complaint in regard thereto. The Zoning Enforcement Officer shall properly record such complaint and immediately investigate it and take appropriate action.

SECTION 812 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

A. The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above mentioned activities.

B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Town is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified as follows:

- | | |
|----------------------------|--|
| Zoning Text amendments | - Town Board |
| Zoning District Amendments | - Town Board |
| Special Use Permits | - Authorizing Board (Planning Board or Town Board) |
| Site Plan | - Planning Board |
| Variances | - Zoning Board of Appeals |

When a project involves two or more separate zoning actions, the board (agency) having final (last) approval would typically be the lead agency. Nothing in this Section shall be interpreted to override the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete until a determination of no significance has been made or until a draft environmental impact statement is completed.

SECTION 813 PUBLIC HEARING AND NOTICE REQUIREMENTS

When a public hearing is required by this Zoning Law the requirements set forth in this Section as well as the applicable requirements of the NYS Town Law shall be followed. All costs for the public hearing including, but not limited to, the legal ad(s), required mail notifications, and posting of signs, shall be paid by the applicant.

A. Legal Advertisement

Each notice of a public hearing shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing for all zoning public hearings conducted by the Planning Board and Zoning Board of Appeals, and for those public hearings conducted by the Town Board under Section 809 (Special Use Permits). Public hearing notices conducted by the Town Board for zoning law amendments and zoning map amendments shall be published at least ten (10) days prior to the date of the hearing.

B. Notices To Surrounding Property Owners

Notice of a required public hearing shall be mailed by first class mail service to all owners of property located within two hundred and fifty (250) feet of the property which is the subject

of the application when the property involved is located in an R, C or I District, or five hundred (500) feet when the involved property is located in any other district, at least ten (10) days before the date of the hearing. For this purpose, the names and addresses of owners as shown on the latest assessment records of the Town of Alabama shall be used.

C. Sign Postings

At least ten (10) days prior to the date set for a public hearing on a conditional use, variance or site plan application, the applicant shall post their property with a sign(s) containing the following information:

1. The nature of the application being presented at the public hearing.
2. The date, time and location of the public hearing.
3. A sign shall be prominently displayed along each five hundred (500) feet of road footage, no closer than eight (8) feet and no further than fifteen (15) feet from the front property line. A minimum of one (1) sign is required along each road frontage.
4. The sign(s) required by this Section shall be made in accordance with specifications approved by the Town Board by separate resolution, and shall be provided to the applicant by the Town Clerk. Up to two (2) signs shall be provided to the applicant without charge, with each additional sign provided at a cost provided in the Town's fee schedule.
5. Failure by the applicant to maintain the required signs for the full ten day period prior to the date of the public hearing may result in the tabling of the application until the next regular meeting of the appropriate board. All signs posted pursuant to this section shall be removed by the applicant within five (5) days after the conclusion of the public hearing.
6. The sign shall be posted in such a manner so as to not blow or fall down and to not be obscured by grass, shrubs, snow, trees, vehicles etc. nor shall it impair traffic safety.

D. Recess or Adjournment of a Public Hearing

The Planning Board, Town Board or Zoning Board of Appeals may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or to persons it decides may be interested in the proposal being considered. Upon recessing or adjournment, the time and date when the hearing is to be resumed shall be announced. No further notice of publication will be necessary.

ARTICLE IX **AMENDMENTS**

SECTION 901 **INITIATING AMENDMENTS**

A. Initiating Amendments

The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Zoning Law.

B. Petitions

Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner and filed in triplicate, accompanied by the required fee.

C. State Environmental Quality Review (SEQR)

Amendments of the Zoning Law may be subject to the State Environmental Quality Review process (SEQR). The Town Board should identify the type of action the zone change is according to SEQR regulations. Depending on the size of the zone change and several other factors it may be a TYPE I or an UNLISTED action. To make a decision, the Board should consult Part 617 of Article 8 of Environmental Conservation Law (New York).

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed.

SECTION 902 **REFERRAL OF PROPOSED AMENDMENTS TO THE TOWN PLANNING BOARD AND COUNTY PLANNING BOARD**

A. Referral to Town Planning Board

All proposed amendments other than those requested by the Planning Board shall be referred to the Planning Board for its recommendation thereon. The Planning Board shall submit its report prior to the public hearing. Failure of the Planning Board to report within the required time shall be deemed to be approval of the proposed amendment.

B. Referral to County Planning Board

Where required by Section 239.m of the General Municipal Law or other applicable statute a proposed amendment shall be referred to the Genesee County Planning Board, which Board shall report its recommendations to the Town Board within thirty (30) days from the date of such referral. Failure of the Genesee County Planning Board to report within thirty (30) days may be construed to be approval by the Board. In the event that the Genesee County Planning Board disapproves the amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such contrary action.

SECTION 903 **HEARING ON PROPOSED AMENDMENT**

Before adopting any amendments to this Zoning Law, the Town Board shall conduct a public hearing and such public hearing shall be advertised in accordance with Section 812 of this Zoning Law.

SECTION 904 **PETITION PROTESTING AMENDMENT**

In case of a protest against such change signed by the owners of twenty per centum or more, either of the area of the land included in such proposed change, or of that immediately adjacent extending one hundred (100) feet therefrom or of that directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the Town Board.

SECTION 905 **PERIODIC REVIEW BY PLANNING BOARD**

From time to time, at intervals of not more than three (3) years, the Planning Board shall re-examine the provisions of the Zoning Law and the location of district boundary lines and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

ARTICLE X **LEGAL STATUS PROVISIONS**

SECTION 1001 **PROVISIONS ARE MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this Local Law shall be considered as the minimum requirements to promote and to protect public health, safety, comfort, convenience, prosperity, and other aspects of the general welfare, and in particular;

A. To promote the purposes set forth in the preamble to this Local Law and in the statements of legislative intent for the respective districts or groups of districts.

B. To provide a gradual remedy for existing conditions which are detrimental thereto.

SECTION 1002 **CONFLICT WITH OTHER LAWS**

Whenever any provision of this Local Law and any other provision of law, whether set forth in this Local Law or in any other law, ordinance, or regulation of any kind, impose overlapping or contradictory regulations over the use of land, or over the use or bulk of buildings or other structures, or

contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

SECTION 1003 **EXISTING ZONING PERMITS**

In all cases where:

- A. A zoning permit has been lawfully issued on the basis of an application showing complete plans for the proposed construction of a new building or other structure, or for an enlargement of an existing building or other structure which requires construction of foundation, and

- B. The adoption of this Local Law or for any subject amendment thereto, would make the completed building or other structures nonconforming or noncomplying construction may nevertheless be continued in accordance with the zoning permit and a certificate of compliance may be issued for such nonconforming or noncomplying building or other structure.

SECTION 1004 **EXISTING PRIVATE AGREEMENT**

This Local Law is not intended to abrogate or annul any easement, covenant, or any other private agreement.

SECTION 1005 **SEPARABILITY CLAUSE**

It is hereby declared to be the legislative intent that, if any provision or provisions of this Local Law or the application thereof to any building or other structure, or tract of land, are declared by a court of competent jurisdiction to be invalid or ineffective in whole or in part, or to be inapplicable to any person or situation, the effect of such decision shall be limited to the provision or provisions which are expressly stated in the decision to be invalid or ineffective, or the lot, building or other structure, or tract of land immediately involved in the controversy. All other provisions of this Local Law shall continue to be separately and fully effective, and the application of any such provision to other persons or situations shall not be affected.

SECTION 1006 **REPEALER**

The ordinance entitled “The Zoning Ordinance for the Town of Alabama,” adopted on March 22, 1972, together with all changes and amendments thereto, is hereby repealed and declared to be of no effect.

SECTION 1007 **EFFECTIVE DATE**

This Local Law was originally adopted by the Alabama Town Board on June 8, 1987 and amended on June 13, 2011, and this amendment shall take effect upon its filing with the Secretary of State.

ARTICLE XI **INCENTIVE ZONING**

SECTION 1100 **PURPOSE AND INTENT**

The purpose and intent of these provisions are to offer incentives to applicants who provide amenities that assist the Town to Implement specific physical, cultural and social policies in the Master Plan as supplemented by the local laws and ordinances adopted by the Town Board.

SECTION 1101 **DISTRICTS DESIGNATED FOR INCENTIVES**

All zoning districts are designated as eligible for zoning incentives. Incentives may be offered to applicants who offer an acceptable amenity to the Town in exchange for the incentive.

SECTION 1102 **AMENITIES FOR WHICH INCENTIVES MAY BE OFFERED**

- A. The following amenities may be either on or off the subject application:
 - 1. Affordable housing.
 - 3. Passive and active open space and related improvements.
 - 3. Parks.
 - 4. Child-care or elder-care facilities.
 - 5. Utilities.
 - 6. Road improvements.
 - 7. Health or other human-service facilities.
 - 8. Cultural or historical facilities.
 - 9. Other facilities or benefits to the residents of the community.
 - 10. Any combination of amenities and/or cash in lieu of any amenity(ies).

B. These amenities shall be in addition to any mandated requirements pursuant to other provisions of the Zoning Law.

SECTION 1103 **INCENTIVES PERMITTED**

The following incentives may be granted by the Town Board to the applicant on a

specific site:

- A. Decreases in required minimum lot sizes.
- B. Changes of use or zoning classifications.
- C. Changes in setbacks or height.
- D. Reduction to open space.
- E. Any other changes in the provisions of the Zoning Law.

SECTION 1104 CRITERIA AND PROCEDURE FOR APPROVAL

A. Applications for incentives in exchange for amenities shall be submitted to the Town Board. In order to preliminarily evaluate the adequacy of amenities to be accepted in exchange for the requested incentive, the following information shall be given by the applicant:

- 1. The requested incentive.
- 2. The proposed amenity.
- 3. The cash value of the proposed amenity.
- 4. A narrative which:

a. Describes the benefits to be provided to the community by the proposed amenity.

b. Gives preliminary indication that there is adequate sewer, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and amenity, if it is an on-site amenity, may place on these facilities beyond the demand that would be placed on them as if the district were developed to its fullest potential.

c. Explains how the amenity helps implement the physical, social or cultural policies of the Master Plan as supplemented by the local laws and ordinances adopted by the Town Board.

B. The Town Board shall review the proposal and inform the applicant whether or not the proposal is worthy of further consideration. If it is deemed worthy of further consideration, the applicant may then submit two (2) sketch plans to the Planning Board.

- 1. The first sketch plan:

a. The first sketch plan shall show how the site will be developed, with the amenity, if it is on-site, and the incentive. In addition to meeting the requirements of Section 808 of the Zoning Law, the plan shall also show existing development, property owners names and tax account numbers for all property within two hundred (200) feet of the property lines of the proposed project or such other distance as specified by the Town Board.

b. If the incentive will result in a setback or open space reduction, the drawing shall show this reduction in relation to the principal structures on-site and on adjacent properties, as well as property line locations.

2. The second sketch plan should meet the requirements of Section 808 of the Zoning Law, show existing development, property owners' names and tax account numbers for all properties within two hundred (200) feet of the property lines of the project site or such other distance as specified by the Town Board, but shall only show how the site would be developed exclusive of any amenity or incentive.

3. The applicant shall also submit such additional information and plans as may be Required by the Planning Board, including such additional information and plans as may be required under Section 808 of the Zoning Law, which in its judgment, are necessary in order to perform a through evaluation of the proposal.

C. The Planning Board will review the proposal and report to the Town Board with its evaluation of adequacy with which the amenity(ies)/ incentive(s) fit the site and how it relates to adjacent uses and structures. The Planning Board's review shall be limited to the planning design and layout considerations involved with the project review or such other issues as may be specifically referred by the Town Board. The Planning Board's report shall be submitted to the Town Board within seventy (70) days from the date of the Planning Board meeting at which the proposal is first placed on the agenda. This time period may be exceeded/suspended upon the consent of the applicant or for good cause by the Town Board.

D. The Town Board will review the Planning Board's report. The Town Board will notify the applicant as to whether it is willing to further consider the proposal. If the Town Board decides to further consider the proposal, it shall hold a public hearing thereon. For Town Board public hearings on incentive zoning requests, the Town Clerk shall give notice of the hearing at least five (5) days prior to the date of the hearing.

E. All applicable requirements of the State Environmental Quality Review (SEQR) Act shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sewer, water, transportation, waste disposal and fire protection facilities to:

1. First, serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal: and

2. Then, serve the on-site amenity and incentive, given the development scenario in subsection E 1. above.

F. Following the hearing and in addition to compliance with all SEQR requirements, the

Town Board shall, before taking action, refer the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other Town's Boards and officials for review and comment.

G. In order to approve an amenity/incentive proposal, the Town Board shall determine that The proposed amenity provides sufficient public benefit to provide the requested incentive. In no circumstances, however, shall the Town Board be compelled to approve any amenity/incentive proposal and it may deny any such proposal in its sole and absolute discretion. The Town Board may also impose such conditions upon its approval as it may deem appropriate to promote the health, safety and welfare of the community.

H. Following the approval by the Town Board, the applicant may proceed to apply for any additional permits or approvals as may be required by the Zoning Law or any other law or regulation, including, where appropriate, site plan approval under Article IX of the Zoning Law. No Such additional permit or approval by any board or agency of the town Shall materially alter any condition imposed by the Town Board under Paragraph G thereof and, in the event that any permit or approval by any agency outside the Town materially alters any such condition; the project may not proceed until and unless the Town Board approves of the modification.

SECTION 1105

CASH PAYMENT IN LIEU OF AMENITY

If the Town Board finds that a community benefit is not suitable on site or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified prior to the acceptance of the funds. Cash payments shall be made prior to the issuance of a building permit. Cash payments in lieu of amenities are not to be used to pay general and ordinary town expenses.

ZONING REGULATIONS

Town of Barre

ADOPTED: June 10, 1997
Revised : 2002

ARTICLE I

ENACTMENT AND INTENT

SECTION 100 TITLE

The title of this code is the "Town of Barre Zoning Ordinance, Orleans County, New York", and shall include this text and zoning map.

SECTION 101 PURPOSE

This Zoning Ordinance is adopted pursuant to the Town Law of the State of New York, to promote and protect the public health, safety and general welfare and in furtherance of the following related and more specific purposes:

1. To protect the open, rural and natural character of the land.
2. To preserve the town's natural resources and habitats.
3. To guide and regulate the orderly growth, development and redevelopment of the Town of Barre in accordance with a well-considered plan and with long-term objectives, principles and standards deemed beneficial to the interest and welfare of the people.

SECTION 102 CONFLICT WITH OTHER LAWS

Whenever the requirements of this Ordinance are in conflict with the requirements of any other lawfully adopted rules, regulations, codes, ordinances or local laws, the most restrictive of such rules, regulations, codes, or ordinances or those imposing the higher standards shall govern.

SECTION 103 VALIDITY AND SEVERABILITY

Should any section of or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so decided to be unconstitutional or otherwise invalid.

SECTION 104 CONSISTENCY WITH COMPREHENSIVE PLAN

The provisions and regulations of this Zoning Ordinance and interpretations thereof shall be made in accordance with the objectives of the Town's Comprehensive Plan.

SECTION 105 AMENDMENTS

A. Procedure

The Town Board may from time to time on its own motion, on petition or on recommendation of the Planning Board, and in accordance with the laws of the State of New York, amend, supplement or repeal the regulations, provisions or district boundaries of this Ordinance.

B. Filing of Petition

A petition to amend, change or supplement the text of this Ordinance or any zoning district as designated on the Zoning Map established herein shall be filed with the Town Clerk and accompanied by the appropriate fees. The Clerk shall transmit the documentation to the Town Board. A petition for a change to the Zoning Map shall contain a map which clearly describes the affected property and its boundaries and shall indicate the existing zoning district and the requested zoning change. In addition, every petition for a change to the Official Zoning Map shall contain an environmental assessment form completed and signed by the petitioner, or agent, in accordance with the procedures set forth in State Environmental Quality Review (SEQR) regulations.

C. Referral to Planning Board

Each proposed amendment, except those initiated by the Planning Board, shall be referred to the Planning Board for an advisory report. In reporting, the Planning Board shall fully state its reasons for recommending or opposing the adoption of such proposed amendment. The Planning Board may condition its approval, as may be appropriate, and shall state whether such amendment is in harmony with the Town's plan for land use. The Planning Board shall state its position relative to proposed zoning amendments in writing within forty-five (45) days of the receipt of all pertinent data from the Town Board. Absence of a reply from the Planning Board within the forty-five (45) day period shall indicate that the Board is in favor of the amendment.

D. Public Hearing; Notice; Referrals; Recording of Actions

Unless otherwise provided, the provisions of the Town Law of the State of New York pertaining to public hearings, official notices, referrals to the County Planning Board, and proper recording of zoning actions taken by the Town Board shall apply to all amendments to this Ordinance.

E. Disposition Final; Rehearing on Petition

The disposition of a petition for amendment by the Town Board shall be final and disapproval or denial of the proposed amendment shall void the petition. No new petition for an amendment which has been previously denied by the Town Board shall be considered by it, except for a vote to table or to receive and file, and no public hearing shall be held on such amendment within a period of one (1) year from the date of such previous denial unless the Planning Board shall submit a recommendation, with reasons stated therefore, certifying that there have been substantial changes in the situation which would merit a rehearing by the Town Board. Such rehearing may be granted only upon a favorable vote of a majority of the Town Board plus one (1).

SECTION 106 REPEALER

The text of the Barre Zoning Ordinance and the Zoning Map of the Town of Barre, Orleans County, New York, enacted by the Town Board of the Town of Barre and as the same from time to time have been amended, are hereby repealed and amended in their entirety as set forth below, superseding all previous enactments and amendments, and from their taking effect, all such previous enactments and amendments thereto shall be repealed.

SECTION 107 EFFECTIVE DATE

This Ordinance shall be in effect immediately upon adoption and the posting and filing of notice of adoption as required by State Law.

SECTION 108 ENFORCEMENT ACTIONS

- A. If the Code Enforcement Officer discovers a project commencing without the required permits, he shall undertake enforcement actions as authorized by this Ordinance and other provisions of NYS Law.
- B. The Town may maintain an action for a temporary restraining order, temporary injunction, or injunction to restrain, correct, or abate any violation of this Ordinance or any failure to comply with any of the provisions of this Ordinance.

SECTION 109 VIOLATIONS AND PENALTIES

Any person, firm or corporation who violates, disobeys, neglects or refuses to comply with any provision of this Ordinance shall be guilty of an offense, and upon conviction thereof, shall be subject to a fine of not more than \$250.00 or imprisonment for a period not more than six (6) months or both. Each day a violation is continued shall be deemed a separate offense.

SECTION 110 FEES

- A. Each application for a permit provided for by this Ordinance shall be accompanied by a fee, payable in cash or other form of security approved by the Town Attorney, according to the fee structure in effect at the time of application. Fees shall be established annually by resolution of the Town Board.
- C. A fee schedule shall be posted at the Town Clerk's office.

ARTICLE II

WORD USAGE AND DEFINITIONS

SECTION 200 WORD USAGE; ADMINISTRATIVE AGENCIES DEFINED

For the purpose of this Ordinance, certain words and terms used herein shall be defined as follows:

A. Word Usage

1. All words used in the present tense include the future tense.
2. All words in the plural number include the singular number and all words in the singular number include the plural number, except as to the number of permitted structures, unless the natural construction of the wording indicates otherwise.
3. The word "person" includes an association, partnership or corporation.
4. Unless otherwise specified, all distances shall be measured horizontally along the ground.
5. The word "building" includes the word "structure".
6. "Lot" includes the words "plot", "parcel", "tract" or "site".
7. The word "premises" includes a lot and all buildings or structures thereon.
8. To "erect", to "construct" and to "build" a building or structure each have the same meaning and also include to "excavate" for a building and to "relocate" a building by moving it from one location to another.
9. "Used" shall be deemed also to include "designated, intended or arranged to be used or occupied".
10. "Shall" is mandatory and not discretionary; "may" is permissive.

B. Administrative Agencies Defined

BOARD OF APPEALS - The Zoning Board of Appeals of the Town of Barre.

COUNTY PLANNING BOARD - The Planning Board of the County of Orleans.

DEPARTMENT OF HEALTH - The New York State Department of Health and any other health board or department established pursuant to the laws of the State of New York and having authority for the regulation of matters pertaining to the public health of the Town.

PLANNING BOARD - The Planning Board of the Town of Barre.

TOWN BOARD - The Town Board of the Town of Barre.

CODE ENFORCEMENT OFFICER - The official or officials designated by the Town Board of the Town of Barre to enforce the provisions of this Ordinance.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION - The New York State Department of Environmental Conservation.

SECTION 201 DEFINITIONS

ACCESSORY BUILDING OR STRUCTURE: A detached building or structure which: (1) is customarily incidental and subordinate to, and serves a principal building; (2) is subordinate in area, extent or purpose to the principal building served; (3) contributes to the comfort, convenience or necessity of occupants of the principal building use; and, (4) is located on the same parcel as the principal building. This definition shall include private garages.

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

ADULT BOOKSTORE: Any business enterprise having as a substantial portion of its stock-in-trade books, magazines, pamphlets, pictures, drawings, photographs, and audio/visual material of any kind, which are characterized by their emphasis on the description or depiction of areas of the anatomy customarily associated with sexual activities; or any business enterprise having a substantial area of its establishment devoted to the sale, rental and display of such material.

ADULT ENTERTAINMENT ESTABLISHMENT: Any business enterprise having as a substantial portion of its activity the presentation of live shows, motion-picture films or sound recordings, or similar visual or audio material, which are characterized by their emphasis on the description or depiction of areas of the anatomy customarily associated with sexual activities; or any business enterprise serving food and beer, wine or liquor whose entertainers or waiters and waitresses appear in a state that displays areas of the anatomy customarily associated with sexual activities; or any business enterprise that offers services requiring the client or customer to display said anatomical areas, except medical and health services establishments.

AGRICULTURAL PRODUCT PROCESSING FACILITY: A facility in which agricultural products, which are not produced on the premises, are altered for the purpose of canning, freezing, or other packaging, or are converted or incorporated into other products.

AGRICULTURAL PRODUCT DISTRIBUTION CENTER: A facility in which agricultural products, which are not produced on the premises, are graded, sorted, and/or packaged for the purpose of distribution by truck, rail, or other means.

AGRICULTURE (FARMING): The use of land for agricultural production purposes including, but not limited to: tilling of the soil, dairying, pasturage, animal and poultry husbandry, apiculture, arboriculture, horticulture, floriculture, viticulture, and accessory uses for packing or storing of products, provided that the operation of any such accessory uses shall be secondary to that of the principal agricultural production activities.

AIRPORT: Any area of land designed for the operation of general aviation aircraft, including hangars for storage and servicing, taxiways, landing strips and accessory uses.

AIRSTRIP, PRIVATE: An airport, as defined above, used solely for the benefit of the landowner and for emergency landing when necessary.

ALTERATIONS: As applied to a building or structure; (1) the change or rearrangement in the supporting members of a building or structure such as bearing walls, columns, beams or girders or in the exit facilities; (2) an enlargement of a building or structure, whether by extending on a side or by increasing in height; (3) the moving from one location or position to another; and (4) any alteration whereby a structure is adapted to another or different use, including any separation into rooms or spaces by the installation of non-bearing partitions.

ALTERNATIVE ENERGY SYSTEMS: Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure. Current examples include windmills, solar collectors and solar greenhouses, heat pumps, or other related devices. For the purposes of this Ordinance, this definition shall apply to individual residences and businesses. Commercial generating plants are excluded.

ANIMAL HOSPITAL: A place used for the care, grooming, diagnosis and treatment of sick, ailing, infirm or injured animals, and those who are in need of medical or surgical attention, and may include overnight accommodations on the premises for the treatment, observation and/or recuperation of such animals. It may also include boarding that is incidental to the primary activity.

ANTENNA: A structure or mount supporting a system of wires, rods, discs, dish, horns, or similar devices used for the transmission and/or reception of electromagnetic waves.

APARTMENT: A dwelling unit that is intended to be leased or rented. This term shall not be deemed to include a motel, hotel, boarding house or travel trailer.

APARTMENT BUILDING: A building arranged, intended or designed to provide three (3) or more dwelling units independent of each other, and which may have common hallways and/or entrances.

AUTOMOBILE SERVICE STATION OR FILLING STATION: A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade at retail, or where minor repair service and vehicle state inspections may be rendered.

AUTOMOBILE WRECKING: The dismantling or disassembling of used motor vehicles, mobile homes or manufactured housing; or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

BASEMENT: That space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of grounds adjoining the building. (See also "CELLAR.")

BED AND BREAKFAST: A single-family dwelling where overnight lodging, with or without the service of meals, is offered to transient guests for compensation. Such use shall be clearly incidental and secondary to the principal use of the dwelling. This term includes hostels and Tourist Homes establishments but does not include hotels, tourist courts, motor lodges, tourist cabins or similar terms.

BUFFER AREA: A continuous strip of land area covered with grass, vegetation, trees, fencing, embankments or berms, designed to provide a physical screen to limit visibility between uses and reduce the escape and/or intrusion of litter, fumes, dust, noise, or other noxious or objectionable elements.

BUILDING: Any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals, or property.

BUILDING CODE: The New York State Uniform Fire Prevention and Building Code.

BUILDING COVERAGE, PERCENT OF: The percent of building coverage of any lot shall be equal to one hundred (100) times the ratio of the gross horizontal area of all principal and accessory buildings that have roofs on them (including covered breeze ways, covered porches, covered cantilevered structures, etc.) measured from the exterior faces of the exterior walls but shall not include any structure (such as a patio or deck) that does not have a roof, divided by the horizontal area of the lot.

BUILDING GROUP: Any building, such as a store group, which is divided into separate parts by one (1) or more unpierced walls, extending from the ground up.

BUILDING HEIGHT: The vertical distance measured, in the case of a building with a flat roof, from the curb level to the level of the highest point of the roof beams, and in the case of a building with a pitched roof, from the curb level halfway between the top of the plate and the ridge, but not including chimneys, spires, mechanical penthouses, towers, tanks, and similar projections.

BUILDING LINE: A line formed by the intersection of a horizontal plane at an average grade level and a vertical plane that coincides with the exterior surface of the building or a projected roof or porch. The vertical plane will coincide with the most projected surface, excluding steps and overhanging eaves less than two (2) feet in width. All yard and setback requirements are measured to the building lines.

BUILDING PERMIT: A written permit issued by the Code Enforcement Officer documenting compliance with the Building Code.

BUILDING, PRINCIPAL: A building in which is conducted the main or principal use of the lot on which said building is situated.

BUSINESS: Includes the purchase, sale or any other transaction involving the handling, servicing or disposition of any article, substance or commodity, tangible or intangible, and includes offices, recreational and amusement enterprises and any operation where the above-described activities are conducted in return for remuneration of any type. For the purpose of this Chapter, "business" shall have the same meaning as commercial, and reference to commercial districts or zones shall be interpreted as referring to business districts.

CAMPING GROUND: A parcel of land used or intended to be used, let or rented for transient, vacation and recreational occupancy by travel trailers, campers, tents, recreational vehicles, motor homes and the motor vehicles propelling or carrying the same, but excluding mobile homes or manufactured housing designed for year-round occupancy or as a place of residence.

CAR WASH: A structure or building designed for the washing, waxing, or similar treatment of automotive vehicles as its principal function. A FILLING STATION having portable washing equipment shall not be deemed to be a car wash where such is an accessory service to the principal service of the FILLING STATION.

CARPORT: A roofed structure without enclosing walls, used for the storage of one or more motor vehicles.

CELLAR: That space of a building that is partly or wholly below grade level, which has more than two-thirds of its height, measured from floor to ceiling, below the average established curb level or finished grade of grounds adjoining the building.

CERTIFICATE OF COMPLIANCE: A certificate issued by the Code Enforcement Officer upon completion of the change in use of an existing building or upon the completion of a project requiring site plan approval. Said certificate shall acknowledge compliance with all requirements of the Town's Code, Ordinances, Local Laws, Variances and Special Permits in existence as of the date of the issuance of the Certificate of Compliance.

CERTIFICATE OF OCCUPANCY: A certificate issued by the Code Enforcement Officer upon completion of construction or alteration of a building. Said Certificate shall acknowledge compliance with all of the requirements of the Building Code.

CHURCH: Any structure used for worship or religious instruction including social and administrative rooms accessory thereto.

CLEAR SIGHT TRIANGLE: An area of unobstructed vision at street intersections defined by lines of sight between points at a given distance from the intersection of street right-of-way lines.

CLUB: Any organization catering to members and their guests, or a building or premises used for recreational, general, social, or athletic purposes not open to the general public. Clubs shall not be conducted primarily for gain, and vending stands, merchandising, or commercial activities shall not be conducted except as required for the membership and purposes of such club. For the purpose of this Ordinance, this term shall include: religious organizations; lodges; fraternal organizations; mutual benefit societies; snowmobiling, archery or hunting clubs; and other similar organizations.

CLUSTER DEVELOPMENT: A development of residential lots, some of which may contain less area than the minimum lot area required for the zone within which such development occurs, while maintaining the density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

CODE ENFORCEMENT OFFICER: The official designated to administer and enforce this Ordinance by granting or denying development permits in accordance with its provisions.

COMMON AREA: Space reserved for use by any and all residents of a housing development including, but not limited to, halls, stairways and landings in apartment houses.

COMMUNICATION TOWER: See "TELECOMMUNICATIONS FACILITY".

CONDOMINIUM: An ownership arrangement in which the interior of a housing unit is individually owned, while the exterior, including land and facilities (common elements), is owned in common by all homeowners in the development. The owner has title to the interior individual dwelling and a shared interest in the common elements.

CONFERENCE/ RESORT COMPLEX: Grounds or facilities used or designed for use by the public or for groups for meetings, conferences or recreational purposes. This definition shall not include membership clubs or public parks and playgrounds, as defined under "Public and Semi-Public Buildings and Grounds."

DAY CARE, CHILD: Care provided for three (3) or more children away from their own home for more than 3 hours but less than 24 hours per day per child, which care is provided with or without compensation or payment.

DAY CARE, HOME (FAMILY): Day care of not more than six (6) children provided in a family home.

DAY CARE CENTER: A place other than an occupied residence which provides day care of children; or, an occupied residence which provides group care for seven (7) or more children away from their own homes.

DEVELOPMENT: Any change made to improved or unimproved real estate including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, excluding normal maintenance to farm roads.

DRIVE-IN BUSINESS: A business providing service or delivery of goods to persons in a vehicle, the vehicle being driven to a position designed to provide that service or goods from inside a building. This term shall include drive-in outdoor theaters, drive-in banking, drive-in photo processing, fast food establishments, auto washing facilities, refreshment stands, and similar uses. This term shall not include retail fuel outlets or filling stations.

DRIVEWAY: A roadway providing a means of access from a street to a property or off-street parking area. An accessway may also be deemed a driveway.

DWELLING: Any building or portion thereof designed or used exclusively as a residence or sleeping place for one (1) or more persons. Structures which do not have permanent or approved sanitary facilities shall not be considered a residential dwelling.

SINGLE FAMILY: A detached residential dwelling designed for and occupied by one family only.

TWO-FAMILY: A detached building containing two dwelling units, each of which contains no more than three bedrooms, and which is designed for occupancy by not more than two families. A duplex is a two-family dwelling which is designed with a common wall. This definition shall not include buildings designed for occupancy by two families, in which one or more of the dwelling units contains more than four bedrooms.

MULTIPLE FAMILY: A residential building designed for or occupied by three or more families with the number of families in residence not exceeding the number of dwelling units provided. This definition shall include buildings designed for two family occupancy, in which one or more of the dwelling units contains four or more bedrooms.

SEASONAL DWELLING: A dwelling unit intended for occupancy only during certain seasons of the year, principally for recreational use by the owner, including hunting cabins, vacation cottages, summer cottages, and vacation lodges. This definition does not include recreational vehicles, travel trailers, or other vehicles.

DWELLING UNIT: One room or rooms connected together for owner occupancy or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities, designed for occupancy by one family.

EASEMENT: A specified (limited) use of private land for a public or quasi-public purpose.

ENVIRONMENTAL ASSESSMENT FORM (EAF): The form required by Town boards or agencies to assess the potential environmental impacts of a proposed action and to determine the environmental significance of a proposal.

ENVIRONMENTAL IMPACT STATEMENT: A written document, prepared in accordance with State Environmental Quality Review Act (SEQR) regulations, which documents the potential environmental impacts of a proposed action and alternative actions.

ESSENTIAL SERVICES AND UTILITIES: Erection, construction, alteration, operation or maintenance by municipal agencies or public utilities of telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities, but shall not include telecommunications facilities as defined herein.

EXCAVATION (Quarry, Sand Pit, Gravel Pit): A lot or land or part thereof used for the purposes of extracting stone, sand, or gravel for sale, as an industrial or commercial operation, but does not include the process of grading a lot preparatory to the construction of a building which has an approved zoning permit.

FAMILY: One or more persons, usually but not necessarily related by blood, marriage or adoption, living together as a single, not-for-profit housekeeping unit.

FARM: Any parcel used for agriculture as defined herein. It includes necessary farm structures within the prescribed limitations and the storage of equipment used. It excludes riding academies and livery or boarding stables and kennels.

FARM ANIMAL: This term shall include horses, cows, goats, sheep, pigs, rabbits, fowls, and other similar animals.

FARM BUILDING: Any building used for the housing of agricultural equipment, produce, livestock or poultry or for the incidental or customary processing of farm products, and provided that such building is located on, operated in conjunction with, and necessary to the operating of the farm as defined by this Article.

FARM LABOR CAMP: Any structure or combination of structures, building or buildings in which people are housed on a farmer's own land who are employed in the individual farmer's personal farming operation, on that farmer's land or land that he has under his control by a valid and existing lease.

FARM MARKET: Retail outlet consisting of permanent structure(s) for the display and sale of agricultural and nursery products primarily grown by the operator.

FENCE: A structure of wood, masonry, wire mesh or other material, which prohibits or inhibits unrestricted travel or view between properties or portions of properties or between the street or public right-of-way and a property.

FLAG LOT: A type of lot (commonly flag-shaped in configuration) in which street frontage is provided by a strip of land which is narrow in relation to the remainder of the lot and which extends from the main body of the lot to the street. A lot which does not physically front on or abut a street, but which has access to a street by means of an easement over other property, shall be deemed to be included in this definition. The portion of the lot that provides access to the interior portion of the lot shall not be less than twenty (20) feet in width, shall not be considered buildable and shall not be used in the calculation of the minimum lot area requirements for the zone district. The interior portion of the lot shall meet the minimum lot area requirements for the zone district.

FLAG LOT, ACCESS PORTION: The panhandle portion of a flag lot having at least twenty (20) feet in lot width and which provides an access corridor between a public road, street or highway right-of-way to the interior portion of a flag lot.

FLAG LOT, INTERIOR PORTION: That portion of a flag lot having sufficient lot area, width and depth to meet the minimum requirements of the zone district, and which excludes the access portion of the lot.

FLOOD HAZARD DISTRICT: Refer to the Town of Barre Local Law for Flood Damage Prevention, 1987, as authorized by the New York State Constitution, Article IX, Section 2, and Environmental Conservation Law.

FLOOR AREA: For the purposes of applying the requirements for off-street parking and loading, "floor area", in the case of offices, merchandising or service types of uses, shall mean the floor area used or intended to be used by tenants or for service to the public as customers, patron, clients or patients, including areas occupied by fixtures and equipment used for display or sales of merchandise. It shall not include areas used principally for non-public purposes such as storage, incidental repair, processing or packaging of merchandise, for shop windows, for offices incidental to the management or maintenance of stores or buildings, for toilet or rest rooms, for utilities or for dressing rooms, fitting rooms or alteration rooms.

FLOOR AREA, GROSS: The sum of the gross horizontal areas of several floors of a building or buildings, measured from the inside faces of exterior walls or from the inside faces of exterior walls or from the center line of walls separating two uses. For the purpose of applying the requirements for off-street parking and loading in the case of offices, merchandising or service types of uses, gross floor area shall not include areas used principally for non-public purposes such as storage, restrooms, fitting or alteration rooms or general maintenance, or enclosed pedestrian malls or corridors.

FLOOR AREA, HABITABLE: The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business. A floor used only for storage purposes is not a "habitable floor". All dimensions shall be measured from the interior faces of exterior walls or from the center line of the base of walls separating two dwelling units.

FRONTAGE: All of the property abutting one side of a road, street, or thoroughfare, measured along the road, street or thoroughfare line.

GARAGE, PRIVATE: An accessory building which provides for the storage of motor vehicles or household items by the occupants on the lot upon which it is erected, with no provision for repairing or servicing such vehicles for profit. A garage cannot serve as the principal use on any lot.

GARAGE, PUBLIC: Any garage other than a private garage, operated for gain, available on a rental basis for the storage of motor vehicles, recreational vehicles, boats or other tangible personal property.

HOME OCCUPATION: Any occupation or profession customarily conducted entirely within a dwelling or a building accessory to the dwelling by the inhabitants thereof, which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. A home occupation shall not be interpreted to include the following: commercial stables and kennels, restaurants, musical and dancing instruction to groups exceeding four (4) pupils, convalescent homes, mortuary establishments, garages or shops for the repair of motor vehicles.

For the purpose of these regulations, a "Home Occupation" shall not include: 1) Occasional sales of goods, such as yard sales, "Tupperware parties," and the like, provided that such sales do not occur on more than ten days during a single calendar year; or 2) A home office for a business that is primarily conducted outside of the home, provided that no clients or customers visit the office on a regular basis.

HOUSEHOLDER: An individual who resides in a dwelling unit and who owns, rents or otherwise has legal possession of such unit.

JUNK YARD: A lot, land or structure or part thereof used for the collection, storage, disassembly, packing, sorting, salvage, buying, selling or exchange of waste paper, rags, scrap, or discarded materials or machinery, or parts of any sort. More than two (2) abandoned, unregistered, disabled, dismantled, or partly dismantled vehicles, or pieces of equipment, allowed to remain unhoued on a premises for a period of more than thirty (30) days shall constitute a junkyard. Also, the unhoued storage, sale, or abandonment of waste paper, rags, scrap metal, discarded materials, or the collecting, dismantling, storage, salvaging or abandonment of machinery, appliances or vehicles not in operating condition shall constitute a junkyard. Automobile junk yards as defined in General Municipal Law, Section 136 shall be included within this definition.

KENNEL: Any lot or premises on which six (6) or more domestic animals more than six (6) months of age are housed, groomed, bred, boarded, trained, or sold.

LOADING SPACE, OFF-STREET: Space logically and conveniently located for public pickups and deliveries, scaled to delivery vehicles expected to be used and accessible to such vehicles.

LOT: A parcel of land considered as a unit, devoted to a certain use and occupied, or capable of being occupied, by a building or group of buildings that are united by a common interest or use, and the customary accessory uses and open space belonging to same.

LOT (CORNER): A parcel of land at the junction of, and fronting on two or more intersecting streets, roads, or thoroughfares.

LOT (THROUGH): An interior lot having frontage on two parallel or approximately parallel streets, roads, or thoroughfares.

LOT AREA: The square footage or acreage contained within the boundaries of a lot. Any portion of a lot included in a public road, street or highway right-of-way shall not be included in calculating lot area.

LOT DEPTH: The mean distance from the right of way line of the street to the rear lot line measured in the general direction of the side lines of the lot.

LOT FRONTAGE: The linear distance along a lot line which adjoins the road or highway which provides access to the lot.

LOT LINE: The property lines bounding the lot:

1. Lot Line, Front: The line separating the lot from a street right-of-way.
2. Lot Line, Rear: The lot line opposite and most distant from the front lot line.
3. Lot Line, Side: Any lot line other than a front or rear lot line.

LOT OF RECORD: A lot which is part of an approved subdivision recorded in the Office of the County Clerk or a lot described by metes and bounds, the description of which has been so recorded.

LOT WIDTH: The width of the lot between side lot lines at the front building line as prescribed by the front setback regulations.

MANUFACTURED HOUSING: A structure transportable in one or more sections, which in the traveling mode is eight foot six inches or more in width or forty body feet or more in length, and which is constructed to either H.U.D. Federal code or NYS building code.

MANUFACTURED HOME PARK: Any site, lot, field, plot, parcel or tract of land on which two (2) or more manufactured homes are parked or located and are occupied or intended for occupancy on the premises, and for which either the said premises or manufactured homes are offered to the public for a fee of any type, including cost sharing. This includes the rental of the said premises and/or the manufactured homes.

MINING: The use of an area of land to remove minerals, metals or other items of value from the ground for a profit, including gas and oil wells.

MOBILE HOME: A factory constructed dwelling constructed prior to June 15, 1976, which does not meet H.U.D. Federal code or N.Y.S. building code.

MODULAR HOME: A structure which is constructed according to the standards set forth in the state building code and, among other possibilities, may consist of two or more sections transported to the site in a manner similar to Manufactured Housing, or a series of panels or room sections transported on a truck and erected or joined together on the site. Modular homes may or may not have an integrated chassis.

MOTEL: A building or group of buildings, whether detached or in connected units, containing sleeping units or lodging facilities for transient guests. Accessory facilities such as restaurants, meeting rooms, retail business activities and other similar services, which solely accommodate the motel patrons and not the general public, are allowed. The term motel includes buildings designated as auto cabins, auto courts, motor lodges, tourist courts, hotels and similar terms.

MOTOR VEHICLE: Any vehicle designed to be propelled or drawn by power other than muscle power, except electrically driven wheelchairs being operated or driven by an invalid. This term shall include automobiles, trucks, buses, motorcycles, tractor-trailers, boats, motor homes, snowmobiles, all-terrain vehicles and garden and lawn tractors.

MOTOR VEHICLE REPAIR SHOP: A building, or portion of a building, arranged, intended or designed to be used for making repairs to motor vehicles for compensation.

MOTOR VEHICLE OR MANUFACTURED HOME SALES: An open area, other than a street, used for the display, sale, lease or rental of new or used motor vehicles or manufactured homes in operable condition and where no repair work is done.

NEIGHBORHOOD BUSINESS: Small commercial establishments, containing less than 6,000 square feet in gross floor area, catering primarily to nearby residential areas and providing convenience goods and services including but not limited to grocery stores, drug stores, beauty salons, barber shops, carry out dry cleaning and laundry pickup stations.

NON-CONFORMING BUILDING OR STRUCTURE: A building or structure legally existing at the time of enactment of this Ordinance or any amendment thereto, and which does not conform to the area or dimensional regulations of the district or zone in which it is situated.

NON-CONFORMING LOT: A lot of record existing at the date of the enactment of the Ordinance which does not have the minimum width, depth or area for the district in which it is located.

NON-CONFORMING USE: Any use of land, buildings or structures, legally existing at the time of enactment of this Ordinance, and which does not legally conform to the regulations of the district or zone in which it is located.

OFFICE BUILDING: A building in which office use comprises more than fifty (50) percent of the total floor area. This does not include home occupations, where offices are a secondary or incidental use.

OPEN SPACE: Area unoccupied by any building, structure or parking area, whether paved or unpaved.

OPEN STORAGE: An unenclosed area used for temporary or seasonal storage of vehicles, materials, building supplies, stock, or supplies for later use in conjunction with a permitted principal use, accessory use, or special permitted use.

PARKING SPACE: Space available for the parking of one motor vehicle and having an area of not less than 180 square feet (9 by 20 feet), exclusive of passageways and driveways providing access thereto.

PARKING OFF-STREET: An off-street area with an appropriate means of vehicular access to a street, intended for the temporary storage of vehicles.

PERMITTED USE: A land use listed in the Zoning District regulations of this Ordinance as permitted.

PINBALL OR VIDEO GAME ARCADE: Any indoor place or enclosure in which is maintained or operated, for the amusement, patronage, or recreation of the public, three (3) or more coin-controlled amusement devices, including the types commonly known as pinball, video games, and foosball.

PRINCIPAL BUILDING: A building in which is conducted the main or principal use of the lot on which said building is located.

PRINCIPAL USE: The main or primary purpose for which a building, structure or lot is to be used.

PROFESSIONAL OFFICES: The office or place of business where professional services are offered and does not involve the sale of goods, or the keeping of a stock in trade. Professional offices include but are not limited to, medical doctors, dentists, surgeons, attorneys, architects, engineers, planners, accountants, real estate brokers, insurance brokers, psychologists and chiropractors.

PROFESSIONAL SERVICES: A specific activity performed by a qualified person(s) which requires training and/or specialized study.

PUBLIC AND SEMI-PUBLIC USES: This definition is intended to include, but not be limited to, any one (1) or more of the following uses, including grounds and accessory buildings necessary for their use:

1. Cemeteries and associated uses.
2. Churches, places of worship, parish houses and convents.
3. Public or semi-public parks, playgrounds and recreational areas when authorized or operated by a governmental authority, school, or religious institution.
4. Nursery schools, elementary schools, high schools, colleges, or universities.
5. Public libraries and museums.

6. Not-for-profit fire, ambulance and public safety buildings.
7. Administrative office buildings and related facilities operated by public agencies.
8. Proprietary or not-for-profit hospitals for the care of human beings, nursing homes, convalescent homes for adults, or homes for the aged as the same are defined under the Public Health Law or the Social Services Law of the State of New York, provided that they are duly licensed by the State of New York.
9. Not-for-profit membership corporation or club established for cultural, social, or recreational purposes.
10. Day care centers approved by the New York State Department of Social Services.

PUBLIC MARKET: A site which provides space, on a rental or fee basis, for growers to sell agricultural products to the general public.

RECREATION OR AMUSEMENT FACILITY: A facility used or designed to be used for either public or private (commercial) recreational purposes. Outdoor facilities include, but are not limited to, golf courses, driving range, miniature golf, and race tracks. Indoor facilities include, but are not limited to, bowling alleys and health clubs. This definition shall not include stables or riding facilities or parks or playgrounds operated by a government agency or non-profit organization for public use.

RECREATIONAL VEHICLE: A vehicle type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic types are:

A. Travel Trailer

A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and of a body width of no more than eight feet and six inches (8'6"), excluding awnings, and a body length of no more than forty (40) feet when factory equipped for the road.

B. Tent Camper

A portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle.

C. Truck Camper

A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck campers are of two basic types:

1. Slide-in camper - A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.
2. Chassis-mount camper - A portable unit designed to be affixed to a truck chassis.

D. Motor home - A vehicular unit built on a self-propelled motor vehicle chassis.

RESIDENTIAL CONVERSION: The conversion of the use of a building from non-residential to residential use or the structural alteration of an existing residential structure to increase the number of residential units in the structure.

RESTAURANT: Any establishment, however designated, at which food or drink is sold for consumption to patrons seated within an enclosed building or on the premises.

RESERVOIR SPACE: Any temporary storage space for a vehicle waiting for service or admission. Such space shall be in addition to drives, aisles or parking space required by this Ordinance. One (1) reservoir space shall be twenty-four (24) feet long and ten (10) feet wide.

RETAIL FUEL OUTLET: Any establishment that sells gasoline, diesel, kerosene, propane, or similar fuels to the public. This includes automobile service stations, convenience stores, car washes or any other facility that sells fuels.

RIDING STABLE: Any use housing animal livestock, such as horses, and providing such livestock to the public for riding on a pay per use or fixed fee basis.

RIGHT-OF-WAY: Land set aside for use as a street, alley, or other means of travel.

RIGHT-OF-WAY LINE: The line determining the street or highway limit of public ownership. For the purposes of this Ordinance, the right-of-way line and the street line shall have the same meaning.

ROAD, ARTERIAL: A road, normally a State Highway, which serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

ROAD, COLLECTOR: A road which serves or is designed to carry traffic from minor streets to the arterial street system.

ROAD, MINOR (LOCAL): A street or road used primarily to provide access to abutting properties.

ROADSIDE STAND: Retail outlet, consisting of non-permanent structures (movable and temporary), for the sale of agricultural products grown principally by the operator during the harvest season. (See also "Farm Market.")

ROOMING HOUSE: A dwelling other than a hotel, motel or tourist home, where more than two (2) persons are housed or lodged for hire with or without meals. A rooming house is distinguished from a tourist home in that it is designed to be occupied by longer term residents as opposed to overnight or weekly guests.

SATELLITE DISH ANTENNA: Shall mean a combination of: an antenna whose purpose is to receive communications or other signals from orbiting satellites and other extraterrestrial sources; and a low noise amplifier whose purpose is to carry signals into the interior of a building, but shall not include a telecommunications facility as defined herein.

SEASONAL SERVICE RESTAURANT: A restaurant which operates only seasonally. Included are coffee shops, lunch counters, and ice cream parlors.

SERVICE ESTABLISHMENT: A business primarily involved in the provision of services, rather than goods, to other businesses or to the general public.

SETBACK: The horizontal distance between the street line, rear or side lines of the lot and the front, rear or side lines of the building. All measurements shall be made at right angles to or radially from the lot lines to the building lines. Setbacks from street lines to building lines are defined as "front setbacks". Setbacks from side lot lines are "side setbacks". Setbacks from rear lot lines are "rear setbacks".

SHOPPING CENTER: A group of stores, shops and similar establishments occupying adjoining structures or two (2) or more commercial buildings located on a single lot or adjacent lots, with such buildings developed as part of a single integrated development with a common architectural design.

SIGHT DISTANCE: The maximum extent of unobstructed vision along a street from a vehicle located at any given point on the street.

SIGN: Any device, structure, or object for visual communication that is used for the purpose of bringing the subject thereof to the attention of others.

SIGN AREA: The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines the said sign.

SITE PLAN: A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, right-of-ways, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

SITE PLAN, FINAL: A complete and exact subdivision or site plan, prepared for official recording as required by statute, to define property rights and proposed streets and other improvements.

SITE PLAN, PRELIMINARY: A tentative subdivision or site plan, in lesser detail than a final plan, showing approximate proposed streets and lot layout as a basis for consideration prior to preparation of a final plan.

SITE PLAN, SKETCH: An informal plan, not necessarily to scale, indicating salient existing features of a tract and its surroundings, and the general layout of the proposed subdivision or site.

SITE PLAN REVIEW: A review and approval process, conducted by the Planning Board, whereby Site Plans are reviewed utilizing criteria stated in this Ordinance.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade.

SPECIAL PERMIT USES: Those particular uses which are specifically permitted in a given district only when conditioning criteria enumerated in this Ordinance are met.

STREET LINE: See "RIGHT-OF-WAY LINE."

STRUCTURE: Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. For example, structures include buildings, mobile homes, walls, fences, signs, sheds, billboards and poster panels, docks, and/or similar construction types.

SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent (50%) of the assessed value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred.

SWIMMING POOL: Any body of water, or receptacle for water, having a capability of a depth of eighteen (18) inches or more at any point, used or capable to be used for swimming, bathing, or wading, and permanently installed or constructed either above or below ground.

TAVERN: Any establishment, licensed by the State of New York, that engages in the sale for on premise consumption of alcoholic and non-alcoholic beverage(s).

TELECOMMUNICATIONS FACILITY: Any commercial equipment used in connection with the provision of wireless communication services, including cellular telephone services, personal communications services, radio and television broadcast communications and private radio communications services, and are regulated by the Federal Communications Commission, both in accordance with the Telecommunications Act of 1996 and other federal laws. A Telecommunication Facility shall include monopole, guyed, or lattice-work tower(s), as well as antenna(s), switching stations, principal and accessory telecommunication equipment and supporting masts, wires, structures, and buildings.

TEMPORARY USE: An activity or use conducted for a specified limited period of time, not exceeding six months. This term shall include those uses incidental to construction projects, festival tents/refreshments stands, temporary real estate sales offices incidental to a subdivision project, and similar type uses.

TOWNHOUSE: An independent single family dwelling unit which is one (1) of a series of dwelling units, having a common party wall between each adjacent unit, each with private outside entrance.

USE: The specific purposes for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

VARIANCE: A variance is any departure from the strict letter of these regulations granted by the Zoning Board of Appeals as it applies to a particular piece of property. Variances run with the land and are not particular to any one landowner.

WHOLESALE ESTABLISHMENT: A business which is primarily involved in sales to other businesses, either directly or as a broker, rather than to the general public.

WINDMILL: An alternative energy device which converts wind energy by means of a rotor to mechanical or electrical energy. A wind generator may also be deemed a windmill.

YARD: An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.

YARD, FRONT: The space within and extending the full width of the lot from the front lot line to the part of the principal building which is nearest to such front line. (See also "Setback-Front")

YARD, REAR: An open space extended across the entire width of the lot between the rear wall of the principal building and the rear line of the lot, and unoccupied except for accessory building and open porches. (See also "Setback-Rear")

YARD, SIDE: An open space on the lot with a principal building between the principal building and the side line of the lot extending through from the front yard to the rear yard, into which space there shall be no extension of building parts other than two (2) feet for rain water leaders, window sills, and other such fixtures and open steps. (See also "Setback-Side")

YARD SALE: The temporary displaying of household items and clothing for sale on a yard, porch or in a barn or garage. This term shall include garage sales, barn sales, porch sales, tag sales and other sales similar in nature.

ZONING CERTIFICATE OF COMPLIANCE: See "Certificate of Compliance."

ZONING PERMIT: A document issued by the Code Enforcement Officer authorizing the use of lots, structures, uses of land and structures, and the characteristics of the uses in conformity with this Ordinance.

ARTICLE III

PERMITS AND PROCEDURES

SECTION 300 PERMITS REQUIRED

No use or structure shall be established, erected, nor land developed until a Zoning Permit has been issued by the Code Enforcement Officer, who shall issue such permits in accordance with regulations in the Ordinance.

SECTION 301 ZONING PERMIT TYPES

Under the terms of this Ordinance, the following types of Zoning Permits may be issued:

- A. **Permitted Use.** A zoning permit for a permitted use may be issued by the Code Enforcement Officer on his own authority. The zoning permit may be issued in conjunction with, and administered using the same form as, a building permit.
- B. **Site Plan Approval.** A zoning permit for a permitted use, other than a one or two family dwelling, farm use, or an accessory use associated with a single or two family dwelling or farm use, may be issued by the Code Enforcement Officer after site plan approval from the Planning Board, as more fully described in Article X.
- C. **Special Permit Uses.** A zoning permit for a special permit use may be issued by the Code Enforcement Officer after special permit approval and site plan approval from the Planning Board, after a public hearing, as more fully described in Article IX.
- D. **Zoning Permit After a Request for Variance.** A Zoning Permit for a use or structure which requires a variance may be issued by the Code Enforcement Officer upon order of the Zoning Board of Appeals, after a public hearing, as more fully described in Article VIII.

SECTION 302 APPLICATION PROCEDURE AND REQUIRED INFORMATION

A. Application

Application for a zoning permit shall be made with the Code Enforcement Officer on forms approved by the Town Board. Forms shall be made available at the Offices of the Code Enforcement Officer and the Town Clerk.

B. Information

- 1. All information on the application form shall be completed.
- 2. In addition, two copies of a property map shall be submitted with all applications. The map shall be either:

- a. Sketch Map: A sketch map is required with all applications for a zoning permit for one or two family dwellings, their customary accessory uses, or farm use. The sketch map shall be drawn to scale and show the dimensions and location of the lot, exact size and location of all existing and proposed buildings on the lot, proposed location of water and sewage disposal systems, parking areas and driveway location, natural water courses, ponds, surface drainage patterns or location of existing or proposed easements; or
 - b. Site Plan: A site plan is required with applications for all other uses. The requirements and procedures for site plan approval are in Article X.
- C. Approval of Water and Sewage Disposal Systems: Evidence of approval of the water supply and the sewage disposal system plans by the Orleans County Health Department or its agent, or design plans signed by a licensed engineer, shall be submitted at the time of application. Applications lacking such information shall not be accepted.
- D. Evidence of Property Ownership or Intent to Purchase. Copies of deeds, titles, purchase agreements, or other proof of ownership or intent to purchase shall be attached to an application before it will be accepted.
- E. Licenses: Any use currently licensed by Federal, State, County or Town Agencies and already operating within the Town shall present evidence of currently valid licenses before any expansion permits are considered.
- F. Fee: The appropriate non-refundable fee established by the Town Board in its fee structure shall be collected at the time of application. This fee structure shall be filed and posted at the Office of the Town Clerk.

SECTION 303 ZONING PERMIT GRANTED

When all requirements of this Ordinance have been met, the Code Enforcement Officer shall issue a Zoning Permit and return one approved copy of the map to the applicant no later than fifteen (15) days after approval. The Code Enforcement Officer shall file one copy of the approved permit in his office.

SECTION 304 TERMINATION OF PERMIT

- A. Permits issued pursuant to this Article shall expire in twelve (12) months unless the project is completed.

- B. The Code Enforcement Officer may grant an extension for time of completion, with the approval of the Planning Board, and include any conditions or requirements deemed by the Planning Board to be necessary or desirable. Applicants shall justify the need for the proposed extension. Unless such an extension is requested and approved, further work as described in the canceled permit shall not proceed until a new permit has been obtained.
- C. If a project is not initiated within six (6) months of the issuance of the permit, the permit issued shall be considered null and void.

SECTION 305 CERTIFICATE OF COMPLIANCE

- A. It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a Certificate of Compliance shall have been issued therefore by the Code Enforcement Officer stating that the proposed use of the building or land conforms to the requirements of this Ordinance.
- B. Failure to obtain a Certificate of Compliance shall be a violation of this Ordinance and punishable as provided by Article VIII.
- C. Within seven (7) days after the completion of the change in use of a building or parcel of land, the applicant shall so notify the Code Enforcement Officer stating that such action has been completed. Within fifteen (15) days of the receipt of this letter, the Code Enforcement Officer shall conduct a final inspection of the premises to determine whether the new use complies with the requirements of this Ordinance. If the Code Enforcement Officer determines that said building or use complies with the provisions herein, he shall issue a Certificate of Compliance. If it is determined that the provisions specified herein are not fully complied with, the Code Enforcement Officer shall specify the violations and the terms and conditions for remedying these violations. A Certificate of Compliance shall not be issued until such violations are corrected.
- D. No non-conforming building or use shall be maintained, renewed, changed or extended without a Certificate of Compliance having first been issued by the Code Enforcement Officer. The Certificate of Compliance shall state specifically wherein the non-conforming use differs from the provisions of this Ordinance.
- E. The Certificate of Compliance may be issued at the same time, and may be administered using the same form as, the Certificate of Occupancy issued pursuant to the NYS Uniform Fire Prevention and Building Code.

ARTICLE IV

ESTABLISHMENT AND DESIGNATION OF ZONING DISTRICTS

SECTION 400 ESTABLISHMENT OF DISTRICTS

The Town of Barre is hereby divided into zoning districts as hereinafter set forth and as the same may be, from time to time, amended.

AR	Agricultural/ Residential
R-1	Residential
B	General Business
LI	Light Industrial
P.D.	Planned Light Industrial/ Commercial Development
F	Flood Hazard Overlay District

SECTION 401 ZONING MAP

- A. There shall exist only one (1) official zoning map which shall be kept in the Office of the Town Clerk, and it shall bear certification that it is the official zoning map of the Town of Barre and its date of adoption. Said zoning map shall show the boundaries of the zoning districts herein established, and, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance.
- B. Said zoning map shall be on material suitable for reproduction. Copies of this map, which may from time to time be published and sold, would be accurate only as of the date of their printing and shall bear words to that effect.
- C. Changes made in zoning district boundaries, or other matters portrayed on the zoning map under the provisions set forth herein, shall be permanently affixed to the zoning map promptly after an amendment has been approved by the Town Board and shall convey information as to the date and nature of the change. No amendment to this Ordinance, which involves matters portrayed on the zoning map, shall become effective until such change and entry has been made on said zoning map and has been attested to by the Town Clerk.

SECTION 402 INTERPRETATION OF DISTRICT BOUNDARIES

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map of the Town of Barre the following rules shall apply:

- A. District boundaries indicated as approximately following the center lines of streets or highways shall be construed as following such center lines.
- B. District boundaries indicated as approximately following lot lines shall be construed as following such lot lines.

- C. District boundaries indicated as being approximately parallel to the center lines or right-of-way lines of streets or highways shall be construed as being parallel thereto and at such distances therefrom as indicated on the zoning map. If no distance is given, such dimensions shall be determined by the use of the scale shown on said zoning map.
- D. District boundaries indicated as approximately following a stream, lake or other body of water shall be construed to follow the center lines of such stream or other body of water.
- E. Boundaries indicated as parallel to or extensions of features indicated in subsections A through D above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.
- F. Where physical or cultural features on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections A through E above, the Code Enforcement Officer shall request the Zoning Board of Appeals to render its interpretation.

SECTION 403 APPLICATION OF REGULATIONS

The regulations set by this Ordinance shall be the minimum regulations within each district and shall apply uniformly to each class or kind of structure or use of land, except as hereinafter provided:

- A. No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all the regulations herein specified for the district in which it is located.
- B. No building or structure shall hereafter be erected or altered which:
 - 1. Exceeds the height limitation for any structure within a specified district;
 - 2. Accommodates or houses a greater number of dwelling units than is permitted within a specified zoning district;
 - 3. Occupies a greater percentage of lot area than is permitted by the zoning schedule; or
 - 4. Has narrower or smaller yards or other open spaces than herein required, or in any other manner contrary to the provisions of this Ordinance or the requirements of the New York State Uniform Fire Prevention and Building Code.
- C. No part of a yard or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with the regulations set forth herein, shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building except as provided in Section 601 and 602.
- D. No yard or lot existing at the time of enactment of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet or exceed the minimum requirements established herein.

**ARTICLE V
DISTRICT REGULATIONS**

SECTION 500 AGRICULTURAL/ RESIDENTIAL DISTRICT (AR)

A. PURPOSE

The purpose of the AR Agricultural/ Residential District is to protect agricultural lands and uses from incompatible uses and development; to maintain an open rural character of the community; to assure compatible types and densities of development; to provide for low density, rural development on lands where public sewers and water service do not exist and are not envisioned in the near future; and to protect the natural environment.

B. PERMITTED USES

1. Single family dwellings, not to exceed one principal structure per lot
2. Agriculture (farming) as defined herein.
3. Storage, packing and sale of field, garden, orchard, nursery, and vineyard crops, but not including agricultural product processing facilities or distribution centers.
4. Roadside Stands, under the following conditions:
 - a. The stand shall be set back not less than thirty (30) feet from the edge of the right-of-way line.
 - b. Sufficient land area shall be provided to accommodate off-street parking for not less than three (3) vehicles on site.
 - c. Such stands (including signs associated with such uses) shall be removed and appropriately stored within ten (10) days of the end of the harvest season.
5. Seasonal dwellings, provided that all applicable provisions of the NYS Uniform Fire Prevention and Building Code are met.

C. PERMITTED ACCESSORY USES

1. One (1) private detached garage or carport with a maximum capacity of eight hundred (800) square feet for the parking of automobiles or storage of property belonging to residents on the premises. Detached garages shall be located to the rear of the front building line of the principal building and may be located in a side yard with a minimum side yard setback of fifteen (15) feet.
2. Customary accessory structures serving residential uses including but not limited to private swimming pools, storage buildings, greenhouses, pet shelters and fireplaces.
3. Customary farm accessory buildings for the storage or packing of products or equipment, but not including agricultural product processing facilities or distribution centers.
4. The keeping, breeding, and raising of farm animals in association with a residential use, subject to the following restrictions:

- a. No stable, similar animal housing or confining areas shall be allowed on lots of less than two (2) acres.
 - b. No structure housing such animals shall be located closer than fifty (50) feet to any street or property line.
 - c. Not more than one (1) adult or fully grown horse, cow, beef cattle, sheep, goat or other four-legged domestic-type farm animal, or combinations thereof, may be kept per acre of land in the residential parcel.
 - d. Not more than a total of any combination of twelve (12) adult or fully grown chickens, ducks, geese or other fowl or birds of any type may be kept per acre of land in the residential parcel.
- 5. Yard sales, provided that not more than three (3) such sales shall occur during one (1) calendar year, and that the duration of such sales do not exceed three (3) consecutive days.
 - 6. Off-street parking, fencing and signs in accordance with the provisions of this Ordinance.
 - 7. Other accessory uses not specified herein may be approved, provided that the Zoning Board of Appeals renders an interpretation indicating that such uses are clearly accessory to the permitted principal use and consistent with the purpose and intent of the zone district and this Ordinance.

**D. USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD
(SUBJECT TO SPECIAL PERMIT REGULATIONS, ARTICLE VII)**

- 1. Home Occupation
- 2. Private or commercial airport or airstrip
- 3. Animal Hospital
- 3. Bed and Breakfast Establishment
- 4. Campground
- 5. Cluster residential development
- 6. Conference/ Resort complex
- 7. Essential Services and Utilities
- 8. Excavation and Mining
- 9. Farm Labor Camp
- 10. Farm Markets
- 11. Kennel
- 12. Manufactured Home Park
- 13. Public and Semi-Public Use, including Day Care Center
- 14. Stable or Riding Academy
- 15. Telecommunications Facility
- 16. Two Family Dwelling

E. SPECIFICATIONS

Setback Requirements:

- Front: 75 Feet (measured from right-of-way line)
- Side: 15 Feet
- Rear: 15 Feet

Lot Width: 200 Feet
Minimum Lot Size: 40,000 Square Feet
Building Height: 35 Feet except Agricultural Storage Facilities and Airport Structures.
Maximum Building Coverage: 25%

SECTION 501 R-1 RESIDENTIAL DISTRICT

A. PURPOSE

The purpose of the R-1 Residential District is to provide a stable environment for rural residential development, free from incompatible uses.

B. PERMITTED USES

1. One Family Dwellings
2. Two Family Dwellings
3. Agriculture (farming) as defined herein

C. PERMITTED ACCESSORY USES

All accessory uses permitted in the AR District shall be permitted in the R-1 District.

D. USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL USE REGULATIONS, ARTICLE VII)

1. Bed and Breakfast Establishment
2. Cluster Residential Development
3. Essential Services and Utilities
4. Home Occupations
5. Manufactured Home Park
6. Public & Semi-Public Uses, including Day Care Centers

E. SPECIFICATIONS

Setback Requirements:

Front: 75 Feet (measured from right-of-way line)
Side: 15 Feet
Rear: 15 Feet

Lot Width: 150 Feet
Height: 35 Feet
Minimum Lot Size: 30,000 Square Feet
Maximum Building Coverage: 30%

SECTION 502 GENERAL BUSINESS DISTRICT (B)

A. PURPOSE

The purpose of the General Business District is to provide for business establishments serving the needs of area residents, especially retail and service businesses, as well as to accommodate residential development.

B. PERMITTED USES

1. One Family Dwelling
2. Two Family Dwelling
3. Agriculture (farming) as defined herein.
4. The storing, packing and sale of field, garden, orchard, nursery, and vineyard crops.
5. Farm Markets
6. Roadside Stands, subject to the requirements of Section 500.B 5
7. Retail business establishments which are clearly of a neighborhood service character such as, but not limited to, the following:
 - a. Stores selling groceries, meats, baked goods, and other such food items.
 - b. Drugstores and variety stores.
 - c. Stationery, tobacco and newspaper stores and confectionery stores.
 - d. Clothing, variety and general merchandise stores.
 - e. Hardware, appliance, radio and television sales and service.
8. Personal service establishments which shall include but not be limited to, the following:
 - a. Barber and beauty shops.
 - b. Shoe repair and fix-it shops.
 - c. Dry cleaning stores and Laundromats.
9. Business and professional offices, including, but not limited to, medical, dental, real estate, and accounting.

10. Assembly halls and theaters, excluding drive-in theaters.
11. Newspaper printing, including incidental job printing.
12. Funeral parlors.
13. Custom shops, including but not limited to printing, electrical, heating, plumbing, or woodworking.
14. Building supply and farm equipment stores.
- 15.. Wholesale establishments provided that all sales activities are conducted in a completely enclosed building.
16. Commercial greenhouse or nursery.
17. Assembling, converting, altering, finishing, cleaning, or any other processing of products, provided that:
 - a. Goods so produced or processed are to be sold at retail, exclusively on the premises;
 - b. Space used for such purposes shall not occupy more than 20 percent of the area devoted to retail sales, shall be clearly incidental to such retail use and shall be fully concealed from any street;
 - c. Not more than two (2) persons shall be engaged in such production/ processing at any one time.
18. Machine tool sales, rental or service.
19. Commercial storage buildings providing space for rent.
20. Business service establishments, including, but not limited to accounting, computer services and repairs, and consulting.
21. Veterinary animal clinics or offices with interior operations only.
22. Restaurant not serving alcoholic beverages
23. Recreation and amusements facility
24. Bed and breakfast establishment
- 25.. Other business uses which, in the opinion of the Zoning Board of Appeals, are similar in nature and scale to those permitted above.

C. PERMITTED ACCESSORY USES

1. All accessory uses permitted in the AR District shall also be permitted in the B District.
2. Private garages and storage buildings which are necessary to store any vehicles, equipment or materials on the premises and which are used in conjunction with a permitted business use.
3. Off-street parking, loading and unloading facilities, signs, fences and landscaping subject to the provisions of this Ordinance.
4. Restaurants, cafeterias, swimming pools, newsstands, pharmacies, barber shops, hairdressers, gift shops, and other personal service shops for the convenience of guests may be permitted as accessory uses to hotels or motels. With the exception of an identifying sign for the restaurant, no external evidence of such internal commercial activities is permitted.
5. Other business uses which, in the opinion of the Zoning Board of Appeals, are similar in nature and scale to those permitted above.

**D. USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD
(SUBJECT TO SPECIAL PERMIT USE REGULATIONS, ARTICLE VII)**

1. Animal Hospital (with outdoor facilities)
2. Drive-in Business
3. Essential Services and Utilities
4. Excavation or Mining
5. Kennel or Animal Hospital (with outdoor runs or other facilities)
6. Manufactured Home Park
7. Motel or Hotel
8. Motor Vehicle, Manufactured Housing, or Boat Sales
9. Motor Vehicle Service Station or Auto Repair Shop
10. Multiple Family Dwelling or Development
11. Public and Semi-Public Buildings or Uses
12. Recreation or Amusement Enterprise
13. Retail Fuel Outlet
114. Restaurants and/or taverns serving alcoholic beverages

E. OTHER PROVISIONS AND REQUIREMENTS

1. Buffer Strip: Commercial structures shall provide a natural buffer strip to be perpetually maintained so as to provide visual screening and separation between commercial and residential uses.
2. Refuse Containers: Commercial structures shall provide a commercial type refuse container on site. Such containers shall be placed on concrete or stone areas and visually screened, and shall provide rodent control.
3. Residential Lot Line: No commercial structure shall be permitted within fifty (50) feet of the nearest lot line of any residential district.

4. Off-street parking, loading and unloading facilities shall be subject to the provisions of Section 601 and 602 of this Ordinance.
5. Signs shall be subject to the requirements of Section 600.

F. SPECIFICATIONS

Setback Requirements:

Front:	75 Feet (measured from right-of-way line)
Side:	15 Feet
Rear:	50 Feet
Lot Width:	200 Feet
Height:	35 Feet
Minimum Lot Size:	40,000 Square Feet
Maximum Building Coverage:	35%

SECTION 503 LIGHT INDUSTRIAL DISTRICT (LI)

A. PURPOSE

The purpose of the Light Industrial District is to provide for light manufacturing, assembly and storage type facilities.

B. PERMITTED USES

1. Agriculture
2. Scientific research or experimental development of materials, methods or products including engineering and laboratory research.
3. Administrative, educational and other related activities and facilities in conjunction with a permitted use.
4. Manufacture or assembly of electric, electronic or optical instruments or devices.
5. Manufacturing, assembling, fabricating or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stone.
6. Agricultural product processing, including manufacturing of food products, pharmaceuticals and the like but not including the production of fish, meat or dairy products, or fermented foods such as sauerkraut, vinegar, or the like, or the rendering of fats and oils.
7. Precision uses which, in the opinion of the Zoning Board of Appeals, are similar in nature and scale to those permitted above.
8. Commercial storage buildings providing space for rent.
9. Warehousing and distribution facilities, including agricultural product distribution centers.

10. Other uses which, in the opinion of the Zoning Board of Appeals, are similar in nature and scale to those permitted above.

C. PERMITTED ACCESSORY USES

1. Private garages and storage buildings which are necessary to store any vehicles, equipment or materials on the premises and which are used in conjunction with a permitted use.
2. Off-street parking, loading and unloading facilities and signs, fences and landscaping subject to the provisions of this Ordinance.
3. Other business uses which, in the opinion of the Zoning Board of Appeals, are similar in nature and scale to those permitted above.

**D. USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD
(SUBJECT TO SPECIAL PERMIT USE REGULATIONS, ARTICLE VII)**

1. Adult Entertainment Uses
2. Junk Yards, Auto Wrecking, and Dismantling Yards
3. Telecommunications Facility

E. PROVISIONS AND REQUIREMENTS

1. Residential uses shall be prohibited except for a caretaker's residence on-site.
2. All assembly, research, engineering, administration, storage and other related activities shall be conducted wholly within enclosed buildings.
3. Incidental storage out of doors may be permitted provided that such materials are shielded from view from public streets and adjacent off-street parking areas by fencing, landscaping or other appropriate measures.
4. At no time shall any use result in or cause dissemination of dust, smoke, smog, observable gas, fumes, odors, radiation or other atmospheric pollution, objectionable noise, glare or vibrations or hazard of fire or explosive or any other physical hazard to any adjacent buildings or to any plant growth or any land adjacent to the site.
5. The architectural treatment and general appearance of all buildings and grounds shall be in keeping with the purpose of this district and shall be of such quality and design as to be a visual asset to the area in which they are located as well as to adjacent development.
6. All uses permitted shall set aside not less than twenty (20) percent of the lot area to be devoted to seeding, planting, retention of tree cover, or other landscaping. This area shall be used for no other purposes.
7. Each use shall provide truck loading and unloading areas in an amount sufficient to permit the transfer of goods and products in other than a public street, off-street parking area or front yard. Off-street loading facilities shall be subject to the additional provisions of Section 602 of this Ordinance.

8. Industrial structures shall be located so as to be a minimum of seventy-five (75) feet from any non-industrial district. A natural buffer strip shall be placed and maintained so as to provide visual screening and separation between industrial and non-industrial uses.
9. Parking areas may be located in any of the required yard areas provided they are not less than fifty (50) feet from a right-of-way line or thirty (30) feet from any other property line.
10. Signs shall be permitted pursuant to the regulations in Section 600 of this Ordinance.

F. SPECIFICATIONS

Setback Requirements:

Front:	75 Feet (measured from right-of-way line)
Side:	50 Feet
Rear:	50 Feet
Height:	35 Feet
Lot Width:	200 Feet
Minimum Lot Size:	One (1) acre.
Maximum Building Coverage:	35%

G. PROHIBITED USES

1. Acetylene Gas manufacture
2. Oxygen manufacture
3. Celluloid manufacture
4. Disinfectant or insecticide manufacture
5. Asphalt manufacture or refining
6. Coal or tar distillation, including manufacture or treatment
7. Boiler making
8. Steel Furnace manufacture
9. Blooming or rolling mill
10. Soap manufacture
11. Chlorine or Hydrochloric, nitric, picric or sulfuric manufacture
12. Smelting of copper, tin, zinc, lead or iron ores
13. Manufacture of explosives, storage of explosives in bulk
14. Glue, size or gelatin manufacture where the process includes the refining or recovery of products from fish or animal refuse or offal

SECTION 504 P.D. - PLANNED INDUSTRIAL/ COMMERCIAL DEVELOPMENT DISTRICT

A. Purpose

The P.D. - Planned Industrial/ Commercial Development District has been designed to encourage commercial and industrial development which conforms to a coordinated site development plan for a relatively large area. Such development should represent the most efficient and productive use of the land area so zoned. Individual uses permitted in this zone shall be designed and constructed so as not to preclude further industrial or commercial development within the P.D. zoning district.

B. Objectives

1. The proposed industrial and/ or commercial development shall be in harmony with the general purpose, goals and objectives of the Comprehensive Plan and this Ordinance.
2. The proposed development shall comply with all applicable regulations of this Ordinance except as modified by the authority of this Section.
3. The proposed development shall not have a substantial adverse effect upon adjacent properties, utility facilities, traffic conditions and other matters that would affect the public health, safety and general welfare.
4. The proposed development shall be constructed, arranged and operated so as to not interfere with the development and use of neighboring properties.
5. The proposed development shall be adequately served by essential public facilities and services, such as but not limited to sanitary sewers, public water supply, storm water drainage facilities and highway capacity.
6. The proposed development shall make appropriate provisions for the preservation of trees, streams, wetlands, natural topography and geological features and the prevention of soil erosion.

C. General Requirements

1. All industrial and commercial uses permitted in the I - Industrial and B - General Business zoning districts are permitted in this district, except for residential uses.
2. Accessory uses permitted in the commercial and industrial district are permitted as accessory uses in the P.D. District.
3. The minimum area required for a Planned Development shall be twenty (20) contiguous acres of land. However, if an applicant can demonstrate that the characteristics of the property proposed for such use can meet the objectives of this Section, projects with less acreage will be considered.
4. Where an applicant proposes the use of a portion of the site as common property, satisfactory arrangements shall be made for the improvement, operation and maintenance of such common property and facilities. For the purpose of this Section, the term "common property" shall be defined as a parcel of land, together with improvements thereon, the use and enjoyment of which is shared by the owners and occupants of the Planned Development.
5. Individual buildings within a Planned Development shall be related to each other in design, mass, materials, placement and connections to provide a visually and physically integrated development.
6. Utility lines providing electric, telephone, television or other services shall be installed underground.

D. Application Procedures

Approval of a Planned Development shall be made by the Town Board, following review and recommendation from the Planning Board.

1. Planning Board Review

The applicant shall meet with the Planning Board to describe the intent of the proposed development, to discuss design and development objectives and to submit a concept plan which depicts the manner in which the proposed project is to be developed. At this meeting, the applicant shall describe how the proposed development would be integrated with neighboring land uses, community features and public facilities and services. The concept plan shall be to scale and shall include the following information:

- a. The principal physical characteristics of the site, including an analysis of the soils and sub-soils and the location of major stands of trees, streams, flood plains and rock outcropping.
- b. The topography of the site with contour intervals of not more than five (5) feet of elevation; areas of the site where grades exceed three percent (3%); portions of the site with a moderate to high susceptibility to erosion, flooding or ponding; and, a preliminary grading plan with five-foot contour intervals.
- c. An analysis of the relationship of the site to the surrounding community, including significant parcels of vacant land and the character of nearby built-up areas.
- d. A conceptual site development plan which presents: a proposed lotting pattern, including the number and general sizing of individual lots; estimates of vehicular traffic volumes to be generated; a suggested internal street system, suggested sidewalks and circulation flows; a description of how the site will be tied to the existing street and pedestrian network; estimated demands for water and sewer services; a suggested layout of water, sanitary sewer and storm sewer facilities with proposed points of interconnection to existing systems; and, the proposed storm water drainage system and its relation to existing systems.
- e. A generalized description of how the site is to be buffered from adjacent areas. This shall include the retention of existing trees as well as new plantings to accomplish this objective.
- f. A description of the manner in which areas that are not proposed to become publicly owned are to be maintained, including but not limited to open space, streets and lighting.
- g. If the development is expected to be phased, a general description of the phasing plan, including the anticipated time frames for development.
- h. A description of any covenants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings or structures, including proposed easements for public utilities.

- i. A written statement by the applicant setting forth the reasons why, in his opinion, the proposed rezoning would be advantageous to and in the best interests of the Town of Barre.
- j. An Environmental Assessment Form (EAF) or a Generic Draft Environmental Impact Statement (DEIS) to comply with the State Environmental Quality Review Act (SEQR).
- k. Any other information or documentation which the applicant deems necessary to support his application.

2. Planning Board Report

Within sixty (60) days of the receipt of a complete application, the Planning Board shall review the concept plan and supporting documents and provide a written report to the Town Board. The Planning Board shall hold a public hearing on the concept plan to assist it in the preparation of its report. If no report has been rendered within the sixty (60) day period, unless such time limit has been extended by formal action of the Planning Board, the applicant may proceed on the basis that the report is favorable. The Town Board shall be so informed on this matter.

- a. A favorable report from the Planning Board shall be based on the following findings which shall be included as part of the report:
 - i) The proposal implements the goals and policies of the Comprehensive Plan of the Town of Barre.
 - ii) The concept plan meets all of the requirements of this Ordinance.
 - iii) The proposal is conceptually sound in that it meets a community need and conforms to accepted design standards for the proposed roadway system, land use configuration, open space and drainage systems.
 - iv) Adequate services and utilities are available or proposed to be made available in order to properly serve the proposed development.
- b. An unfavorable report shall state clearly the reasons therefore and, if appropriate, point out to the applicant the conditions under which a favorable report may be issued.

3. Town Board Consideration

Upon receipt of a report from the Planning Board, the Town Board shall consider the application for the Planned Development and may establish a date for and conduct a public hearing for the site plan as provided by Town Law.

4. Final Site Plan Approval

In the approval of the Site Plan, the Town Board may establish a maximum aggregate gross floor area for all buildings in the District and may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its resolution additional requirements for the applicant to meet. Such requirements may include, but shall not be limited to: visual and acoustical screening; the order of construction and/or occupancy; vehicular and pedestrian circulation systems; protection of natural resources; and, other physical or community needs.

SECTION 505 F - FLOOD HAZARD OVERLAY ZONE

- A. The Zoning Map indicates approximate boundaries of the flood hazard overlay zone. The exact legal boundaries of the flood hazard area is depicted on the official FIRM Maps and Flood Boundary-Flood way Map prepared by the Federal Emergency Management Agency (FEMA).
- B. Such areas shall be subject to the provisions of all applicable Town of Barre Local Laws in addition to the use regulations and other provisions of this Zoning Ordinance.

ARTICLE VI

REGULATIONS APPLICABLE TO ALL ZONING DISTRICTS

SECTION 600 SIGNS

A. Purpose

The purpose of these regulations is to provide comprehensive time, place and manner restrictions on sign age including, but not limited to, controls on size, height, quantity, location, spacing, shape, lighting, motion, design and appearance for the purpose of promoting community aesthetics, traffic safety, economic development and the protection of property values.

B. Sign Permit Required

A Sign Permit is required for all outdoor advertising signs, subject to the following standards:

1. General advertising signs related to the permitted use of the premises are allowed, including secondary advertisement of products or services.
2. Brand name sponsored signs are permitted provided that the brand name, logo, trademark (or the combination thereof) shall not exceed 25% (twenty-five percent) of the square footage of the sign.
3. Signs shall be informative, enhance the rural character of the community, and shall be consistent with the Town of Barre Comprehensive Plan. Signs that are manufactured from wood, or wood simulated products, or stone, or stone simulated products (with the appearance of natural wood or stone) are recommended.

C. Exempt Signs

The following types of signs may be erected without a permit in any zoning district:

1. Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into masonry surface or when constructed of bronze, stainless steel or similar material; and emblems installed by government agencies, religious or non-profit organizations. Such signs shall not exceed six (6) square feet in area.
2. Flags and insignia of any government, except when displayed in connection with commercial promotion.
3. Any sign placed by any governmental agency for public purposes, or any non-advertising sign identifying underground utility lines.
4. On-premise directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits and similar signs, internally illuminated or non-illuminated, not exceeding two (2) square feet per face and six (6) feet in height. Business names and personal names shall be allowed, excluding advertising messages.

5. Non-illuminated warning, private drive, posted or no trespassing signs, not exceeding two (2) square feet per face.
6. Number and name plate identifying residents and/or property addresses, not exceeding two (2) square feet per face.
7. Private-owner merchandise sale signs for garage sales and auctions, not exceeding four (4) square feet for a period not to exceed seven (7) days.
8. Temporary lighted or unlighted signs erected by and for non-profit organizations such as churches, American Legion, Boy Scouts, Girl Scouts, political organizations, or military reserve associates which advertise suppers, banquets, benefits, fund raising sales, and similar functions may be erected for a period of forty (40) days without a permit in any district.
9. Temporary non-illuminated "For Sale," "For Rent", real estate signs and signs of similar nature, concerning premises upon which the sign is located. Such sign shall not exceed twenty-four (24) square feet in area, and shall be set back at least ten (10) feet from all property lines. All such signs shall be removed within three (3) days after the sale, lease or rental of the premises or property.
10. Holiday decorations, including lighting, are exempt from the provisions of this Ordinance and may be displayed in any district without a permit.
11. Integral graphics or attached price signs on gasoline pumps at gasoline stations.
12. Directional signs for meetings, conventions and other assemblies.
13. One sign, not exceeding sixteen (16) square feet in area, listing the architect, engineer, contractor and/or owner, on premises where construction, renovation or repair is in progress.
14. "Non-commercial speech" signs, also known as "free speech" signs, which express an opinion or a statement unrelated to a business venture, are subject to the following conditions:
 - a. The maximum number of non-commercial speech signs per lot shall be two (2) excepting posted or preserve signs erected pursuant to the Environmental Conservation Law of the State of New York.
 - b. Such signs shall not exceed a total of twenty (20) square feet in area for all signs on a single lot.
 - c. Freestanding non-commercial speech signs shall not exceed six (6) feet in height above grade level.
 - d. Non-commercial speech signs shall not be illuminated, except indirectly.
 - e. Political candidacy signs shall be removed within seven days following the election.

D. General Sign Standards

All signs, including outdoor advertising signs and exempt signs, shall comply with the following standards:

1. No sign shall consist of lights which flash, or move, or appear to move.
2. No sign shall be higher than the principal building to which it is accessory.
3. No sign shall project into a public right-of-way, be closer than thirty (30) feet from any street line nor closer than five feet to any other property line, create a traffic hazard, be unduly distracting to motorists and pedestrians, or reduce the effectiveness of signs needed to direct the public.
4. No sign shall project on a public utility pole or traffic control structure.
5. No advertising sign shall be placed on premises other than the site of the business advertised.
6. The total number of permitted signs on a single lot shall not exceed two (2), of which only one (1) may be freestanding.
7. The total cumulative area of all signs permitted on a single lot shall not exceed:
(a) thirty-two (32) square feet; or (b) an amount calculated at the rate of one (1) square foot of sign area per lineal foot of building front, plus one (1) square foot of sign area for every four (4) lineal feet setback of the principal building on the property, whichever is greater, but in no case shall the total sign area allowed exceed sixty-four (64) square feet.

E. Construction Standards for all Signs

1. All signs, including wall-mounted and projecting signs, shall be securely anchored and shall not swing or move in any manner.
2. All signs, sign finishes, supports and electrical work shall be kept clean and painted, and free from all hazards, such as but not limited to faulty wiring and loose supports, guys and anchors.
3. All projecting, freestanding or wall mounted signs shall employ acceptable, safe materials.
4. All signs shall be painted and/or fabricated in accordance with generally accepted standards.
5. No freestanding sign shall be more than twenty (20) feet in height above finished grade. Such height shall be measured vertically from the established grade directly below the sign or entry level of the building or structure, whichever is lower, to the highest point of the sign, including supporting structures.

F. Non-Conforming Signs

All existing signs that are legal at the time of the enactment of this Ordinance shall be allowed to remain as long as they are properly maintained and their use remains current. Replacement of any existing sign for any cause shall be in accordance with the more restrictive provisions of this Ordinance.

G. Procedures for Obtaining a Sign Permit

1. Except as otherwise provided, no person shall erect, alter or relocate any sign without first obtaining a permit from the Code Enforcement Officer. Subsequent to this initial application, no permit shall be required for a sign to be repainted, repaired or have its message changed.

2. Application Procedure

Applications shall be made to the Code Enforcement Officer on the form prescribed and provided by the Town of Barre, accompanied by the required fee, and shall contain the following information:

a. Name, address and telephone number of:

- i) applicant;
- ii) owner of the property; and,
- iii) contractor installing the sign.

b. Location of the building, structure or land upon which the sign now exists or is to be erected.

c. If a new sign is to be erected, elevation and plan drawings to scale shall be included. In addition, a full description of the placement and appearance of the proposed sign shall be included and shall cover the following:

- i) location on the premises, specifically, its position in relation to adjacent buildings, structures and property lines;
- ii) the method of illumination, if any, and the position of lighting or other extraneous devices;
- iii) graphic design including symbols, letters, materials and colors; and,
- iv) the visual message, text, copy or content of the sign.

d. Written consent, or a copy of the contract made with the owner of the property upon which the sign is to be erected, if the applicant is not the owner.

3. Permit

a. Upon the filing of a completed application for a sign permit and the payment of the required fee, the Code Enforcement Officer shall examine the plans, specifications and other data submitted and the premises on which the sign is to be erected or now exists. If it shall appear that the sign is in compliance with all the requirements of this Article, the Code Enforcement Officer shall then, within five (5) days of receiving the application, issue a permit for the erection of the proposed sign, or for alterations of an existing sign. The issuance of the permit shall not excuse the applicant from conforming to the other laws, rules and regulations of the Town of Barre.

- b. If the erection of the sign authorized under any such permit has not commenced within six (6) months from the date of issuance, the permit shall become null and void, but may be renewed within thirty (30) days prior to the expiration, for good cause shown, for an additional six (6) months, upon payment of one-half (1/2) of the original fee.
4. Permit Fee - Fees for the sign permits shall be fixed by the Town Board and listed in the fee schedule.

H. Removal of Temporary Signs

Temporary signs that are not removed by the owner within the time specified herein shall be removed by the Code Enforcement Officer, after ten (10) days written notice to remove such sign and after the failure of the owner to remove such sign. The cost of removal by the Code Enforcement Officer shall be charged to the owner of the premises where the temporary sign was displayed.

SECTION 601 PARKING

In all districts there shall be provided, at the time any building or structure is erected, enlarged, increased in capacity or changed in use, improved and usable off-street parking spaces for motor vehicles in accordance with the requirements of this Section. Existing buildings or uses shall not be subject to the requirements of this Section, unless said building shall be enlarged or the use of said building or land is changed. In such cases, off-street parking facilities shall be provided as hereinafter specified for the building as enlarged or to accommodate the needs of the new use.

A. Design Requirements

1. All uses shall provide adequate off-street parking for all vehicles parked during typical peak periods. Parking should be designed to eliminate the need to back out or to park on the shoulder of public roads.
2. A parking space shall be not less than nine by twenty (9 x 20) feet, exclusive of access ways and driveways. Single family residences need not exclude driveway area.
3. Off-street parking areas with a capacity for more than twenty (20) vehicles shall delineate fire lanes and post "no parking" markers.
4. Any off-street parking area with at least twenty (20) off-street parking spaces shall designate a minimum of five percent (5%) of those spaces, up to a maximum of ten (10) spaces, as only for the handicapped and clearly mark them for such use. Parking spaces designated to serve handicapped individuals shall be at least fourteen (14) feet in width and twenty (20) feet in depth.
5. All off-street parking space shall be deemed to be required space on the lot on which it is situated and shall not be encroached upon or reduced in any manner.
6. All parking areas, passageways and driveways (except where provided in connection with one and two family dwellings, or farm residences and buildings) shall be adequately drained and surfaced with a dustless, durable, all weather surface, subject to approval of the Town Highway Superintendent.

7. Each off-street parking space shall be so designed, maintained and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk or alley, and so that any motor vehicle may be parked and unparked without moving or damaging another.
8. The collective provision of off-street parking areas by two (2) or more buildings or uses located on adjacent lots may be approved by the Planning Board during Site Plan Review, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately.
9. No driveway to an off-street parking area shall be located closer than fifty (50) feet to the intersection of any two streets or within twenty (20) feet of any side lot line provided that sufficient distance will always remain for all required radii for said driveway. The distance from the driveway to the intersection shall be measured by extending the curb line of the intersecting street until it intersects the curb line of the driveway in question, extending such driveway curblines if necessary,. In addition, a minimum distance of twenty (20) feet shall be maintained between two driveways located on any one frontage.
10. Except where otherwise specified in this Ordinance, off-street parking areas may be located in any yard space for non-residential uses but shall not be located closer than thirty (30) feet to the right-of-way line of all streets and no closer than ten (10) feet to any other property line.

B. Location of Off-Street Parking Facilities

Off-street parking facilities shall be located as herein-after specified. Where a distance is specified, such distance shall be walking distance measured from the nearest point of the parking facility to the nearest public entrance of the building that such facility is required to serve.

1. For one and two family dwellings and for all types of residential structures: On the same lot with the building they are required to serve.
2. For multiple family dwellings: Not more than two hundred (200) feet from the building they are required to serve.
3. For other uses: Not more than five hundred (500) feet from the building they are required to serve.

C. Screening and Landscaping

1. Off-street parking areas for more than five (5) vehicles shall be effectively screened on the rear and side yards by a fence of acceptable design, unpierced masonry wall, landscaped berm or compact evergreen hedge. Such fence, wall or hedge shall not be less than six (6) feet in height and shall be maintained in good condition.
2. Except where otherwise specified in this Ordinance, when a parking area for five (5) or more vehicles is within or abuts a residential district, a planted buffer area not less than ten (10) feet in depth shall be provided in addition to the fence or wall specified in paragraph (1) above. Landscaping utilized to provide this buffer shall not be less than four (4) feet in height at the time of planting and spaced not more than three (3) feet apart.

D. Lighting

1. All off-street parking areas and appurtenant passageways and driveways (excluding areas serving one and two family dwellings and farm dwellings) shall be illuminated adequately during the hours between sunset and sunrise when the use is in operation.
2. Any lights used to illuminate an off-street parking area shall be so arranged as to direct light away from all adjoining property and public or private roadways.

E. Units of Measurement

1. In churches and other places of assembly in which patrons or spectators occupy benches, bleachers, pews or other similar seating facilities, each twenty (20) inches of such seating facilities shall be counted as one (1) seat for the purpose of determining requirements for off-street parking facilities.
2. When units of measurement determining the number of required parking spaces result in the requirement of a fractional space, any fraction of one-quarter (0.25) or more shall require one (1) parking space.

F. Mixed Occupancies and Uses Not Specified

In any case of mixed uses, the total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately. In the case of a use not specifically mentioned in this section, the requirements for off-street parking facilities shall be determined by the Town Board. Off-street parking facilities for one (1) use shall not be considered as providing required parking facilities for any other use, except as hereinafter specified for joint use.

G. Joint Use

The off-street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap in point in time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.

H. Minimum Parking Standards

1. One parking space is required for every three seats in a public meeting place.
2. One parking space is required for each employee on the maximum working shift in an industrial or light industrial establishment and one parking space per two hundred and fifty (250) square feet of gross floor area in a commercial establishment unless otherwise specified herein.
3. One parking space is required for every two hundred (200) square feet of gross floor area in business and professional offices.
4. One parking space is required for every one hundred (100) square feet of gross floor area in supermarkets and self service food stores.

SECTION 602 OFF-STREET LOADING

- A. For every building, structure or part thereof having more than four thousand (4,000) square feet of gross building area erected and occupied for commerce and industry as well as other uses requiring the receipt and distribution of materials and merchandise by vehicles, adequate space for loading and unloading services shall be provided and permanently maintained in order to avoid undue interference with the public use of streets, alleys, or parking areas.
- B. Every building, structure or addition thereto having a use which complies with the above definition shall be provided with at least one (1) truck standing, loading and unloading space on the premises not less than twelve (12) feet in width, fifty-five (55) feet in length, and fourteen (14) feet in height. One (1) additional truck space of these dimensions shall be provided for every additional twenty thousand (20,000) square feet, or fraction thereof, of gross area in the building.

SECTION 603 ACCESS CONTROL

In order to encourage the sound development of street frontage, the following special regulations shall apply to all non-residential buildings and uses:

- A. Each separate use, grouping of attached buildings or groupings of permitted uses shall not have more than two (2) points of access.
- B. The use of common access points by two or more permitted uses shall be encouraged by the Town Board in order to reduce the number and closeness of access points along the streets and to encourage the fronting of significant traffic generating uses upon a parallel access street and not directly upon a primary road.
- C. Access points for industrial uses shall not be less than twenty-four (24) feet nor more than forty (40) feet in width. All other access points shall not be less than twenty (20) feet nor more than thirty (30) feet in width.
- D. All access ways shall meet all applicable standards and requirements of the New York State Department of Transportation, Orleans County Highway Department, and Town of Barre Highway Superintendent.

SECTION 604 FENCES

- A. Fences may be erected, altered or reconstructed to a maximum height of eight (8) feet for residential uses and ten (10) feet for non-residential uses.
- B. Fences may be substituted for lot line landscaping during Site Plan Review, at the discretion of the Planning Board.
- C. No fence shall cause obstruction of vision at street intersections.
- D. Farm fencing ten (10) feet in height or shorter shall be exempt from these provisions.

- E. Any fence erected along a lot line shall be erected wholly on the property of the owner and neither the fence itself nor any supporting accessory components thereof shall encroach upon the adjoining properties.
- F. A finished side of any fencing shall front the neighboring properties.

SECTION 605 RECREATIONAL VEHICLES

- A. Recreational vehicles shall not be occupied outside of an approved campground for more than seventy-two (72) hours on any basis, except with the consent of the private landowner. A temporary use permit may be granted by the CEO for single recreational vehicles to be occupied outside of approved campgrounds for a period not to exceed two weeks in duration.
- B. No more than two (2) recreational vehicles may be parked on any residential property at the same time.
- C. Recreational vehicles shall not be placed in the front yard of land upon which there is a dwelling.
- D. Placement of occupied recreational vehicles shall be in accordance with the setbacks required for principal buildings in the respective zone of the property.
- E. The recreational vehicle shall either have self contained sanitation or be connected to adequate sanitation facilities.

SECTION 606 NON-CONFORMING USES, LOTS AND STRUCTURES

Lots, structures, uses of land, and characteristics of uses which lawfully existed at the time of the enactment of this Ordinance and which would be prohibited or restricted under the terms of these regulations may be continued subject to the following provisions:

A. Intent

It is the intent of this Ordinance to permit non-conforming uses to continue until they are removed, but not to encourage their survival.

B. General Regulations

1. A non-conforming lot shall not be further reduced in size.
2. A non-conforming building shall not be enlarged, extended or increased unless such enlargement would tend to reduce the degree of non-conformance.
3. A non-conforming use shall not be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of the adoption of this Ordinance.
4. A non-conforming use may be changed into a conforming use. When a non-conforming use is changed to conform to the requirements of this Ordinance, the use of the building or tract of land shall not be changed again except in accordance with these regulations.

5. Where such non-conforming use is upon the land itself and not enclosed within a structure, or where such use involves the removal of soil, minerals or the excavation of gravel or rock or other material, such use may be continued upon the land being so used at the time of the adoption hereof. Any such non-conforming use of the land may be extended or expanded to include any part of the plot or parcel of land now being used or held in reserve for future use, provided such enlargement does not involve the use of any lot excavation rights which were acquired after the effective date of this Ordinance. However, such extension or expansion of such non-conforming use shall comply with the setback and fencing requirements of this Ordinance.
6. Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the district in which it is located after it is moved.

C. Restoration and Alterations

1. A non-conforming structure damaged by fire or other causes to the extent of more than seventy-five percent (75%) of its assessed value, based upon the State Board of Equalization and Assessment rates, shall not be repaired or rebuilt except in conformity with the requirements of these regulations; except residential property owners may rebuild a home, on the same foundation area, provided that:
 - a) The property owner provides the Code Enforcement Officer an instrument survey demonstrating that the foundation lies totally within the property boundaries.
 - b) The owner provides evidence of applicable County Health Department approval for the new construction.
 - c) The new construction shall be in compliance with all other applicable laws and regulations.
2. Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition any wall or roof which has been declared unsafe by the Code Enforcement Officer.
3. Normal maintenance repairs and incidental alteration of a building or other structure containing a non-conforming use shall be permitted, provided it does not extend the area or volume of space occupied by the non-conforming use.
4. Any building which is non-conforming due to insufficient yard distances or lot area shall not be considered a non-conforming use. Any alterations or structural changes may be accomplished within the existing frame of said building, but any additions shall conform to the specific setback and yard distance requirements of this Ordinance.

D. Discontinuance

1. In any district, whenever a non-conforming use of land, premises, building or structure, or any part or portion thereof, has been discontinued for a period of one (1) year, such non-conforming use shall not thereafter be re-established, and all future uses shall be in conformity with the provisions of this Ordinance.
2. Such discontinuance of the active and continuous operation of such non-conforming use, or part or portion thereof, for such period of one (1) year, is hereby construed and

considered to be an abandonment of such non-conforming use, regardless of any reservation of an intent not to abandon same or of an intent to resume active operations.

3. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such non-conforming use of the land and premises, the abandonment shall be construed and considered to be completed and all rights to re-establish or continue such non-conforming use shall thereupon terminate.

E. Existing Undersized Lots of Record

1. Any lot of record held in single and separate ownership prior to the adoption of this Ordinance and whose area and/or width and/or depth are less than the minimum requirements specified herein for the district, may be considered as complying with this Ordinance and no variance therefore shall be required provided that:
 - a. Such lots do not adjoin any other lot or lots held by the same owner, the aggregate area of which lots is equal to or greater than the minimum lot area required for the district;
 - b. The minimum lot size of land for such non-conforming lot is at least seventy-five by one-hundred fifty (75 x 150) feet.
2. In any district where residences are permitted, such undersized non-conforming lots may be used for not more than one single-family dwelling.
3. A lot of non-conforming size may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said owner's property.

SECTION 607 FLAG LOTS

- A. Flag lots may be permitted in any district, if said lots have a width of at least twenty (20) feet at the street line. The access portion of a flag lot shall have a minimum width of twenty (20) feet.
- B. The area in the access portion of the flag lot shall not be used in calculating lot size.
- C. The front setback distance shall be measured from that lot line of the main part of the flag lot which is closest to the road or highway providing access.

SECTION 608 PINBALL AND VIDEO GAME ARCADES

- A. Pinball and video games arcades shall not be permitted as home occupations.
- B. Arcades shall be closed between the hours of 12:00 midnight and 8:00 a.m.
- C. No one under the age of sixteen (16) shall be permitted in an arcade while school is in session.
- D. An owner or responsible person over the age of eighteen (18) shall be on the premises during all hours of operations.

SECTION 609 ALTERNATIVE ENERGY SYSTEMS

This section is intended to reduce impacts on neighboring property owners and health and safety problems which may accompany alternate energy systems.

- A. All wind energy towers shall be located so as to allow an open zone around the tower on the owner's property with a radius at least equal to the height of the tower.
- B. All energy collection/storage facilities and appurtenant electrical equipment shall cause no undue interference or noise, or glare.
- C. Windmill blades shall clear the ground at their lowest point by at least twenty (20) feet.
- D. Height Exemption: The height limitations of this Ordinance shall not apply to wind energy towers or solar collectors provided that such structures are erected only to such height as is necessary to accomplish the purpose for which they are intended, and that such structures do not obstruct solar access to neighboring properties.

SECTION 610 HABITATION, SIZE AND WIDTH OF DWELLINGS

- A. All residential habitation shall be in residential dwellings as defined in this Ordinance.
- B. No cellar sited independently of a structure shall be used exclusively as a dwelling.
- C. The minimum gross habitable floor area of any single family dwelling shall not be less than nine hundred (900) square feet.
- D. The minimum width of a dwelling, at its narrowest dimension, not including porches or patios, shall be twenty (20) feet.
- E. The roof shall have a minimum nominal 3/12 pitch, and shall utilize a type of shingle commonly used in standard residential construction.
- F. The exterior siding shall consist of vinyl or aluminum lap siding, wood, Masonic, or other materials similar to the exterior siding commonly used in standard residential construction.
- G. Permanent landing and steps and/or ramps with handrails are required at each exterior doorway. The structure must include steps and/or ramps which lead to the ground level.
- H. The construction and installation of all structures, including seasonal dwellings, and appurtenant utilities shall conform to provisions of the NYS Uniform Fire Prevention and Building Code and all other applicable standards.

SECTION 611 PROVISIONS FOR MANUFACTURED HOMES ON INDIVIDUAL LOTS

The following provisions apply to manufactured homes located on individual lots in residential areas, in addition to the requirements in Section 610 above.

- A. All towing devices, wheels, axles, and hitches shall be removed.

- B. The manufactured home shall be placed on the lot in such a manner that is compatible with and reasonably similar in orientation to the site-built housing in adjacent or nearby locations.
- C. The home shall be permanently installed in accordance with the Manufacturer's Installation Manual. In the event that the Manufacturer's Installation Manual is not provided, the home must be installed according to ANSI A225.1 (1994), Manufactured Home Minimum Installation Standards. In addition, all applicable provisions of the NYS Uniform Fire Prevention and Building Code shall apply.
- D. The home must be built to the standards of the H.U.D. code or New York State Uniform Fire Prevention and Building Code, as applicable. The appropriate code sticker shall be on display inside the home.
- E. The home shall be placed upon a frost free concrete perimeter foundation, constructed in accordance with New York State codes. Such foundation shall carry more than one-half of the weight of the home on the perimeter part of the foundation.
- F. Excluding patios, porches and carports, no structure may be hereafter attached to any existing manufactured home, unless the manufactured home is already supported by a concrete perimeter foundation. Such structure shall also be supported by a concrete perimeter foundation.
- G. The anchoring systems for all Manufactured Homes must meet the requirements of the N.Y.S. building code and must be attached to a concrete frost free foundation for that home. Any deviation from these requirements must be supported by specifications and drawings stamped by a New York State professional engineer.

SECTION 612 STRIPPING OF TOP SOIL

The stripping and sale of topsoil shall not be allowed, except in conjunction with a permitted mining or excavation operation, or in the course of construction of any permitted structure. Excavations for the sole purpose of sale of top soil shall not be permitted.

SECTION 613 SWIMMING POOLS

Private swimming pools shall be permitted in any Residential District provided that there is an existing residence on said lot and the following regulations are complied with:

- A. Setbacks
 - 1. Outdoor swimming pools shall be located in the rear or side yards and shall conform to the minimum setback requirements for a structure in the district. Aprons and decks which are accessory to a pool shall not be within the minimum setback area specified in the Schedule for accessory uses.
 - 2. No swimming pool shall be closer to the street or front lot line than the front of the building or structure to which the pool is an accessory use.

- B. Drainage

No permit shall be issued for such pool unless the applicant can show that the proposed drainage of such pool is adequate and will not interfere with the property of others, with public highways or area drainage facilities.

C. Water Supply

No permit shall be issued for such pool unless the applicant can demonstrate that there is sufficient water supply to accommodate such pool without detriment to normal water consumption requirements and that all proposed water connections are proper and adequate.

D. Permits

Zoning permits shall be required for all swimming pools having an area greater than one hundred (100) square feet or a depth greater than eighteen (18) inches regardless of whether the pool is above or below ground.

E. Fences and gates shall be required, pursuant to the requirements of the NYS Uniform Fire Prevention and Building Code.

F. Ladders on all above ground pools shall be retractable or capable of being locked during all times the owner or occupant of the premises is not present at such pool.

G. This section does not apply to farm ponds or other natural or artificial made bodies of water located in residential areas.

SECTION 614 SATELLITE DISH ANTENNAE

This section is intended to provide the minimum level of control necessary to accomplish the health, safety, and aesthetic objectives of the town.

A. Antennae smaller than one meter in diameter shall not be subject to these regulations.

B. All parabolic antennae larger than one meter in diameter shall be located on the ground at natural grade only and shall not be installed on or above any buildings.

C. All parabolic antennae larger than one meter in diameter shall be located in rear or side yards, except they may be placed in a front yard if a 200 foot setback from the front lot line can be obtained.

SECTION 615 CLEAR VIEW OF INTERSECTING STREETS

No obstruction to view in excess of four (4) feet in height, measured perpendicular from the street grade, shall be maintained on any premises within the angle formed by intersecting streets within the distance of seventy-five (75) feet measured along the center lines of each street from the intersection thereof. Such a clear sight triangle shall be maintained in order to ensure visibility of traffic approaching the intersection.

ARTICLE VII

SPECIAL PERMIT CRITERIA

SECTION 700 GENERAL PROVISIONS

The uses specified in this Article are hereby declared to possess unique characteristics requiring that each proposal for any such use shall be considered by the Town Planning Board as an individual case. Upon application, special use permits may be approved by the Town Planning Board and issued by the Code Enforcement Officer in accordance with the administrative procedures set forth in this Ordinance and only after it has found that each and all of the following standards have been met:

- A. The proposed special use is consistent with the general intent of the Town's Comprehensive Plan and with each of the specific purposes set forth in this Ordinance.
- B. The location, size and use of the structures involved, nature and intensity of the operations involved and size and layout of the site in relation to the proposed special use are such that it will be compatible with the orderly development of the zoning district.
- C. Operation of the proposed special use is no more objectionable to the uses of nearby properties, by reason of dust or smoke emission, noise, odors, fumes, pollution of air or water, including subsurface waters, unsightliness or similar conditions, than would be the operation of any permitted use.
- D. The proposed special use satisfies each and all standards and conditions specified for such special use by the relevant provisions of this Article.
- E. The Planning Board may impose additional conditions or restrictions as it may deem necessary prior to approving any special use permit application in order to protect public health and safety, the quality of the Town's natural resource base and the value of property.
- F. The Code Enforcement Officer shall make an on-site visit to each property authorized as a special use not less than one (1) time each year. The purpose of said site visit is to insure that the use is being operated in accord with the conditions specified by the Planning Board. If the Code Enforcement Officer shall determine that a violation of this Ordinance or the conditions imposed by the Planning Board exists, the owner and, if applicable, operator of such special use shall be notified in writing of the violation. If such violation continues to exist fifteen (15) days following such notification, or if three violations occur within a consecutive twelve (12) month period, the Certificate of Occupancy and/or Certificate of Compliance shall be null and void. A new special use permit application shall be required to be submitted and approved prior to the re-establishment of said use.
- G. No site preparation or construction shall commence nor shall existing structures be occupied for any special permit use until final site plan approval has been granted by the Planning Board and permits have been issued by all governmental agencies involved.

SECTION 701 AIRPORTS

The Town Planning Board may approve a special use permit for private or commercial airports or airstrips in the AR Agricultural/ Residential District provided the following standards and provisions are maintained:

- A. An application for the establishment, construction, enlargement or alteration of an airport shall include, in addition to requirements for special use permits outlined in Article IX, the following statements and information:
 1. Name and address of the proponent.
 2. Classification of the proposed airport, such as commercial or restricted.
 3. Number and type of aircraft expected to be based at the airport initially and within five years.
 4. Whether an instrument approach procedure will be offered.
 5. Statement as to the anticipated number of daily operations.
 6. Copy of the airspace clearance granted by the Federal Aviation Administration for this airport, including USGS topographic map.
 7. A copy of the New York State Commissioner of Transportation's determination that the airport is in compliance with the provisions of Section 249 of the New York State Business law.
 8. A site plan of the airport which includes the following in addition to the requirements listed in Article X:
 - a) Scale no smaller than one inch equals one hundred feet (1" = 100').
 - b) Location of all existing and proposed structures.
 - c) Alignment of existing and/or proposed runways shown in their exact location.
 - d) Location of aircraft parking and tie-down areas.
 - e) Provision for vehicular access and off-street parking.
 - g) Provisions for sanitary waste disposal and water supply, if applicable.
 - f) Location and method of all fuel storage facilities.

9. An area map at a scale of no less than one inch equals five hundred feet (1" = 500') showing:
 - a) Distances to power lines, or other possible obstructions, within two thousand (2,000) feet of the ends of runways shall be accurately plotted.
 - b) Properties within five hundred (500) feet shall be plotted and owners identified by name.
- B. The Planning Board may, at its discretion, exclude from the requirements of paragraph A.8. above, any private airport established, constructed or maintained by an individual on his property for his personal or hobby use; provided, however, that the following conditions are met:
 1. The average number of hours that the airport is in use each week does not exceed twelve hours.
 2. The individual owns no more than three planes, none of which is designed to accommodate more than six persons, including the pilot.
 3. The airport is not utilized for any industrial or commercial purposes.
 4. The Planning Board may, at its discretion, require the applicant to submit proof that the requirements of Section 249 of the General Business Law are otherwise complied with, depending on the proximity of the proposed airport to highways and other airports.
- C. The Planning Board, in considering a request for a special use permit or the extension of a permit to operate an airstrip, may impose any conditions it deems necessary to protect the health, safety and public welfare of the Town.

SECTION 702 ANIMAL HOSPITAL

The Planning Board may approve a special permit for an animal hospital in the AR Agricultural/Residential District, or for an animal hospital with outdoor runs in the B General Business District, provided that the following standards and provisions are maintained:

- A. Minimum lot size shall be two (2) acres.
- B. Exercise pens and runways shall not be permitted within one hundred (100) feet of any lot line.
- C. All animal hospital facilities shall be maintained in enclosed structures which shall be of soundproof construction and so maintained as to produce no dust or odors at the property line.
- D. Hours of operation (those hours when dogs are brought to and from the establishment and when dogs are allowed out of cages) shall be limited to 7:00 a.m. to 8:00 p.m.

SECTION 703 BED AND BREAKFAST ESTABLISHMENT

The Planning Board may approve the use of a residential structure for a tourist home/bed and breakfast establishment in the AR, R-1 or B district provided that the following standards and provisions are maintained:

- A. The building proposed for occupancy as a bed and breakfast establishment shall contain no more than four lodging rooms for hire.
- B. The operator of the bed and breakfast establishment shall reside on the premises.
- C. The dwelling shall not be altered in a manner which would cause the premises to differ from its residential character, nor shall any extensions or additions to the dwelling be made for the purpose of renting such space for overnight accommodations.
- D. Outbuildings detached from the principal dwellings shall not be used for the purpose of a bed and breakfast establishment.
- E. A minimum of one (1) off-street parking space shall be provided for each rental unit, in addition to the two (2) spaces required for a single family dwelling. No such parking space shall be located in the front yard area and each space shall not be less than nine by twenty (9x20) feet.
- F. The dwelling may display a sign not to exceed two by two (2x2) feet in size.
- G. No bed and breakfast establishment shall be permitted where access is provided by a shared driveway.
- H. No bed and breakfast establishment shall be permitted in an individual mobile home or mobile home park.
- I. Each rental unit in a bed and breakfast establishment shall maintain a working smoke detector.
- J. Such uses shall comply in full with the Orleans County Sanitary Code and the New York State Uniform Fire Prevention and Building Code.

SECTION 704 CAMPING GROUNDS

The Planning Board may approve a special use permit for camping grounds in the Agricultural/ Residential (AR) District provided that the following standards and provisions are maintained:

- A. Camping grounds shall be occupied only by travel trailers, pick-up coaches, motor homes, camping trailers, recreational vehicles, and tents suitable for temporary habitation and used for travel, vacation and recreation purposes. No permanent external appurtenances such as carports, cabanas or patios may be attached to any travel trailer or other vehicular accommodation parked in a camp ground. The removal of wheels and placement of a unit on a permanent frost-free foundation in a camping ground is prohibited.
- B. Minimum site area: Ten (10) acres.
- C. Minimum sizes for individual campsites: twenty-five (25) feet by eighty (80) feet to accommodate areas with travel trailers and campers; and, twenty-five (25) feet by fifty (50) feet for areas to be occupied exclusively with tents.

- D. Not more than ten (10) travel trailers, campers, tents, recreational vehicles or motor homes shall be permitted per acre of gross site area.
 - E. A camping ground shall be so located that no entrance or exits from a site shall discharge traffic into any residential area nor require movement of traffic from the camping ground through a residential area. A camping ground shall have a minimum of one hundred fifty (150) feet of frontage on a public street.
 - F. Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. Natural vegetation shall be retained wherever possible. The site shall not be exposed to objectionable smoke, noise, odors, or to other adverse influences, and no portion of the camping grounds subject to flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.
 - G. Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundries, and other uses and structures customarily incidental to the operation of camping grounds are permitted as accessory uses to the camping grounds. In addition, retail stores and other convenience establishments shall be permitted as accessory uses in camping grounds in such districts where such uses are not allowed as principal uses, subject to the following restrictions.
 - 1. Such establishments and the parking areas primarily related to their operations shall not occupy more than five (5) percent of the gross area of the camping ground. Such establishments shall be restricted in their use to occupants of the camping ground.
 - 2. Such establishments shall present no visible evidence from any street outside the camping ground of their commercial character which would attract customers other than occupants of the camping ground.
 - 3. The structures housing such facilities shall not be directly accessible from any public street, and shall only be accessible from a street within the camping ground.
 - H. Plans for sewage disposal and water supply shall be designed in accordance with standards promulgated by the New York State Department of Health and/or Environmental Conservation, and shall receive approval from said agencies.
 - I. Streets in camping grounds shall be private, but shall be constructed with a stabilized travelway and shall meet the following minimum stabilized travelway width requirement:

One Way with no parking on either side:	12 feet
One Way with parking on one side:	24 feet
Two Way with no parking on either side:	24 feet
Two Way with parking on one side:	36 feet
Two Way with parking on both sides:	48 feet.
- All roadways and public parking areas shall either be paved or dust treated.
- J. Recreation facilities. A minimum of eight percent (8%) of the gross site area for the camping ground shall be set aside and developed as common use areas for open or enclosed recreation facilities. No travel trailer site, required buffer strip, street right-of-way, storage area or utility site shall be counted as meeting recreational purposes.

- K. Entrances and exits to camping grounds shall be designed for safe and convenient movement of traffic into and out of the camping ground and to minimize friction with movement of traffic on adjacent streets. All traffic into or out of the camping ground shall be through such entrances and exits. No entrance or exit shall require a turn at an acute angle for vehicles moving in the direction intended. Road curbs shall have a minimum radius of fifty (50) feet and shall be designed for "Drive-thru" campsite parking.
- L. An adequate lighting system shall be provided for the camping ground. Pedestrian walkways shall be provided to lead to all parking areas, restrooms or other service buildings. All walkways shall have adequate lighting.
- M. All utilities shall be underground.
- N. Not less than one (1) covered twenty (20) gallon garbage receptacle shall be provided for each camp site. No camp site shall be situated further than one hundred (100) feet from a garbage receptacle. Garbage and rubbish shall be collected and disposed of as often as may be necessary to insure sanitary conditions.
- O. All applicable sanitation standards promulgated by the State of New York, County of Orleans, or Town of Barre shall be met.
- P. Setbacks. Each building or structure within a camping ground shall comply with the setback regulations applicable to the zoning district in which such camping ground is located, except that travel trailers, campers, tents, motor homes, and the motor vehicles propelling or carrying the same may be located not closer than twenty-five (25) feet to any side or rear lot line nor closer than sixty (60) feet to any front lot line.
- Q. Campsites and buildings shall be set back not less than fifty (50) feet from any stream which carries water more than six (6) weeks per year.

SECTION 705 CLUSTER RESIDENTIAL DEVELOPMENTS

The Planning Board may approve a special use permit for cluster residential developments of one-family dwellings in the AR Agricultural/ Residential Districts and in the R-1 Residential District provided that the following standards and provisions are maintained:

- A. A site development plan shall be submitted in conformance with the requirements of Article X of this Ordinance.
- B. The minimum tract size shall be fifteen (15) acres.
- C. The lot size, yard, area and height requirements shall be established on an individual case basis which reflects the unique conditions of each site proposed for development, the potential impact on adjacent properties and to insure consistency with the Town Comprehensive Plan.
- D. The number of lots or units (density of development) in a cluster plan shall not exceed that which could be created under a conventional development plan for the same tract of land.
- E. The developers shall set aside an area of not less than twenty (20) percent of the gross acreage of the tract to be devoted exclusively to permanent recreation areas or open space.

- F. All recreation or open space areas shall, in the opinion of the Planning Board, be suitable for such use. The ownership and future maintenance of such recreation areas shall be subject to the approval of the Town Board or offered for dedication to the Town.
- G. In determining the overall density to be allowed for a residential site, all areas of the site will be included.

SECTION 706 CONFERENCE/ RESORT COMPLEX

The Planning Board may approve a special use permit for a conference/ resort complex in the AR Agricultural/ Residential District provided that the following standards and provisions are maintained:

- A. All applicable health and safety codes, including provisions of the NYS Fire Prevention and Building Code, are met.
- B. The maximum amount of coverage of buildings and paved areas on the lot shall not exceed fifteen percent (15%) of the lot area.
- C. Landscaped buffers shall be provided, which are sufficient to screen views of the facility from neighboring property and to minimize the impacts of noise, traffic and other operations of the facility on neighboring property, roads and other public facilities.

SECTION 707 DRIVE-IN BUSINESS

The Planning Board may approve a special use permit for a drive-in business in the B General Business District provided that the following standards and provisions are maintained:

- A. The following information shall be submitted as part of the application for site plan approval and for a special use permit for a drive-in business, in addition to that information required in other sections of the Ordinance.
 - 1. The location and dimensions of all structures including buildings, screened trash areas, fencing and lighting (show direction and level of illumination).
 - 2. The locations and dimensions of all off-street parking areas and driveways.
 - 3. Proposed landscaping of site.
- B. All drive-in businesses shall be a minimum of 200 feet from other such businesses, which distances shall be computed as follows:
 - 1. For such businesses on the same side of the street, 200 feet measured between the two (2) closest property lines.
 - 2. For such businesses on opposite sides of the street, 200 feet measured diagonally between the two closest property corners.
 - 3. For four-corner intersections, one (1) such business may be located on a diagonally opposite corner exclusive of the 200 foot distance requirement.

- C. Banks with drive-in facilities shall be permitted provided that at least five (5) car length spaces are provided in the approach drive within the property line of the lot for each drive-in teller's window. Such spaces shall be exclusive of required off-street parking spaces.
- D. All drive-in businesses shall provide suitable storage of trash in areas which are so designated and constructed as to allow no view of the trash storage from the street, to prevent waste paper from blowing around the site or adjacent properties or public right-of-ways, and to permit safe, easy removal of trash by truck or hand.
- E. The minimum distance from any driveway to a side lot line shall be twenty (20) feet.
- F. The minimum distance between driveways on the site shall be fifty (50) feet measured from the two (2) closest driveway curbs.
- G. The minimum distance into the site from a street intersection shall be 30 feet measured from the intersection of the street right-of-way to the nearest end of the curb radius.
- H. Drive-in businesses adjacent to or integrated in a shopping center or cluster of commercial facilities shall use the common access with other business establishments in that center.
- I. Exterior lighting proposed for the site shall be planned, erected and maintained so it will not cast direct light or glare upon adjacent properties or public right-of-way. The light source shall not be higher than twenty (20) feet.
- J. Sufficient landscaping and fencing shall be provided in order to minimize visual impacts and minimize conflicts with adjacent land uses.
- K. Water supply and sewage disposal systems shall be reviewed by the Orleans County Health Department.
- L. Any outdoor eating area associated with a drive-in restaurant shall be maintained, landscaped and physically separated from any off-street parking area or driveway. Outdoor eating shall be allowed only if all parking and vehicular travel areas have a dust-free (paved) surface.

SECTION 708 ESSENTIAL SERVICES AND UTILITIES

Essential services and utilities may be allowed as special permit uses in all districts by the Planning Board. The Planning Board shall determine the following prior to approving a special permit:

- A. The proposed installation in a specific location is necessary and convenient for the efficiency of the essential services or the satisfactory and convenient provision of service to the area in which the particular use is located.
- B. The design of any building in connection with such facility shall conform to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights in the district in which it is to be located.
- C. Adequate landscaping will be provided to create a visual and sound buffer between such facilities and adjacent property.
- D. Adequate and attractive fences and other safety devices will be provided.

- E. Adequate off-street parking shall be provided.
- F. All new and replacement electric distribution, telephone, cable TV and other lines shall be placed underground, if practical, as determined by the Planning Board during Site Plan Review.
- G. All points of necessary access, or transformers, shall be placed in secure structures at ground level.
- H. All major electrical transformer facilities or substations, if above ground, shall be secured by an outer and inner fence, each ten feet from each other at any point; also no transformer or associated switches shall be closer than 100 feet from any lot line.

Section 709 FARM MARKET

The Planning Board may approve a special use permit for farm markets in the AR Agricultural/ Residential Districts provided that the following standards and provisions are maintained:

- A. Such structures shall not exceed 2,000 square feet of floor area.
- B. Not more than 1/3 of the total floor area shall be for the display and sale of products grown off the premises.
- C. Such structures shall conform to the minimum setback requirements for accessory buildings in this district as specified in the Zoning Schedule.
- D. Sufficient land area shall be provided to accommodate off-street parking for not less than three (3) vehicles on site.

SECTION 710 HOME OCCUPATIONS

The Planning Board may approve a special use permit for Home Occupations in the AR Agricultural/ Residential and in the R-1 Residential Districts provided that the following standards and provisions are maintained:

- A. The type of business allowed as an in-home occupation includes, but is not limited to:
 - 1. Professional or business office
 - 2. Beauty shop or barber shop
 - 3. Family day care for no more than 6 children at any one time.
 - 4. Other similar business as determined by the Zoning Board of Appeals
- B. The business shall be owned and operated by the occupant of the residential structure.
- C. A total of at least four (4) parking spaces shall be provided. Such parking shall be provided off the street and other than in a required front yard.
- D. No more than three (3) persons, other than members of the immediate family occupying such dwelling, shall be employed as part of the home occupation or home professional occupation.
- E. A home occupation or home professional occupation must be conducted within a dwelling which is bona fide residence of the principal practitioner or in an accessory building thereto which is normally associated with a residential use. Such home occupations may occupy either up to thirty

(30) percent of the gross floor area of the residence to be used for the conduct of the home occupation or up to forty (40) percent of the floor area of an accessory structure but not both.

- F. In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs, or the emission of sounds, noises or vibrations.
- G. No outdoor display of goods or outside storage of equipment or materials used in the home occupation or profession shall be permitted.
- H. No sign shall be permitted except in accordance with the provisions of Section 600.
- I. Off-street parking shall be provided in accordance with Section 601.
- J. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
- K. Only one (1) commercial type vehicle may be used in connection with the home occupation.
- L. Not more than one (1) home occupation or profession shall be permitted for each residential property.

SECTION 711 JUNK YARDS, AUTO WRECKING AND DISMANTLING YARDS

The Planning Board may approve a special use permit for a junkyard, auto wrecking and dismantling yard in the LI Light Industrial District provided the following standards and provisions are maintained:

- A. The provision of the State Junkyard Law (General Municipal Law, Section 136, as amended) are hereby adopted by reference and shall apply to all junk yards as defined in this Ordinance. The expansion or alteration existing junk yards shall also be governed by the provisions of this section.
- B. Minimum Dimensional Requirements:
 - Minimum Lot Size: 5 acres
 - Maximum Lot Size: 15 acres
 - Minimum Lot Width: 300 feet
 - Minimum Front, Side and Rear Setbacks: 100 feet
- C. A junk yard shall be completely surrounded with a solid fence at least eight feet in height which completely obscures the junk yard from public view and with a suitable gate which shall be closed and locked except during the working hours of such junk yard or when the applicant or his agent shall be present. Such fence shall be erected no nearer than the required setbacks.
- D. All junk stored or deposited by the operator shall be kept within the enclosure of the junk yard except as removal shall be necessary for the transportation of same in the reasonable course of business.
- E. All vehicles or engines stored in the yard shall first be drained of any oil, gasoline or other fluids. Such fluids shall be safely stored and disposed of off-site.

- F. There shall be no storage or stockpiling of tires or batteries except within an enclosed building.
- G. Direct sales to the general public shall be confined to an enclosed building located on the site, except for the sale of reconditioned motor vehicles. Said motor vehicles may be displayed in a defined area outside of the fenced junkyard portion but on the subject parcel. A minimum area of two hundred (200) square feet shall be required for each motor vehicle displayed for sale.
- H. No motor vehicle or dismantled parts may be stored within one hundred (100) feet of the bed of a stream carrying water on an average of six (6) months of the year.
- I. Off-street parking shall be in accordance with Section 601 of this Ordinance.
- J. A performance bond shall be submitted in an amount determined by the Planning Board as sufficient to cover the cost of required fencing, restoration of property, and Planning Board review.
- K. Special Permits granted pursuant to this Section shall be inspected annually.

SECTION 712 KENNELS

The Planning Board may approve a special use permit for kennels in the AR Agricultural/ Residential District and the B General Business District, provided that the following standards and provisions are maintained:

- A. The lot size shall be adequate to accommodate the number of animals proposed to be housed at site
The Planning Board shall specify a minimum lot size on a case by case basis.
- B. The Planning Board may require fencing or suitable enclosure for facilities located outside the building and, in addition may require buffer landscaping to create a visual ,sound and smell buffer between such facilities and adjacent properties.
- C. The Planing Board shall specify the minimum lot size ,setbacks for shelter , kennel outdoor runs for the animals.
- D. Adequate provisions shall be made for disposing of animal waste.
- E. Noise and odors shall not become a nuisance to adjacent property owners.
- F. In issuing the Special Use for kennels the Planning Board shall specify the maximum number and types of animals to be housed boarded or trained.
- G. All animals shall be kept within a totally enclosed building between 8:00 p.m. and 6:00 a.m.

SECTION 713 MANUFACTURED HOME PARK

The Planning Board may approve a special use permit for manufactured home parks in the AR Agricultural/ Residential District, R-1 Residential District, and the B General Business District, provided that the following standards and provisions are maintained:

- A. The minimum site area of proposed manufactured home parks shall not be less than twenty (20) acres.
- B. Individual manufactured home lots shall have an area of not less than 7,500 square feet. Each individual lot shall front on an interior park roadway and have a minimum width of 75 feet.
- C. Setbacks for individual manufactured home lots

Minimum Front Setback: 20 feet
Minimum Side Setback: 20 feet
Minimum Rear Setback: 10 feet
- D. The minimum setbacks of every manufactured home, building or other structure in a park from the nearest public street line shall be seventy (70) feet, and from every other lot line of the park shall be forty (40) feet.
- E. Not more than one (1) manufactured home shall be located on any one (1) individual lot. Every manufactured home within a park shall be located on a manufactured home lot shown on the approved site plan for said park.
- F. At least one (1) framed service building shall be constructed in each manufactured home park which shall be adequate to provide for storage of all equipment, tools and materials necessary for the maintenance of the park, and all such equipment, tools, and materials shall be stored within said building when they are not in use.
- G. Each individual lot shall have not less than two (2) off-street parking spaces. Such parking spaces shall be connected to the entrance of the manufactured home by a paved sidewalk having a minimum width of thirty-six (36) inches.
- H. No boats, campers, travel trailers, recreational vehicles, or unregistered and unregistered motor vehicles shall be parked or stored at any place within a manufactured home park except in areas designated and approved for such storage as part of the site plan approval.
- I. Every travel lane and parking lane within a manufactured home park shall have a minimum pavement width of twelve (12) feet and each roadway shall have a minimum right-of-way width of fifty (50) feet. If cul-de-sacs exist, they shall have a minimum diameter of eighty (80) feet.
- J. A complete water distribution system approved by the Orleans County Health Department and other appropriate agencies, including a water-service pipe for each manufactured home lot and appropriately spaced fire hydrants, shall be installed.
- K. A public sanitary sewage disposal system approved by the Orleans County Health Department and other appropriate agencies shall be installed, including a sewer connection for each manufactured home lot.

- L. All public utility, electric, gas, cable television and telephone lines shall be installed underground.
- M. Appropriate lighting shall be installed on interior roadways with the minimum number of lights being one light for each house or lot, and one light at each intersection of interior roadways.
- N. Pedestrian walkways, if provided, shall be a minimum of five (5) feet in width.
- O. A landscape plan shall be prepared and carried out which will assure the Planning Board that an appropriate planting of trees and shrubs will be included in the park design, including screening where necessary.
- P. No manufactured home shall be located on a manufactured home lot until the roadways, sanitary sewage disposal system, water supply system, storm drainage system, street lighting, landscaping, recreation areas, framed service buildings, and accessory vehicular storage buildings serving the manufactured home park have been installed in accordance with the approved site plan for the park.
- Q. Each roadway shall be named and noted upon signs at each roadway intersection. Each manufactured home lot shall be assigned a permanent number which shall be noted on the manufactured home lot in a location clearly visible from the roadway.
- R. All fuel tanks used for heating within a manufactured home park, including all fuel tanks used for heating within individual homes, shall be installed in accordance with NFPA standards.
- S. Every manufactured home park shall have a recreational area or open space area for use by the occupants of the park. Such areas shall be appropriately located as the topography and design of the park permit. Such areas shall not be less than one (1) acre for the first 20 manufactured home lots, with an additional 1,000 square feet provided for each additional manufactured home lot.
- T. The park owner/operator shall provide for the regular collection and disposal of garbage, trash, and rubbish for all residents of the park.
- U. No more than one (1) accessory building shall be permitted on any individual manufactured home lot.
- V. Each manufactured home shall be enclosed at the bottom with a fire resistant, properly maintained, stable, and enclosed skirt within thirty days after the placement of the home on the lot.
- W. No enclosure or addition, with the exception of carports, door porches, and patios, shall be constructed on, added to, or attached to the exterior of any manufactured home.
- X. No manufactured home shall be offered for sale, displayed for sale, or sold within a park unless such manufactured home is located on an individual manufactured home lot and is connected to electric, sewer and water services.
- Y. Every roadway within a manufactured home park shall be maintained in good repair and shall be open at all times reasonably possible for travel by occupants of the park and necessary fire, police, ambulance, public utility maintenance and fuel supply vehicles. The park owner/operator shall be responsible for providing and paying the cost of such maintenance and for all necessary snow removal.

- Z. Sale of Lots. Any sale of a manufactured home lot or lots, or a portion of a manufactured home park, other than the entire manufactured home park, as shown on the plan of such park approved by the town, shall thereupon immediately invalidate the special permit for such park approved by the Planning Board. Any use of any of the premises within the manufactured home park other than as a manufactured home park shall thereupon immediately invalidate the special permit of such park approved by the Planning Board.
- AA. Home Occupations. Home occupations or businesses shall not be permitted in any individual manufactured home located within a park.

SECTION 714 MOTOR VEHICLE, BOAT OR MANUFACTURED HOME SALES

The Planning Board may approve a special use permit for the sales of motor vehicles, boats or manufactured homes in the General Business (B) District provided that the following standards and provisions are maintained:

- A. Such sales may be conducted either in a fully enclosed building located on the same lot, or in an unenclosed area.
 - 1. If such sales are conducted in a fully enclosed building located on the same lot, such building shall have a building area of not less than 5,000 square feet devoted to the sale and service of automobiles or boats.
 - 2. If sale of new and/or used automobiles, boats or manufactured housing is carried on in an unenclosed area, the following standards shall be maintained:
 - a. Such unenclosed area used for the storage of automobiles or boats, or traversed by motor vehicles, shall be paved, shall be suitably drained, and shall be maintained in a neat and orderly manner.
 - b. All exterior illumination shall be approved by the Planning Board and shall be shielded from the view of all surrounding properties and streets.
 - c. Suitable landscaping and/or fencing of such unenclosed area shall be required.
 - d. No establishment for the sale of new and used automobiles, boats or manufactured housing shall be opened, conducted, or maintained except as provided above. None of the provisions of this section, however, shall be deemed to prohibit the continuance of the present use of any property for the sale of new and used automobiles, boats, or manufactured housing provided that any such continued use shall be subject to all of the provisions of this section. Plans for any changes required to bring about such conformance shall be submitted to and approved by the Planning Board before any such change shall be made. The Planning Board may approve, modify, or disapprove such plans and may impose reasonable and appropriate conditions to such approval so that the spirit of this Ordinance shall be observed.

B. Minimum Specifications

Front Setback:	75 Feet	Side Setback:	30 Feet
Rear Setback:	30 Feet	Lot Width:	200 Feet
Lot Size:	1 Acre		

- C. No vehicles shall be displayed for sale or rent within 35 feet of the front property line, or within 25 feet of any side or rear property line. No manufactured homes shall be displayed within any required building setback. The maximum coverage for buildings shall apply to manufactured homes for sale, in addition to buildings used in the conduct of such sales.
- D. No retail sale of fuels shall occur on the site at any time.
- E. All sign age shall comply with Section 600 of this Ordinance.
- F. No exterior light source shall be erected in excess of 50 feet above the ground surface and all lighting shall be placed to eliminate the casting of direct light or glare upon adjacent properties.
- G. Repair of motor vehicles on site is prohibited unless the provisions found in Section 715 -**Motor Vehicle Service Stations and Auto Repair Shops** of this Ordinance are complied with in full.

SECTION 715 MOTOR VEHICLE SERVICE STATIONS AND AUTO REPAIR SHOPS

The Planning Board may approve a special use permit for motor vehicle service stations and auto repair shops in the B - General Business District provided that the following standards and conditions are maintained:

- A. In addition to the information required in the special permit and site plan review applications and enumerated in Articles X and XI herein, the site plan submitted shall also show the location and number of fuel tanks to be installed, the dimensions and capacity of each storage tank, the depth the tanks will be placed below the ground, and number and location of fuel pumps to be installed.
- B. Such uses shall be screened from adjacent uses by a buffer area not less than ten (10) feet in depth composed of densely planted evergreen shrubbery, solid fencing, or a combination of both which, in the opinion of the Planning Board, will be adequate to prevent the transmission of headlight glare across the property line. The Planning Board shall determine on an individual case basis how close to the right-of-way the landscaped buffer shall be required to be installed. Such buffer screen shall have a minimum height of six (6) feet above the ground. If said shrubbery becomes decayed and fails to provide an adequate screen, the Code Enforcement Officer shall direct the property owner to replace said shrubs.
- C. The entire area of the site traveled by motor vehicles shall be hard surfaced.
- D. All repairs of motor vehicles, except for minor servicing, shall be performed in a fully enclosed building. No motor vehicle parts, or partially dismantled motor vehicles shall be stored outside of an enclosed building.
- E. No commercial parking shall be allowed on the premises of a motor vehicle service station or auto repair shop.
- F. Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans and/or antifreeze and similar products may be displayed on the respective island if provided for in a suitable stand or rack.
- G. No accessory building or structure, including gasoline pump or automotive service appliances, shall be erected within forty (40) feet of any street line.

- H. No motor vehicle service station or auto repair shop may display more than four (4) unregistered vehicles for sale or repair outside of an enclosed building at any one time. All licensed motor vehicles being serviced or repaired shall be stored in a neat, orderly manner.
- I. No motor vehicle service station or auto repair shop shall have more than two (2) driveways on any public street fronting the site. The driveway width on any street shall not exceed one third of the total site frontage on each street.
- J. No driveway shall be closer than fifty (50) feet to the intersection of two street lines, or within twenty (20) feet of an adjacent lot line.
- K. No motor vehicle service station or auto repair shop and no driveway to any such use shall be established within two hundred (200) feet of the boundary line of the R-1 Residential District, or of any school, church, park, playground, public library, or any place of public assembly designed for occupancy by fifty (50) persons or more, regardless of the district where the subject premises are located. For the purposes of this Section, the distance shall be measured along the street line on the side of the street where such use is proposed or such driveway would cross.

SECTION 716 MULTIPLE FAMILY DWELLINGS

The Planning Board may approve a special use permit for multiple family developments in the B - General Business District provided that the following standards and provisions are maintained:

- A. The maximum gross density shall not exceed eight (8) units per acre.
- B. Minimum Habitable Floor Area Requirements:

1. Townhouse units with two bedrooms or less:	850 square feet
2. Townhouse units with three bedrooms or more:	1,000 square feet
3. Efficiency Apartment unit:	450 square feet
4. Apartment unit with one bedroom:	550 square feet
5. Apartment unit with two bedrooms:	700 square feet
6. Apartment unit with three bedrooms:	900 square feet
- C. Unit Distribution
 - 1. No more than thirty (30) percent of the total units within a multiple family dwelling development shall be three (3) or more bedroom units.
 - 2. No more than thirty (30) percent of the total units within a multiple family dwelling development shall be efficiency units.
- D. Setback Requirements:
 - 1. The minimum front setback from the right-of-way of any public street shall be 75 feet.
 - 2. The side and rear setbacks shall be 50 feet from all other lot lines.
 - 3. Minimum distance between buildings in a multiple family dwelling development shall be 60 feet.

4. Direct line of sight visibility from one building to another shall not be less than one hundred (100) feet.
 5. Every building shall have a minimum setback of twenty-five (25) feet from all interior roads, driveways and parking areas.
 6. A strip of land at least six (6) feet in width surrounding each building shall be kept completely open except for foundation plantings of less than six (6) feet in height.
 7. Court yards bounded on three sides by the wings of a single building or by the walls of separate buildings shall have a minimum court width of two (2) feet for each one (1) foot in height of the tallest adjacent building.
- E. No exterior wall shall exceed one hundred (100) feet in length unless there is a lateral offset of at least eight (8) feet in its alignment not less frequently than along each one hundred (100) feet of length of such exterior wall.
- F. All stairways to the second floor or higher shall be located inside the building.
- G. Access to public road:
1. All multiple-family dwelling developments shall have direct access to public roads.
 2. If there are more than twelve (12) dwelling units in a multiple-family development, direct access shall be provided to a public road by a private driveway or a road dedicated to the Town by the developer.
 3. If there are more than fifty (50) dwelling units in a multiple-family development, or if in the opinion of the Planning Board the location or topography of the site indicates the need for additional access, the Planning Board may require such additional access as a condition of site plan approval.
- H. Requirements for off-street parking as provided in Section 601 of this Ordinance shall be met, except that the location of off-street parking lots may be modified to conform with the approved site plan, provided that such lots shall not be located within the front yard or the required side yard setback. Paved pedestrian walkways, with appropriate lighting, shall be provided from off-street parking areas to all living units each parking area is intended to serve.
- I. Off-street parking shall be provided in the amount of two (2) spaces for each unit.
- J. The aggregate of building coverage of multiple-family dwelling development shall not exceed thirty (30) percent of the total lot area.
- K. Services:
1. Each dwelling unit shall contain complete kitchen facilities, toilet, bathing and sleeping facilities.
 2. There shall be a minimum common storage area in each building for bicycles, perambulators and similar type equipment of forty (40) square feet in area, a minimum of five (5) feet in height and not less than four (4) feet in width per dwelling unit.

3. Sufficient laundry, drying, garbage pick-up and other utility areas shall be provided and shall be located with a view both to convenience and to minimizing the detrimental effect on the aesthetic character of the building(s) and shall be enclosed and shielded from view by fencing, walls or shrubbery of at least six (6) feet in height around the perimeter. Fencing and walls shall be not more than fifty (50) percent open on the vertical surface.

L. Recreation, open space, maintenance:

1. Multiple family dwelling complexes shall be designed to create usable private open space. A minimum of ten (10) percent of the total tract area, exclusive of the required setback areas, buffer strip and parking areas shall be designated for common recreational purposes.
2. No recreational area shall be less than ten thousand (10,000) square feet in area nor less than one hundred (100) feet in width. Areas designated for recreation purposes shall be approved by the Planning Board.
3. Multiple family dwelling complexes shall be attractively shrubbed and properly maintained. Open space adjacent to, around, or between driveways, parking areas, structures or other required improvements shall be graded and seeded to provide a thick stand of grass or other plant material.

M. Utilities:

1. All public utility, electric, gas, cable television and telephone lines shall be installed underground.
2. Multiple family developments shall be connected to and served by public water supply and sanitary sewer systems. Such systems shall be approved by the Orleans County Health Department and other applicable agencies.

SECTION 717 PUBLIC AND SEMI-PUBLIC BUILDINGS AND GROUNDS

The Planning Board may approve a special use permit for public and semi-public uses of an institutional, health, educational, recreational, religious or cultural nature in any zoning district provided that the following standards and provisions are maintained:

A. Day Care Centers

1. All day care centers shall have an active outdoor play area of 100 square feet per child.
2. Outdoor play areas shall be appropriately fenced in or otherwise protected from roads and nearby properties.
3. No outdoor play equipment may be placed within ten feet of any property line, fence, or structure.
4. Minimum parking shall be one (1) space per staff member, plus one (1) space per each five (5) children.
5. The operator shall have a valid license from New York State.

B. All Other Public & Semi-Public Uses

1. The application shall include a statement setting forth the details of the operation of the use.
2. The applicant shall provide evidence of approval, certificate of need, license or other similar document required to initiate or expand such a use from any and all appropriate regulating agencies.
3. The proposal shall meet the minimum area and yard requirements for such uses as specified in the Zoning Schedule.
4. The proposed use shall meet the minimum off-street parking and loading and unloading requirements of this Ordinance as well as provisions for landscaping, buffering, signs and access ways.
5. The Planning Board, in considering the request for a special use permit, may impose conditions it deems necessary to protect the health, safety and public welfare of the Town.

SECTION 718 STABLES OR RIDING ACADEMIES

The Planning Board may approve a special use permit for the use of land and buildings for stables for the commercial boarding of horses or riding academies in the AR Agricultural/ Residential District provided that the following standards and provisions are maintained:

- A. No site preparation or construction shall commence nor shall existing structures be occupied until final site plan approval has been granted by the Planning Board and permits have been issued by all governmental agencies involved.
- B. The permitted use may include any of the following:
 1. Storage of horse vans for conveying or vanning of horses as may be accessory to the principal use.
 2. Sale or rental of horses for use by public by the hour, day, month or year.
 3. Rides on horses by the public.
 4. Rental of horse vans.
 5. Riding lessons to the public.
 6. Sale of horse supplies and/or equipment.
- C. The land devoted to this use shall not be less than ten (10) contiguous acres.
- D. One principal single family dwelling may be located on the land devoted to this use provided that it complies with the requirements for this Ordinance. The land area on which the principal single family dwelling is located (minimum lot size of AR District) shall not be considered as part of the land "devoted to this use" as set forth in paragraph C above.

- E. The number of horses that may be boarded and/or trained at such property shall not exceed 25 horses for the first 10 acres of land devoted to this use, plus one horse for each additional half acre of land available for such purpose.
- F. The stable shall be located not less than 100 feet from any boundary line. The storage of manure shall be located on land not less than 200 feet from any boundary line. The Planning Board may require manure storage areas to be screened and/or buffered from adjacent areas.
- G. Any riding ring shall be at least 50 feet from any boundary line.
- H. Accessory buildings such as barns (not housing horses), sheds and the like, may be located on the land devoted to this use provided that they are set back a minimum of fifty (50) feet from the street line and from each boundary, and provided further that they are not used for the storage of manure.
- I. Structures on the land devoted to this use (not including the principal dwelling) shall not be in the aggregate cover more than five percent of the area of the land devoted to this use.
- J. No structure shall exceed 35 feet in height.
- K. Suitable and adequate off-street parking shall be provided in accordance with the requirements established by this Ordinance and the Planning Board.
- L. Exterior lighting shall be permitted only to the extent necessary to prevent injury to the public and shall be so installed and arranged as to reflect light away from the adjoining streets and prevent any nuisance to adjoining property.
- M. The installation and use of exterior loudspeakers shall be conducted in such a manner as to minimize potential nuisances to adjacent properties.

SECTION 719 TELECOMMUNICATION FACILITY

The Planning Board may approve a special use permit for the use of land and buildings for a telecommunication facility in the AR Agricultural/ Residential District or the LI Light Industrial District provided that the following standards and provisions are maintained:

A. Purpose

The purpose of these supplemental regulations is to promote health, safety, and the general welfare of the residents of the Town of Barre; to provide standards for safe provision of telecommunications consistent with applicable federal and state regulations; to minimize the total number of telecommunications towers in the community by encouraging shared use of existing and future towers, and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from telecommunications towers by requiring careful siting, visual impact assessment, and appropriate landscaping.

B. General Criteria

No Special Use Permit or renewal thereof or modification of a current Special Use Permit relating to a Telecommunications Facility shall be authorized by the Planning Board unless it finds that such Telecommunications Facility:

1. Is necessary to meet current or expected demands for service;
2. Conforms with all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies;
3. Is designed and constructed in a manner which minimizes visual impact to the extent practical;
4. Complies with all other requirements of this Ordinance, unless expressly superseded herein;
5. Is the most appropriate site among those available within the technically feasible area for the location of a Telecommunications Facility;
6. When including the construction of a tower, such tower is designed to accommodate future shared use by at least one (1) other telecommunication service provider. Any subsequent location of telecommunication equipment by other service providers on existing towers specifically designed for shared use shall not require a new or modified special permit if there would be no increase in the height of the tower. However, the additional equipment will require site plan review.

C. Co-Location

The shared use of existing Telecommunications Facilities or other structures shall be preferred to the construction of new Facilities. Any Special Permit applications, renewal or modification thereof shall include proof that reasonable efforts have been made to co-locate within (share) an existing Telecommunication Facility or upon an existing structure. The application shall include an adequate inventory report specifying existing Telecommunication Facility sites and structures exceeding seventy-five percent (75%) of the height of the proposed tower within the search range of the cell grid. The inventory report shall contain an evaluation of opportunities for shared use an alternative to the proposed location.

The applicant must demonstrate that the proposed Telecommunication Facility cannot be accommodated on existing Telecommunications Facility sites in the inventory due to one (1) or more of the following reasons:

1. The planned equipment would exceed the structural capacity of existing and approved Telecommunication Facilities or other structures, considering existing and planned use for those facilities;
2. The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented;
3. Existing or approved Telecommunications Facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;
4. Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures;
5. The property owner or owner of the existing Telecommunication Facility or other structure refuses to allow such co-location.

D. Dimensional Standards

1. A fall zone around any tower constructed as part of a Telecommunications Facility must have a radius at least equal to the height of the tower and any antennae(s) attached upon its zenith. The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, and may not contain any structure other than those associated with the Telecommunications Facility. If the Facility is attached to an existing structure, relief may be granted by specific permission of the Zoning Board of Appeals on a case-by-case basis.
2. All Telecommunications Facilities shall be located on a single parcel.
3. All Telecommunications Facilities shall comply with the setback standards of the underlying zoning district. The size of the leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone. A lot leased or owned for the purpose of construction of a tower as part of Telecommunications Facility shall not result in the creation of a non-conforming lot.
4. The frontage requirement of the underlying zoning district shall not apply, provided the Telecommunications Facility is not proposed on a parcel to be partitioned specifically for the Facility and/or is designed for occupancy by staff. In the absence of required frontage, an access for service vehicles - either through easement, lease or ownership - shall be in accord with paragraph G herein.

E. Lighting and Marking

1. Towers shall not be artificially lighted and marked beyond requirements of the Federal Aviation Administration (FAA).
2. Notwithstanding the preceding paragraph 1, an applicant may be compelled to add FAA-style lighting and marking, if in the judgement of the Planning Board, such a requirement would be of direct benefit to public safety.

F. Appearance and Buffering

1. The use of any portion of a Telecommunications Facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited.
2. The facility shall have the least practical visual effect on the environment, as determined by the Planning Board. Any tower that is not subject to FAA marking, pursuant to paragraphs E.1. and E.2. herein, shall otherwise:
 - a. have a galvanized finish, or shall be painted gray above the surrounding tree line and gray or green below the tree line, as deemed appropriate by the Planning Board; or
 - b. be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the Facility to perform its designed function.

3. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.
4. The Planning Board may require a State Environmental Quality Review (SEQR) Full EAF (Environmental Assessment Form) for proposed Facilities at key viewpoints in the community. A Visual Environmental Assessment Form (Visual EAF), may be required as an addendum to either the Full or Short EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF.
5. The Planning Board shall require that the Facility have appropriate vegetative buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, or public roads. Such screening shall include the maximum feasible retention of existing vegetation. The Planning Board may similarly require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public.
6. Equipment or vehicles not used in direct support, renovations, additions or repair of any Telecommunications Facility shall not be stored or parked on the Facility site.

G. Access and Parking

1. Access ways shall make maximum use of existing public or private roads to the extent practicable. New access ways constructed solely for Telecommunications Facilities must be at least twenty (20), but no more than thirty (30) ft. wide, and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
2. The road surface (driveways) shall be centered within access ways and shall not comprise more than 60% of the width of the access way.
3. Parking areas shall be sufficient to accommodate the greatest number of service vehicles expected on the premises at any one time.
4. Driveways or parking areas shall provide adequate interior turn-around, such that service vehicles will not have to back out onto a public thoroughfare.

H. Security

1. Towers, anchor points of guyed towers, and accessory structures shall each be surrounded by fencing at least eight (8) ft. in height, the top foot of which may, at the discretion of the Planning Board in deference to the character of the neighborhood, be comprised of three-strands of barbed wire to discourage unauthorized access to the site.
2. Motion activated or staff activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site. Such lighting should only occur when the area within the fenced perimeters has been entered.
3. There shall be no permanent climbing pegs within fifteen (15) feet off the ground of any tower.

4. A locked gate at the junction of the access way and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.

I. Engineering and Maintenance

1. Site plans for all Telecommunications Facilities must bear the seal of a professional engineer licensed to practice in the State of New York. Every facility shall be built, operated and maintained to acceptable industry standards including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).
2. Every Facility shall be inspected at least every second year for structural integrity by a New York State licensed engineer. A copy of the inspection report shall be submitted to the municipal code enforcement officer.
3. A safety analysis by a qualified professional must accompany any special permit or site plan application, renewal thereof or modification, for the purpose of certifying that general public electromagnetic radiation exposure does not exceed standards set by Federal Regulations.
4. The municipality, at the expense of the applicant, may employ its own consulting assistance to review the findings and conclusions of safety analysis, visual analysis, or structural inspection, provided by the applicant.

J. Removal

1. At the time of submittal of the application of a special use permit for a Telecommunications Facility, the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower(s) dedicated solely for use within a Telecommunications Facility if such Facility becomes technologically obsolete or ceases to perform its originally intended function for more than twelve (12) consecutive months. Upon removal of said Facility, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.
2. At the time of obtaining a building permit, the applicant must provide a financial security bond for removal of the Telecommunications Facility and property restoration, with the municipality as the assignee, in an amount approved by the Planning Board, but not less than one hundred thousand (\$100,000) dollars.
3. At time of renewal or modification of the Special Use Permit, the Planning Board may adjust the required amount of the financial security bond to adequately cover increases in the cost of removal of the Telecommunications Facility and property restoration.

**SECTION 720 ADULT BOOKSTORES AND ADULT ENTERTAINMENT
ESTABLISHMENTS**

Adult bookstores and adult entertainment establishments, as defined herein, may be approved in the LI-Light Industrial District by the Town Planning Board following a public hearing and provided that the standards and provisions specified below are maintained:

A. Purpose

1. In the execution of this Ordinance 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 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 neighborhood or land uses.
2. It is further declared that the location of adult bookstores or adult entertainment establishments in areas where youth may regularly assemble, and the general atmosphere encompassing their operations, is of great concern to the Town of Barre.
3. These special regulations are intended to accomplish the primary purpose of preventing a concentration of these uses in any one area and restricting their accessibility to minors.

B. General Regulations

1. The proposed use shall be operated in a manner that is consistent with the New York State Penal Law relating to exposure, obscenity or lewdness.
2. An adult bookstore or adult entertainment establishment use shall not be operated within one-thousand (1,000) feet of:
 - a) a church, synagogue or place of worship.
 - b) a public or private elementary or secondary school, day care, pre-school or other uses of a similar nature.
 - c) a boundary of any AR or R-1 zoning district.
 - d) a public park, municipal building or community center.
3. An adult bookstore or adult entertainment establishment shall not be operated within one-thousand (1,000) feet of another adult bookstore or adult entertainment establishment, or on the same lot or parcel of land.
4. An adult bookstore or adult entertainment establishment shall not be operated in the same building, structure, or portion thereof, containing another adult bookstore or adult entertainment establishment.
5. For the purpose of this Ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structures as part of the premises where an adult bookstore or adult entertainment establishment is conducted, to the nearest property line of the premises of any of the uses specified in B.2. a) through d) identified above or to another adult bookstore or adult entertainment establishment.
6. All adult bookstores or adult entertainment establishments shall be conducted in an enclosed building, regardless of location.

7. No exterior sign shall contain any photographic or artistic representation of the human body.
8. All building openings, entries, windows, doors, etc. associated with an adult bookstore or adult entertainment establishment 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.
9. No adult bookstore or adult entertainment use shall be established in any building which is used, in part, for residential purposes.
10. No residential use shall be established in any building which contains an approved adult bookstore or adult entertainment use.
11. No more than one (1) of the adult uses as defined above shall be located on any lot.

C. Waiver of Restrictions

The restrictions enumerated in Section 720.B above may be waived by the Town Planning Board if the applicant shows and the Board finds that the following conditions have been met in addition to the general conditions contained in Article VIII of this Ordinance:

1. The proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of this Ordinance will be observed;
2. That the establishment of an additional use of this type in the area will not be contrary to any program of neighborhood conservation or improvement, either residential or non-residential; and
3. That fifty-one percent (51%) or more of the property owners within the restricted area as defined in Section 720.B.2 of this Ordinance have signed a petition stating that they have no objection to the establishment of the uses defined above.

D. Amortization

By amortization, the right to maintain a legal non-conforming adult use shall terminate in accordance with the following schedule:

Amount of Capital Investment* as of the Effective Date of this Ordinance	Date Before Which Use Shall Terminate
\$ 0 to 5,000	January 1, 1998
\$ 5,001 to 8,000	January 1, 1999
\$ 8,001 to 15,000	January 1, 2000
\$ 15,001 to 22,000	January 1, 2001
\$ 22,000 or more	January 1, 2002

*NOTE: The term "capital investment," as used above is defined to mean the initial outlay by the owner or operator of the use to establish the business as of the date of the enactment of the Ordinance, exclusive of the fair market value of the structure in which the use is located.

Section 721 FARM LABOR CAMP

The Planning Board may approve the construction and maintenance of temporary housing to support individual agricultural operation with AR housing to support individual agricultural operation within a AR District provided the following standards and condition are maintained.

The maximum number of temporary housing units allowed for an individual agricultural operation will be based on:

- A. Justification of need for the number of dwelling units requested. . This justifications to be based on full time seasonal employment by (1) one or more persons living as a family in temporary dwelling Unit and deriving their principal income from the individual agricultural operation for which The Special Use Permit is requested.
- B. A temporary housing unit will be only be occupied during ,growing and harvest season for agricultural operation . All other times ,the temporary housing units will be secured and maintained in state of good repair.
- C. No temporary housing unit will be used ,leased or rented to another person if that person does not have a legal interest established with the individual agricultural operation. The land owner will certify ,on an annual basis that the temporary farm housing is used for his /her farm labor.
- D. All temporary housing units will be located on a parcel that is under the same ownership as individual agricultural operation.
- E. All temporary housing units will comply with the New York Sate Uniform Fire and building code.
- F. All temporary housing units will have a septic system approved by Orleans County Health Department ,or an approved connection to public answer system.
- G. All temporary housing units will have and adequate access to public highway. The access may be combined with driveway for owner of individual agricultural operation and any other temporary housing units associated with said individual agricultural operation.
- H. All temporary housing will refer to Section 601 Parking, Article VI
- I. All temporary housing units will be located on portion of an actively farmed site which the planning board determines would cause the least disruption to continue farming operation. The basis for this determination will include an overall site plan identifying the land needed for production and land needed for production and land needed in support of said production.
- J. All temporary housing units will be subject to the front side and rear setback standards specified for principle buildings in AR District.

SECTION 722 MINING/EXCAVATION

Background

The New York State Department of Environmental Conservation (DEC) regulates mining and the reclamation of mined land when the mining operation would remove more than 1000 tons of material within a calendar year. Recent court decisions have stated that DEC's authority supercedes local zoning control of mining operations., Local governments may regulate whether and where such mining may take place within the municipality.

The following suggests a definition of mining/excavation as well as draft special permit criteria for the review of proposed mining/excavation operations. Note that extensive regulations are proposed for small scale operations that are not regulated by DEC(paragraph F). For mining operations regulated by DEC, the proposed regulations are limited to location of mining operations and reference required DEC permit (paragraph E).

Definitions

EXTRACTION OF STONE AND OTHER MINING OPERATION- Any use of the principal activity of which the extraction of 500 or more yards of stone, gravel, sand, soil or other minerals from any lot within a period of 24 consecutive months for the purpose of sale. The term shall not include the incidental extraction and sale of soil or minerals as part of an agricultural use, development of a site, road construction, installation of utilities or other subdivision improvements.

GRAVEL OR SAND PIT- See “Extraction of stone and other mining operation.”

Regulations

EXTRACTION OF STONE AND OTHER MINING OPERATION

The extraction of stone, sand or gravel shall be permitted with a special use permit in the Districts allowed by the ordinance provided the following standards and conditions are maintained. The minimum parcel size shall be not less than 10 acres.

- A. The extraction of stone, sand and gravel shall be in accordance with applicable statutory provisions.
- B. Notwithstanding the following regulations, property owners may conduct earthmoving, excavation and filling operations and may utilize gravel, stone or quarry materials in the preparation of building sites or for activities in accordance with an approved final subdivision plan, or for agricultural purposes thereon; provided that such soil, stone, gravel or other materials are not sold.
- C. The Planning Board may issue and renew permits for the extraction of mineral for commercial purposes and for the reclamation of the land affected by the excavation, including any operation accessory to the excavation or reclamation.
- D. Renewal of permits shall require that all activities undertaken pursuant to the initial permit shall have been conducted in compliance with the terms of such permit and all provisions of this chapter.
- E. Regulations applicable to the excavation of more than 1,000 tons of mineral [roughly equivalent to at least 750 cubic yards or 40 to 50 truckloads] for commercial purposes within 12 consecutive calendar months and for the reclamation of the land affected by the excavation, including any operation accessory to the excavation or reclamation.
 1. The Planning Board may issue or renew a special use permit for such a use,

provided that the proposed excavation or reclamation has been duly approved by the New York State DEC in accordance with the New York State Reclamation Law, Title 27 of the New York State Environmental Law.

2. All excavation and reclamation shall be made only in accordance with a mined land use plan, including a mining and reclamation plan, which has been duly approved by the New York State DEC. This plan shall meet all applicable environmental protection codes established by federal, state and county agencies having jurisdiction. All permit application information, including mined land use plans, submitted to the DEC, along with all correspondence from the Department regarding the permit application, shall be submitted to the town.
 3. No excavation shall be closer than 100 feet to any street line or other property line, and no excavation below the grade of a street or a property line shall be closer than 100 feet therefrom. No excavation shall be closer than 100 feet to a natural stream.
 4. The town shall notify the DEC of local concerns with regards to activities subject to the subsection.
- F. Regulations applicable to the excavation of 1,000 or fewer tons of minerals [roughly equivalent to no more than 750 cubic yards or 40 to 50 truckloads] for commercial purposes with 12 consecutive calendar months and for the reclamation of land affected by the excavation, including any operation accessory to the excavation or reclamation.
1. The Planning Board may issue a permit for a period of no more than one (1) year. Such permit may be renewed for additional periods no greater than that for which the permit was originally issued.
 2. Such permit shall be issued or renewed, provided that the excavation or reclamation:
 - a. conforms to the applicable regulations of this chapter; and
 - b. will not be detrimental to the appropriate and orderly development of the district in which it is situated or impair the value thereof.
 3. All excavations and reclamation shall be made only in accordance with plans approved by the Planning Board. These plans shall meet all applicable environmental protection codes established by federal, state and county agencies having jurisdiction. In addition to the information required in Section 4a, these plans shall show:
 - a. the location of the site and its relation to neighboring properties and roads with 500 feet from the site;
 - b. the location of access drives into the site;
 - c. plans for erosion and sedimentation control during excavation and reclamation;
 - d. areas to be excavated;
 - e. the location and description of fences and barricades;
 - f. the location and description of accessory uses;
 - g. the location and description of easements;

- h. hours of operation;
 - i. plans for control of noise and dust;
 - j. slopes before and after excavation;
 - k. drainage of surface water and groundwater before and after excavation;
 - l. the proposed level of any impounded water;
 - m. proposed vegetation after excavation;
 - n. the disposal of debris, refuse, tailings, waste or spoils;
 - o. information from all serving utility companies as to the location of easements and underground facilities;
 - p. any additional information required by the Planning Board to ensure the provisions of this section are complied with.
4. No excavation shall be closer than 100 feet to any street line or other property line, and no excavation below the grade of a street or a property line shall be closer than 100 feet therefrom. No excavation shall be closer than 100 feet to a natural stream.
 5. Fences or barricades shall be erected on all sides of an excavation area that abuts a residential area or road to protect pedestrians and vehicles. Fencing may be required depending upon the existence of a earthen berm, the nature of the operations, distance from developed area, distance from property lines, depth of pit water, and slope of pit walls.
 6. All haulageways leading to public highways shall be dust and mud free. All precautions shall be taken to prevent dust and dirt from being blown from the premises.
 7. Noise created by excavation and reclamation operations shall not be detrimental to adjacent property nor unduly interfere with the quiet enjoyment of adjacent property. Noise shall be in accordance with and not exceed the MSHA levels from sunset to sunrise.
 8. All debris, stumps, boulders and similar waste materials shall be removed from the site and properly disposed of or, in the case of inorganic material, buried and covered with a minimum of two(2) feet of compacted soil. All such materials shall have been identified to the Planning Board as part of the approved application permit.
 9. All rock blasting shall occur during daylight hours Monday through Friday and shall be conducted in accordance with all applicable regulations under the personal supervision of a person holding a current license and certificate of competence from the New York State Department of Labor. Before any blasting occurs, the applicant shall file evidence of insurance or shall file a bond in such form, amount and coverage as determined by the Planning Board and Town Attorney to be adequate in each case to indemnify any injured parties against damages arising from the blasting.
 10. Subsoil and topsoil shall be respread over the excavation areas to a minimum depth of one (1) foot [six inches of topsoil and six inches of subsoil]. This soil shall be treated with lime and fertilizer and seeded with a grass or legume mixture prescribed by the

- Planning Board. The planted area shall be protected from erosion during the establishment period using generally accepted soil conservation practices. A plan describing the revegetation of reclaimed land, including location, size and type of all materials to be planted and the type, location and rate of all seeding to be done, shall be included as part of the site plan submitted to the Planning Board.
11. An adequate and comprehensive drainage system shall be provided to convey the storm water runoff originating on and crossing the premises in accordance with the natural direction of runoff for the total watershed areas. During and upon completion of the excavation operation, [with one year after completion of the excavation operation] the land shall be left so that natural storm drainage leaves the property at the original drainage points or other drainage points if appropriate and approved by the Planning Board. Also the rate of drainage to any one point shall not be significantly increased.
 12. The reclamation method shall be such to allow for the future use permitted in the district in which the site is located. For sites to be reclaimed for residential purposes, a minimum depth of five(5) feet of undisturbed material above the water table shall be maintained during excavations.
 13. Within one(1) year after the termination of the excavation operation, all equipment, buildings and structures not consistent with the planned use of the reclaimed land and all unsightly evidence of the operation shall have been removed from the premises and disposed of by the methods approved by the Planning Board or other authority having jurisdiction and all restoration shall have been completed.
 14. Reclamation, where possible, shall provide for orderly, continuing reclamation concurrent with excavation operations, and all reclamation work shall be completed in accordance with a schedule accepted as a condition of the approved permit.
 15. A description of the mining method shall be provided indicating compliance with all applicable regulations and environmental codes. Such descriptions shall include, but not necessarily limited to, the method of extraction, the locations and extent of any cut or excavation, the location and size of all stockpiles or spoil banks, the disposition of all materials used in and resulting from the mining and location and treatment of haulageways.
 16. All operations shall be conducted in a safe manner with respect to the likelihood of hazard to persons, physical damage to adjacent land or improvements or damage to any street or user of a highway by reason of slides, sinking or collapse.
 17. Erosion and sedimentation control measures shall be installed to keep all sediment damage on the applicant's property.
 18. The final slope of any excavated material shall not exceed the normal limiting angle of repose of such material, except where a suitable retaining wall is built to provide lateral support.

19. Storage piles of materials obtained as a result of the mining operation, topsoil and waste materials, including but not limited to vegetation, subsoil, rock overburden, and soil, shall not be located closer to property lines than is permitted for excavations. Storage piles shall include material classified as toxic by the New York State DEC. During excavation operations, all stockpiles of soil shall be seeded or otherwise treated to minimize the effects of erosion by wind or water upon public roads, steams or adjacent properties. After completion of excavation operations, waste materials shall be removed from the site or may be used in filling all open pits, quarries, etc. piles of excess waste materials shall be leveled and the excavated areas shall be graded, topsoil added, seeded and planted to prevent erosion.
20. The Planning Board shall require a cash bond or letter of credit to be posted in an amount and form to be determined by that Board, ensuring conformance to approved excavation and reclamation plans and all applicable regulations. The Planning Board shall set a reasonable time limit for such bond, not to exceed one(1) year or the term of the permit or renewal, except in the case of continuing excavation operations when a bond may be renewed or extended with each permit renewal.

ARTICLE VIII

ADMINISTRATION AND ENFORCEMENT

SECTION 800 ENFORCEMENT

The duty of administering and enforcing the provisions of this Ordinance is hereby conferred upon the Code Enforcement Officer (CEO), who shall be appointed by the Town Board and shall carry out any directives from the Board relative to the duties of the position set forth below. The CEO shall receive such compensation as the Town Board shall determine.

SECTION 801 DUTIES AND PROCEDURES OF THE CODE ENFORCEMENT OFFICER

- A. It shall be the duty of the Code Enforcement Officer or his duly authorized assistants to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this Ordinance. In the fulfillment of their duties, the Code Enforcement Officer or his authorized assistants may enter any premise or building during reasonable hours in the course of his duties in accordance with State Law **after due written notice has been given.**
- B. If the Code Enforcement Officer shall find that any of the provisions of this Ordinance are being violated, he shall notify, **in writing**, the person responsible for such violations, indicating the nature of the violation and order the action to correct it. In his efforts to attain compliance, the Code Enforcement Officer shall have the authority to order discontinuance of illegal uses of land, buildings or structures; removal of illegal buildings or structures, or of illegal additions, alterations or structural changes; stop work; or, discontinuance of any illegal work being done. On the serving of notice by the Code Enforcement Officer to the owner of any property violating any of the provisions of this Ordinance, the Certificate of Compliance for such building or use shall be held null and void. A new Certificate of Compliance shall be required for any further use of such building or premises.
- C. It shall be the duty of the Code Enforcement Officer to issue permits and certificates to applicants who fully comply with the provisions of this Ordinance.
- D. The Code Enforcement Officer shall maintain a permanent and current record of all applications for permits and certificates, his action upon same, any conditions relating thereto, and any other matters considered and action taken by him. Such records shall form a part of the records of his office and shall be available for use by Town officials and for inspection by the public. The records to be maintained shall include the following:
 1. Application File. An individual permanent file for each application for a permit or certificate provided for by this Ordinance shall be established at the time the application is made. Said file shall contain one (1) copy of the application and all supporting documents and plans; notations regarding pertinent dates and fees and the like; as appropriate, one (1) copy of any resolutions or actions of the Town Board, Planning Board or Zoning Board of Appeals in acting on the application; and the date the permit or certificate applied for was issued or denied.

2. Quarterly Report. The Code Enforcement Officer shall prepare a quarterly report for the Town Board. Said report shall cite all actions taken by the Code Enforcement Officer, including all referrals made by him; all permits and certificates issued and denied; all complaints of violation received and all violations found by him, and the action taken by him consequent thereon; and the time spent and mileage used.
- E. Whenever the Code Enforcement Officer denies a permit or certificate he shall, in writing, inform the applicant of the specific reasons for denial and instruct the applicant on the proper methods to apply for relief.
 - F. The Code Enforcement Officer shall maintain a current list and a map of non-conforming uses to determine if discontinuance or destruction, or change in use or vacancy has taken place.
 - G. The Code Enforcement Officer shall maintain a current list and a map showing the variances and special use permits to determine if the conditions and safeguards placed on variances and special use permits are being complied with.
 - H. Upon written direction from the Planning Board, the Code Enforcement Officer shall issue special use permits. Upon approval of a variance by the Zoning Board of Appeals, the Code Enforcement Officer shall be empowered to issue the necessary permits with the specific conditions to be imposed.
 - I. The Code Enforcement Officer shall be authorized and empowered to issue appearance tickets pursuant to the New York State Criminal Procedure Law.

SECTION 802 CREATION, APPOINTMENT AND ORGANIZATION OF PLANNING BOARD

- A. Pursuant to the provisions of the Town Law applicable thereto, the Town Board shall appoint a Planning Board consisting of the number of members and for the term of years set forth in Section 271 of the Town Law.
- B. The Planning Board shall establish such rules and regulations as are required by law and the provisions herein for the transaction of their business, and may amend, modify and repeal the same from time to time.
- C. The Town Board may select a chairman of the Planning Board, or on failure to do so, the Planning Board shall elect a chairman from its own members.

SECTION 803 POWERS AND DUTIES OF THE PLANNING BOARD

The Planning Board shall have the following powers and duties:

- A. To review and recommend revisions to the comprehensive plan for the development of the Town as provided under Section 272-a of Town Law and/or Town Board Resolution.
- B. To review and comment on all proposed zoning amendments and to make investigations, maps, reports and recommendations relating to the planning and development of the Town as it deems desirable. This shall include but not be limited to changes in boundaries of districts, recommended changes in the provisions of this Ordinance, other land use and development matters of importance to the Planning Board, and to act on any matter lawfully referred to it by the Town Board.

- C. To review Site Plans as authorized by New York State Town Law and prescribed in Article X of this Ordinance.
- D. To review applications for Special Use Permits as authorized by Articles VII and IX of this Ordinance.
- E. To review proposals to approve or disapprove the laying out, closing off, abandonment or changes in lines of streets, highways and public areas and to make recommendations to the Town Board.
- F. To review, act on or provide advisory reports as specified by this Ordinance.
- G. To make referrals to other Town Departments, Boards and/or officials to request advisory opinions to assist the Planning Board in making decisions which affect the development of the Town.
- H. All such powers and duties as are conferred upon Town Planning Boards and subject to the limitations set forth in Sections 272, 272-a, 274, 274-a, 275, 276, 277, 278, and 281 of the New York State Town Law, as the same may be amended, modified, or changed from time to time, or any sections subsequently adopted pertaining to Planning Boards.

SECTION 804 PLANNING BOARD OFFICE AND RECORDS

- A. The Office of the Town Clerk shall be the Office of the Planning Board. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in said office as required by the Town Law of the State of New York.
- B. The Planning Board shall keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep records of its environmental reviews and determination, its examinations and other official actions.

SECTION 805 CREATION, APPOINTMENT AND ORGANIZATION OF THE ZONING BOARD OF APPEALS

- A. A Zoning Board of Appeals is hereby created. Said Board shall consist of five (5) members appointed by the Town Board, who shall also designate a Chairman. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals. Of the members of the Board, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, and one for the term of five years from and after his appointment. Their successors shall be appointed for the term of five (5) years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur other than by expiration of a term, it shall be filled by the Town Board by appointment for the length of the unexpired term.
- B. In making such appointments, the Town Board may require Board of Appeals members to complete training and continuing education courses in accordance with any local requirements for the training of such members. The Town Board may reimburse the members for appropriate expenses incurred in obtaining training.
- C. The Town Board shall have the power to remove, after public hearing, any member of the Zoning Board of Appeals for cause and may provide by local law for removal, after public hearing, of any

Board of Appeals member for non-compliance with minimum requirements relating to meeting attendance and training as established by the Town Board by local law.

- D. The Zoning Board of Appeals shall establish such rules and regulations as are required by state and local laws for the transaction of their business and may amend, modify and repeal the same from time to time.

SECTION 806 POWERS AND DUTIES OF THE ZONING BOARD OF APPEALS

The Board of Appeals shall have all the powers and duties prescribed by Chapter 62, Section 267, of the Town Law of the State of New York and by this Ordinance which are more particularly specified as follows:

A. Appeals for Administrative Review, Interpretations and Determinations

1. The Zoning Board of Appeals shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative officer or body in the enforcement of this Ordinance.
2. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
3. The Zoning Board of Appeals shall hear and decide on interpretive matters where the provisions of this Ordinance, including the determination of exact district boundaries, are not clear.

B. Variances

1. The Board of Appeals is empowered to authorize, upon appeal in specific cases, such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to conditions peculiar to the property, and not the result of the action of the applicant, a literal enforcement of the provisions herein would result in unnecessary hardship or practical difficulties.
2. As used herein, a variance may be authorized for height, area, size of structure, size of yards and open spaces or establishment or expansion of a use otherwise prohibited.
3. A variance shall not be granted solely because of the presence of non-conformities in the zoning district or uses in other zoning districts.
4. In granting any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable.
5. Variances granted shall be the minimum which would accomplish the purpose of providing for reasonable use of land or buildings.
6. Variances granted shall be in harmony with the general purpose and intent of this Ordinance and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.

SECTION 807 PERMITTED ACTIONS ON AREA OR USE VARIANCES

A. Area Variances

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such Ordinance or local law, or in conjunction with an application for Site Plan Review or subdivision approval, to grant area variances as defined herein.
2. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:
 - a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - c) whether the requested area variance is substantial;
 - d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
3. The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

B. Use Variances

1. The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of this Ordinance, shall have the power to grant use variances, as defined herein.
2. No such use variance shall be granted by a Board of Appeals without showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that, for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - a) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - b) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

- c) the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - d) the alleged hardship has not been self-created.
3. The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

C. Imposition of Conditions

The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Ordinance, and shall be imposed for the purpose of minimizing any adverse impact that such variance may have on the neighborhood or community.

SECTION 808 PROCEDURES FOR APPEALS AND VARIANCES

A. Variance Procedures

- 1. The applicant may arrange an informal discussion with the Board of Appeals to determine any and all of the data to be included in the application.
- 2. All applications for variances shall be made in quadruplicate to the Code Enforcement Officer (CEO) on forms provided by the CEO and shall be accompanied by plans and supporting documents to sufficiently describe the proposal. All applications shall refer to the specific provision of the law involved and establish the details of why the variance should be granted. The Board of Appeals may request additional information it deems necessary in order to act on the application.
- 3. The CEO, after determining that an application is in proper form, shall transmit copies of the application and all supporting documents to the Board of Appeals for action thereon.
- 4. Use Variance within Agricultural District

Where an application for a use variance involves land lying within certain distances prescribed in Section 283-a of Town Law, an agricultural data statement shall be prepared and proper notice thereof given to all affected property owners.

5. Public Hearing on Appeal

The Board of Appeals shall fix a reasonable time for the public hearing of the appeal, variance, or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five (5) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a

reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the Board of Appeals prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

6. Additional Public Notice

The applicant shall place one (1) sign on the property for which an appeal or variance is requested. Said sign shall be provided by the Code Enforcement Officer at the time the appeal or application for variance is filed. The sign shall be placed in a location which is easily read from a public street. The sign shall specify the date, time and place of the public hearing and a telephone number to call for more specific information. Such sign shall be placed on the site not less than five (5) days prior to the public hearing and shall be brought to the hearing by the applicant or his designated representative.

7. Referral to County Planning Board

A copy of the complete variance application and supporting documents shall also be transmitted to the County Planning Board for review when required either under Article 12-B, Sections 239-1 and -m of the General Municipal Law, or Section 283-a of the New York State Town Law.

8. Time of Decision

The Board of Appeals, providing SEQR has been complied with, shall decide upon the appeal or variance within sixty-two (62) days after the conduct of said hearing. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.

9. Filing of Decision and Notice

The decision of the Board of Appeals on the appeal or variance shall be filed in the Office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

10. The CEO shall, upon receipt of the notice of approval and upon application by the applicant, issue the appropriate zoning permit or such other approval permitted by the variance, subject to all conditions imposed by the Zoning Board of Appeals.

B. Appeals Procedures

1. An appeal, including any request for an interpretation or determination, and specifying the grounds for the appeal, shall be filed with the officer, or body, from whom the appeal is taken and with the Board of Appeals. All appeals and applications shall be made to the Board of Appeals within sixty (60) days of the date on which the order, requirement, decision or determination appealed from was rendered and shall be on forms prescribed by the Board.
2. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the Town.

3. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official.
4. The officer from whom the appeal is taken shall, within thirty (30) days of the filing of the appeal, transmit all papers constituting the record upon which the appeal is taken to the Board of Appeals.
5. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Appeals after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record, on application, on notice to the officer from whom the appeal is taken and on due cause shown.
6. If the Board of Appeals determines that a public hearing is necessary, the Board of Appeals shall fix a time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable length of time thereafter. At the time of the hearing, any party may appear in person, by agent or by attorney.
7. The Board of Appeals, providing SEQR has been complied with, shall render a decision on each appeal within sixty-two (62) days of the close of the public hearing on said matter. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the board.
8. Any action by the Board of Appeals shall be stated in writing and communicated to the person bringing the appeal within five (5) business days after the decision has been made.

SECTION 809 MEETINGS, RECORDS AND GENERAL PROCEDURES

- A. All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine.
- B. Meetings of such Board of Appeals shall be open to the public to the extent provided in Article Seven of the Public Officers Law.
- C. All votes of the Zoning Board of Appeals shall be taken by roll call. Such Board of Appeals 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.
- D. In accordance with General Municipal Law, Section 980, a member of the Zoning Board of Appeals having a conflict of interest shall abstain from any discussion or voting on that matter.
- E. The Zoning Board of Appeals may request and obtain any advice or opinions on the law relating to any matter before the Board from the Town Attorney, and require the Town Attorney to attend its meetings, provided that funds for such services are made available by the Town Board.
- F. The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized

by the Town Board. Such department, agency or employee shall be reimbursed for any expenses incurred as a result of such assistance.

- G. The Town Board may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the Town Board for such purpose.
- H. The Zoning Board of Appeals shall make factual record of all its proceedings, including the reading of the case, public hearing, deliberation, voting and decisions of the Board, These factual records shall be taken by stenographic and/or tape recorder means and shall be accurate but not necessarily a verbatim transcript, but may be in narrative form. The factual record shall be taken by the Secretary of the Board.
- I. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the Office of the Town Clerk within five (5) business days and shall be a public record.
- J. Rehearings

Whenever the Zoning Board of Appeals, after hearing all the evidence presented upon an application for appeals under the provisions of this Ordinance, denies or rejects same, said Board shall refuse to hold further hearings on the same or substantially similar application for appeal by the same applicant, their successors or assigns, for a period of one (1) year, except and unless the Board shall find and determine from the information supplied in the request for a rehearing that changed conditions have occurred relating to the promotion of public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified. Such rehearing may be granted only upon the favorable vote of a majority of the Board plus one (1).

SECTION 810 BOARD OF APPEALS OFFICE

The Office of the Town Clerk shall be the office of the Board of Appeals. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in said office as required by Section 267 of the Town Law of the State of New York. The Board of Appeals shall keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep records of its environmental reviews and determination, its examinations and other official action.

SECTION 811 LAPSE OF AUTHORIZATION

Any variance or modification of this Ordinance authorized by the Board of Appeals shall be automatically revoked unless a zoning permit or building permit, conforming to all the conditions and requirements established by the Board of Appeals, is obtained within six (6) months of the date of approval by the Board of Appeals and construction commenced within one (1) year of such date of approval.

SECTION 812 VIOLATION OF CONDITIONS OR RESTRICTIONS

- A. Failure to comply with any condition or restriction prescribed by the Board of Appeals in approving any appeal for a variance, or a modification of regulations shall constitute a violation. Such violation may constitute the basis for revocation of a variance or modification or for imposing penalties and other applicable remedies.

- B. If applicable and appropriate, and authorized by the Town Board or specified herein, and after ten (10) days notice of the violation and failure to correct such violation, the Code Enforcement Officer may correct any violation of these regulations and charge the responsible party for the costs incurred. If such costs are not paid by the responsible party, the cost shall be added to the yearly tax bill for the owner of the premises on which the violation occurred.

SECTION 812A (Adopted 2/11/2003)

A REVOCATION OF VARIANCES

1. In the event that there is a violation of any condition or restriction of variance prescribed by Zoning Board appeals, the Code Enforcement Officer shall notify in writing the person responsible for such violation, indicating the nature of the violation and order the action to correct it. In the event that there is a failure to correct any such violation after 30 days the Code Enforcement officer shall make a written report of same to the Zoning Board of Appeals.
2. In addition to any other enforcement action that may be taken against the property owner for zoning law violation ,in the event that the Zoning Board of Appeals may revoke a variance, pursuant to Town Law 267 (6) ,for failure to comply with any condition or restriction there of.
3. The Zoning Board of Appeals shall schedule a hearing on a minimum of 20 days notice to property owner , to determine whether the property owner's variance should be revoked. The property owner may appear in person and may be represented by counsel.
4. If after the hearing ,the Zoning Board of Appeals decides ,by a majority vote, to revoke the variance ,such action shall be deemed final ,and the variance shall be revoked. The Zoning Board of Appeals shall render it's decision in writing stating the reason (s) for it's action.
5. Upon an adverse decision by Zoning Board of Appeals against the property owner, the property owner may pursue an Article 78 proceeding pursuant to Article 813 of the Zoning Ordinance, Town of Barre.

SECTION 813 ARTICLE SEVENTY-EIGHT (78) PROCEEDING

A. Application to Supreme Court by Aggrieved Persons

Any person or persons, jointly or severally aggrieved by any decision of the Board of Appeals or any officer, department or board of the Town, may apply to the Supreme Court for review by a proceeding under Article Seventy-Eight (78) of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision of the Board in the Office of the Town Clerk or in the office designated by resolution of the Town Board. The court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his or her findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court, at special term, shall itself dispose of the cause on the merits, determining all questions which may be presented for determination.

B. Costs of Appeal

Costs shall not be allowed against the Board of Appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

C. Preference of Appeal to Court

All issues in any proceeding under this Section shall have preference over all other civil actions and proceedings.

D. Power of Court

If, upon the hearing at a special term of the Supreme Court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may specify the decision brought up for review.

SECTION 814 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

A. The State Environmental Quality Review Act requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 6 and Part 617 of Title 6 of the New York Code of Rules and Regulations are hereby adopted by reference.

B. All Type I actions (6 NYCRR Part 617) shall require the submission and review of an Environmental Assessment Form.

C. For zoning action reviewed by the Town, the following bodies shall be lead agency, unless otherwise delegated by the Town Board.

Zoning Text Amendments	-	Town Board
Zoning District Amendments	-	Planning Board
Variances	-	Zoning Board of Appeals

D. If in the opinion of the local lead agency, after review of the Environmental Assessment Form, there appears the potential for a significant environmental impact, the lead agency shall cause the applicant to prepare a Draft Environmental Impact Statement. Review, notice and action on the EIS shall be conducted according to Part 617.

E. The local lead agency's review of the action shall include the following procedures and general considerations.

1. If the local lead agency determines that the proposed action is not an exempt action, or an action listed in Section 617.12 of Title 6 NYCRR as a Type II action, and that it will not have significant effect on the environment or local plans, then the local lead agency shall prepare, file and circulate such determination as provided in Section 617.7(b) of Title 6 NYCRR and thereafter the proposed action may be processed without further regard to this Article.

2. The local lead agency shall maintain files that are open for public inspection of all notices of proposed actions, draft and final environmental impact statements, and written determinations.

ARTICLE IX

SPECIAL USE PERMITS AND PROCEDURES

SECTION 900 PURPOSE

It is the intent of this Ordinance to use Special Use Permits to control the impact of certain uses upon areas where they will be incompatible unless conditioned in a manner suitable to a particular location. Special Use Permits bring needed flexibility and individuality to the otherwise rigid controls of zoning regulations.

SECTION 901 ADMINISTRATION

- A. The Town Planning Board is authorized to review and grant Special Use Permits, as provided for by this Ordinance. Upon written direction of the Planning Board, the Code Enforcement Officer is hereby empowered to issue a special use permit as provided for by this Ordinance.
- B. Uses permitted by special use permit shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth in Article VII in addition to all other requirements of this Ordinance. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.
- C. A special use permit shall authorize only one particular special use. The special use permit shall expire if the use shall cease for more than one (1) year for any reason.
- D. No person shall be issued a special use permit for a property where there is an existing violation of this Ordinance.

SECTION 902 FINDINGS

- A. The Planning Board may grant a special use permit for uses described in Article VII provided that all requirements and conditions set forth in that Article are complied with.
- B. The Planning Board shall make written findings for each special use permit decision. Findings shall state the reasoning behind, the basis for, and the evidence relied upon to reach the decision. Compliance with the requirements or Article VII shall also be maintained, in addition to the following concerns:
 - 1. Ingress and egress to the property and proposed structures thereon, with particular reference to vehicular and pedestrian safety, and convenience, traffic flow and control, and access in case of fire or catastrophe.
 - 2. Off-street parking and loading areas where required, and the noise, glare or odor effects of the special use permit use on adjoining properties, and properties generally in the district, and the economic impact of the proposed special permit use.
 - 3. Refuse and service areas.

4. Utilities as appropriate, with reference to locations, availability and compatibility.
5. Storm drainage, including potential impact on downstream properties.
6. Screening and buffering, with reference to type, dimensions and character.
7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.
8. Required yards and other open space.
9. General compatibility with adjacent properties and other properties in the zone district.

SECTION 903 PROCEDURES

- A. All applications for special use permits shall be made in quadruplicate to the Code Enforcement Officer on forms provided by him.
- B. The Code Enforcement Officer, after determining that an application is in proper form, shall transmit copies of the application and all supporting documents to the Planning Board for approval, in accordance with the procedures specified below.
- C. The Code Enforcement Officer shall transmit a copy of the complete application and supporting documents to the County Planning Board for review when required under Article 12-B, 239-m of the General Municipal Law.
- D. Each application for a special use permit shall be accompanied by a proposed site plan showing the information required for site plan approval as described in Article X of this Ordinance.
- E. Public Hearing
 1. Prior to taking action on an application for a special use permit, the Planning Board shall conduct a public hearing on the proposed request. Said hearing shall be conducted within forty-five (45) days following the receipt of a complete application and supporting documents from the Code Enforcement Officer.
 2. The Planning Board shall send a notice of the public hearing to the applicant and publish a notice of the public hearing in the official newspaper, one of general circulation in the Town.
 3. The notice of the public hearing shall be sent and published at least ten (10) calendar days prior to the date of the public hearing. Such notice shall include sufficient information so as to identify the property involved and the nature of the proposed action.
- F. If the application is required to be transmitted to the County Planning Board under Article 12-B, 239-m of the General Municipal Law, the Planning Board shall not act within the first thirty (30) days following the referral of the application to the County Planning Board unless said Board provides a written reply to the Town within the thirty (30) day period.

- G. The Planning Board shall render its decision, either approving, approving with conditions, or denying the special use permit, within forty-five (45) days after the public hearing unless an extension is mutually agreed upon by the Planning Board and the applicant.
- H. In approving an application, the Planning Board may impose any modifications or conditions it deems necessary to conform with the goals and objectives of the Town's Comprehensive Plan and its principles of land use and development, and to protect the health, safety or general welfare of the public.
- I. If an application is approved by the Planning Board, the Code Enforcement Officer shall be furnished with a copy of the approving resolution of the Planning Board and he shall issue the permit applied for in accordance with the conditions imposed by the Board.
- J. If any application is disapproved by the Planning Board, the reasons for such denial shall be set forth in the Board resolution and a copy of such resolution shall be transmitted to the Code Enforcement Officer. The Code Enforcement Officer shall deny the application accordingly by providing the applicant with a copy of the Board's reasons for disapproval.
- K. The Code Enforcement Officer shall inspect the premises of a use authorized and approved with a special use permit not less than one time each calendar year. The inspection shall determine that the use is being operated consistent with the terms and conditions established by the Planning Board in approving the permit. If the Code Enforcement Officer shall determine that the conditions are not in compliance with the permit, the Code Enforcement Officer shall nullify the Special Use Permit and set forth the procedures and requirements for re-establishing the use. The use may not be operated until a new application is submitted and approved.

ARTICLE X

SITE PLAN REVIEW

SECTION 1000 PURPOSE

The intent of this section is to set forth additional general standards applying to certain uses and activities. The nature of these uses and activities require special consideration of their impacts upon surrounding properties, the environment, community character and the ability of the Town to accommodate development consistent with the objectives of this Ordinance.

SECTION 1001 APPLICATIONS

All applications for zoning permits, zoning variances, or special use permits,(except those for one and two family dwellings and their permitted accessory uses, any addition to a single family dwellings, or general farming uses,) shall be accompanied by a site plan. No zoning permit shall be issued until all the requirements of this Article and all other applicable provisions of the Ordinance have been met.

SECTION 1002 PROCEDURE

- A. A pre-application conference may be held between the Planning Board and applicant to review the basic site design concept and to determine the information to be submitted with the site plan.

- B. Each application for a building permit, variance or special use permit for any structure, building or use other than one or two family dwelling, their permitted accessory use, any addition to a single family dwelling or general farming use, shall be referred to the Town Planning Board for Site Plan Review. The application shall be made to the Planning Board by filing it with the Code Enforcement Officer. The Code Enforcement Officer shall present it to the Planning Board at their next regularly scheduled meeting. The applicant may wish to attend the Planning Board meeting to answer questions concerning the application.

- C. Within forty-five (45) days of receipt of the application or sixty (60) days in cases when the application shall be referred to the County Planning Board, the Planning Board shall render a decision to approve, approve with conditions, or deny the site plan, and shall forward the decision to the Code Enforcement Officer. Any extension of this forty-five (45) day period may be granted upon consent of both the applicant and the Town Planning Board. If the Planning Board fails to act within the forty-five day period or the extension period that has been granted, the site plan shall be considered approved.

- D. A full written record of the Planning Board minutes and decisions together with all documents pertaining to the case shall be filed in the Office of the Town Clerk and shall be mailed to the applicant.

SECTION 1003 APPLICATION FOR SITE PLAN APPROVAL

An application for site plan approval shall be made in writing to the Code Enforcement Officer and shall be accompanied by information drawn from the following checklist. The Planning Board may require additional information, if necessary, to complete its review.

A. Plan Checklist for all Site Plans:

1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.
2. North arrow, scale and date.
3. Boundaries of the property plotted to scale.
4. Existing watercourses and bodies of water.
5. Location of any slopes of five percent (5%) or greater.
6. Existing and proposed grading and drainage.
7. Location, proposed use, and height of all buildings and site improvements including culverts, drains, retaining walls and fences.
8. Location, design and construction materials of all parking and truck loading areas, showing points of entry and exit from the site.
9. Location of outdoor storage, if any.
10. Description of the method of sewage disposal and location of the facilities.
11. Identification of water source; if well, locate on drawing.
12. Location, size and design and construction materials of all proposed signs.
13. Location and proposed development of all buffer areas, including existing vegetation cover.
14. Location and design of outdoor lighting facilities.
15. General landscaping plan.
16. Copy of property deed and a listing of all deed restrictions.

B. As Necessary, the Planning Board may Require the Following:

1. Provision for pedestrian access, if necessary.
2. Location of fire lanes and hydrants.

3. Designation of the amount of building area proposed for retail sales or similar commercial activity.
4. Other elements integral to the proposed development as considered necessary by the Planning Board.

SECTION 1004 PLANNING BOARD REVIEW OF SITE PLAN

The Planning Board's review of the site plan shall include, as appropriate, the following:

A. General Considerations:

1. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls. This includes the maximum feasible redesign of private roads to conform to existing public access and rights of way.
2. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
3. Location, arrangement, appearance and sufficiency of off-street parking and loading.
4. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.

No use shall be undertaken which eliminates or substantially reduces a significant view or vista from an existing property due to height, bulk or orientation of structure.
5. Adequacy of storm-water and drainage facilities.
6. Adequacy of water supply and sewage disposal facilities.
7. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum feasible retention of existing vegetation.
8. In the case of an apartment complex or other multiple dwelling, the adequacy of useable open space for play areas and informal recreation.
9. Protection of adjacent or neighboring properties against noise, glare, unsightliness or nuisances.
10. Protection of solar access on adjacent or neighboring properties.
11. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
12. Adequacy of on-site refuse storage, including appropriate screening and rodent control measures.

12. Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
13. Special attention to the productive use and access with "backlot" areas, indicating present and future intended uses.
14. Consistency with the general intent of the Town's Comprehensive Plan.

B. Consultant Review

The Planning Board may consult with the Town Code Enforcement Officer, fire commissioners, highway departments, county planning department, and other local county officials, in addition to representatives of federal and state agencies including, but not limited to, the Soil and Water Conservation District, the State Department of Transportation and the State Environmental Conservation.

C. Optional Public Hearing

The Planning Board may conduct a public hearing of the site plan. If a public hearing is considered desirable by a majority of the Planning Board, such public hearing shall be conducted within forty-five (45) days of the receipt of the complete application and shall be advertised in the official newspaper of the town at least ten (10) days before the public hearing. If a public hearing is held, a decision on the site plan shall be rendered within forty-five (45) days after the public hearing.

D. Additional Public Notice

If the Planning Board determines that a public hearing shall be held, the applicant shall place one (1) sign on the property for which site plan review is requested. Said sign shall be provided by the Code Enforcement Officer. The sign shall be placed in a location which is easily read from a public street. The sign shall specify the date, time and place of the public hearing and a telephone number to call for more specific information. Such sign shall be placed on the site not less than five (5) days prior to the public hearing and shall be brought to the hearing by the applicant or his designated representative.

E. Action on Site Plan

1. The Planning Board may:
 - a) Grant final approval of the Site Plan;
 - b) Disapprove the Site Plan; or
 - c) Conditionally approve the Site Plan.
2. If the Planning Board grants final approval of the Site Plan, the Planning Board shall direct the Planning Board Chairman to endorse its approval on the original and one copy of the final site plan. Once signed, the Planning Board shall forward the Mylar and site plan to the CEO. The CEO shall issue a zoning permit to the applicant if the project conforms with all other applicable requirements and permits.

3. If the Planning Board disapproves the Site Plan, the Planning Board shall so inform the CEO and the applicant. The Code Enforcement Officer shall deny a zoning permit to the applicant. The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.
4. If the Planning Board conditionally approves the Site Plan, the site plan initially submitted shall be considered to be the preliminary site plan, and the applicant may prepare his final detailed site plan and submit it to the Planning Board for approval. If more than six (6) months has elapsed between the time of the Planning Board's report on the preliminary site plan and the submission of the final site plan, and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.

SECTION 1005 APPLICATION FOR FINAL DETAILED SITE PLAN APPROVAL

- A. The final detailed site plan shall conform substantially to the preliminary site plan that has received conditional (preliminary) site plan approval. It shall incorporate any revisions or other features that may have been recommended by the Planning Board during the preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.
- B. The following additional information shall accompany an application for final site plan approval:
 1. Detailed sizing and final material specification of all required improvements.
 2. An estimated project construction schedule.
 3. A detailed plan identifying all lands, easements and rights-of-way which shall be commonly owned with the identification of the association responsible for said ownership, the method of managing commonly owned properties and requiring that the officers of said association shall be identified to the CEO in writing on an annual basis.
 4. Information specifying the materials to be used and information as to the character of the exterior design.

SECTION 1006 ACTION ON THE DETAILED FINAL SITE PLAN APPLICATION

- A. Within forty-five (45) days of the receipt of a complete application for final site plan approval, the Planning Board shall render a decision to the applicant and the CEO.
- B. Upon approval by all involved agencies, an application for final site plan approval by the Planning Board shall direct the Planning Board Chairman to endorse its approval on the original Mylar and one copy of the final site plan. Once signed, the Planning Board shall forward the Mylar and site plan to the CEO. The CEO shall issue a zoning permit to the applicant if the project conforms with all other applicable requirements and permits.
- C. Upon disapproving an application for a final site plan, the Planning Board shall so inform the CEO and the applicant. The Code Enforcement Officer shall deny a zoning permit to the applicant.

The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.

SECTION 1007 SUPPLEMENTAL REGULATIONS PERTAINING TO SITE PLAN APPROVAL

A. Expiration of Site Plan Approval

Such site plan approval shall automatically terminate one (1) year after the same is granted unless significant work has been done on the project.

B. Reimbursable Costs

Reasonable costs incurred by the Town for consultation fees or other extraordinary expenses associated with the review of a proposed site plan shall be charged to the applicant in accordance with the fee schedule.

C. Performance Guarantee

1. No zoning permit shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee, approved by the Planning Board, has been posted for improvements. The sufficiency of such performance guarantee shall be determined by the Planning Board after consultation with the CEO, Town Engineer, Planning Board and Town Attorney.
2. The Planning Board shall have the option of requiring a performance bond or other financial guarantee in an amount sufficient to restore the property to its original condition if the applicant fails to comply with the conditions of the Site Plan approval.

D. Inspection of Improvements and Development

The CEO shall be responsible for the overall inspection of site improvements, including coordination with the Town officials and agencies, as appropriate. No Certificate of Occupancy shall be granted prior to a final inspection and determination of conformity to the site plan and New York State Building Code.

E. Integration of Site Plan Approval Procedure with Other Planning Board Approvals

Whenever the particular circumstances of a proposed development require compliance with either the special use permit procedures or other requirements of this Ordinance, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this Section with the procedural and submission requirements for such other compliances. In any case, all state permits and local land use control approvals shall be procured prior to the issuance of a Buildings Permit for a development project.

F. Conflicts

If any conflicts exist between this site plan review procedure and other land use controls of the Town, this Section shall apply.

Chapter 235

ZONING

GENERAL REFERENCES

Zoning Board of Appeals — See Ch. 34.

Freshwater wetlands — See Ch. 116.

Adoption of zoning laws — See Ch. 70.

Junkyards — See Ch. 138.

Building construction and fire prevention — See Ch. 89.

Mobile home parks — See Ch. 150.

Flood damage prevention — See Ch. 112.

Subdivision of land — See Ch. 204.

ARTICLE I
General Provisions

§ 235-1. Statutory authority.

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Batavia hereby adopts and enacts as follows.

§ 235-2. Title.

This chapter shall be known as the "Town of Batavia Zoning Ordinance."

§ 235-3. Purposes.

This chapter is adopted for the protection and promotion of the public health, safety, morals and general welfare of the community, as follows:

- A. To guide the future growth and development of the Town in accordance with a comprehensive land use plan and population density that represent the most beneficial and convenient relationships among the residential, nonresidential and public areas within the town, considering the suitability of each area for such uses, as indicated by existing conditions, trends in population and mode of living, and having regard for the use of land, building development and economic activity, considering such conditions and trends both within the town and with respect to the relation of the Town to areas outside thereof.
- B. To provide adequate light, air and privacy; to promote safety from fire, flood and other danger; and to prevent overcrowding of the land and undue congestion of the population.
- C. To protect and conserve the value of the land throughout the town and the value of buildings appropriate to the various districts established by this chapter.
- D. To protect the rural character and the social and economic stability of all parts of the Town and to encourage the orderly and beneficial development of all parts of the Town.
- E. To bring about the gradual conformity of the uses of land and buildings through the comprehensive zoning plan set forth in this chapter and to minimize the conflicts among the uses of land and buildings.
- F. To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the town, having particular regard for the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian traffic movement appropriate to the various uses of land and buildings throughout the town.

- G. To provide a guide for public policy and action in the efficient provision of public facilities and services and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the town.
- H. To limit concentrated development to an amount equal to the availability and capacity of public facilities and services.
- I. To prevent the pollution of streams and ponds, to safeguard the water table, and to encourage the wise use and sound management of the natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.
- J. To prevent excessive uniformity, dissimilarity, inappropriateness or poor quality of design in the exterior of large-scale multifamily (20 or more units) residential developments, commercial and industrial uses.

§ 235-4. Applicability and interpretation.

- A. No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used, for any purpose except in conformity with this chapter. No building, structure, or premises shall be used, and no building or other structure shall be erected, which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind that is noxious by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the health or safety of the community.
- B. In interpreting and applying this chapter, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public safety, health, morals and general welfare. This chapter shall not be deemed to affect in any manner whatsoever any easements, covenants or other agreements between parties; however, where this chapter imposes greater restrictions than are imposed by other ordinances, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, then the provisions of this chapter shall prevail.
- C. This chapter shall not apply to uses which were legal prior existing nonconforming uses as defined herein except as set forth in § 235-15.
- D. Nothing herein contained shall require any change in plans or construction of a building for which a zoning permit has been issued.
- E. All buildings under construction at the time this chapter is adopted shall conform to the Zoning Ordinance in effect at the time construction was commenced.

§ 235-5. Word usage and definitions.

A. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense shall include the future tense, and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is always mandatory; and the word "occupied" or "used" shall be construed to mean and shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied."

B. The following terms are specifically defined. As used in this chapter, the following words shall have these meanings:

ABOVEGROUND TANK — Any stationary tank which is not entirely covered with earth or other backfill material.

ACCESSORY BUILDING — A building situated on a lot, subordinate to the main building on the same lot, and used for purposes customarily incidental and subordinate to said main building.

ACCESSORY STRUCTURE — A structure the use of which is incidental to the principal use of the main structure and which is attached thereto or located on the same lot.

ACCESSORY USE — A use customarily incidental and subordinate to the principal use of buildings and located on the same lot (i.e., a garden is accessory to a residence). For the purposes of this chapter, a family day-care home, roadside stand and home occupation (as defined herein) shall be considered accessory uses to a principal use on a lot; however, they and other accessory uses may be subject to additional requirements and review provisions set forth in this chapter (i.e., a Home Occupation II requires issuance of a special use permit).

ADULT CARE — The provision of temporary or long-term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29, and 31 of the Mental Hygiene Law,¹ are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

ADULT CARE FACILITY — A facility, other than a family-type home, which provides adult care. For the purposes of this chapter an adult care facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult care facility as defined by the New York State Department of Social Services, Chapter II, Subchapter D, Part 485.

ADULT USE — The definitions associated with adult uses are contained in § 235-49.

AGRICULTURAL USE — Any parcel of land containing at least five acres used for the raising of food products or other useful or valuable

1. Editor's Note: Article 23 of the Mental Hygiene Law was repealed by L. 1999, c. 558.

growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other generally accepted agricultural practices, where the same is carried on as a business or otherwise for profit.

- (1) Such uses shall include the establishment of necessary farm structures within the prescribed limits, and the storage of equipment used in connection therewith.
- (2) Agricultural uses shall exclude the raising of fur-bearing animals, riding academies, public stables or dog kennels.

ALTERATION — Structural changes, rearrangements, change of location, or addition to a building, other than repairs and modification in building equipment.

AMUSEMENT GAME — Any mechanical, electric or electronic device used or designated to be operated for entertainment or as a game by the insertion of a coin, slug, token, plate, disc, key or any other article into a slot, crevice, or other opening or by paying money to have it activated. Not included are rides, bowling alleys, any device maintained within a residence for the not-for-profit use of occupants thereof and their guests, any gambling device, or jukeboxes.

ANIMAL SHELTER — A building or land used for the temporary harboring of stray or homeless dogs, cats, and other similar household pets, together with facilities for the provision of necessary veterinary care and adoption of the harbored animals.

ANIMAL WASTE STORAGE FACILITY — Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

ANTENNA — An arrangement of wires or metal rods used in transmitting or receiving electromagnetic waves.

APARTMENT HOUSE — See "dwelling, multifamily."

AQUIFER — A geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield adequate quantities of groundwater to the wells.

AQUIFER RECHARGE AREA — The surface and subsurface land areas that collect precipitation or surface water and transmit this water to an aquifer.²

AREA OF SPECIAL FLOOD HAZARD — Land subject to a one-percent or greater chance of flooding in any given year and part of Zone A on the Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM).

2. Editor's Note: The former definition of "Architectural Review Board," which immediately followed this definition, was repealed 2-19-2003.

AREA VARIANCE — The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this chapter.

ARTERIAL HIGHWAY — A highway which collects and distributes traffic to and from minor highways. For the purposes of this chapter the following highways shall be considered arterial highways within the town: New York State Route Nos. 5, 33, 63 and 98.

AUCTION HOUSE — An enclosed place or establishment conducted or operated for compensation or profit as a private or public market where items are offered for sale through competitive bidding. The term "auction house" shall not include on-premises estate, foreclosure, real estate or personal property sales conducted upon the estate, foreclosed or for-sale property or property belonging to the personal property owner. The term "auction house" shall not include flea markets, yard sales or livestock markets defined or regulated elsewhere or sheriff's or bank repossession sales. **[Added 2-20-2008 by L.L. No. 2-2008]**

BED-AND-BREAKFAST — An owner-occupied one-family dwelling in which a room or rooms are rented on a nightly basis for periods of less than two weeks. Meals may or may not be provided.

BOARDINGHOUSE — An owner-occupied dwelling wherein more than three nonrelated, nontransient people are sheltered for profit.

BOARD OF APPEALS — The officially designated Town of Batavia Board of Appeals as established by the Town Board in accordance with § 267 of Town Law.

BUFFER STRIP — See § 235-13F.

BUILDING — Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals, machinery, equipment or other material.

BUILDING, FRONT LINE OF — The line of that face of the building nearest the street line or, if there are street lines on two or more sides of the building, the line of that face of the building fronting on that street line where the principal entrance is located. This face includes decks and porches but does not include steps.

BUILDING, HEIGHT OF — The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof.

BUILDING INSPECTOR — The Building Inspector of the Town of Batavia as appointed by the Town Board. Whenever the term "Building Inspector" appears in this chapter, it shall be interpreted to mean "and/or the Code Enforcement Officer." **[Amended 12-21-2011 by L.L. No. 2-2011]**

BUILDING PERMIT — A permit issued by the Code Enforcement Officer stating that plans for the proposed construction of a building are in conformance with the Uniform Fire Prevention and Building Code.

BUILDING, TEMPORARY — A temporary building or temporary structure erected, constructed or placed upon the premises for a period not exceeding nine months. All other buildings or structures shall be deemed permanent for the purposes of this chapter.

CAMPGROUND — Land on which is located one or more cabins, trailers, shelters, houseboats or other accommodations for seasonal or temporary living purposes, excluding mobile homes.

CERTIFICATE OF COMPLIANCE — A certificate issued by the Building Inspector upon completion of construction, alteration or change in occupancy or use of a building or land. Said certificate shall acknowledge compliance with all the requirements of this chapter only and any adjustments thereto granted by the Board of Appeals.

CERTIFICATE OF OCCUPANCY — A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of the New York State Uniform Fire Prevention and Building Code.

CHILD DAY CARE — Care for a child on a regular basis provided away from the child's residence for less than 24 hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity (blood relationship) of the parents or stepparents of such child. "Child day care" does not refer to care provided in:

- (1) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;
- (2) A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation;
- (3) A facility providing day service under an operating certificate issued by the New York State Department of Social Services;
- (4) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or
- (5) A kindergarten, prekindergarten or nursery school for children three years of age or older, or a program for school-age children three years of age or older, or a program for school-age children conducted during nonschool hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, prekindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

CHILD DAY-CARE CENTER — A program or facility in which child day care is provided on a regular basis to more than six children for more

than three hours per day per child for compensation or otherwise, except those programs operating as a group family day-care home, a family day-care home, or school-age child care program, as defined in this section.

CLUB — An organization established pursuant to the New York Not-For-Profit Corporation Law for a social, educational, or recreational purpose, catering exclusively to members and their guests, whose activities are not conducted primarily for profit.

CLUSTER DEVELOPMENT — A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, while maintaining the overall density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer as appointed by the Town Board, who shall have all qualifications, duties and powers to administer and enforce all of the provisions in this chapter in the same manner as the Building Inspector. **[Added 12-21-2011 by L.L. No. 2-2011]**

COMMERCIAL COMMUNICATION TOWER — A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

COMMERCIAL EXCAVATION (MINING) — A lot or part thereof used for the purpose of excavation, processing or sale of sand, gravel, or clay, or other natural mineral deposits or the quarrying of any kind of rock formation, and exclusive of the process of grading a lot preparatory to the construction of a building for which a building permit application has been filed. Commercial excavation shall be divided into two categories based on the scale and type of operation as follows:

- (1) **MAJOR EXCAVATION** — All excavations requiring a New York State mined land reclamation permit shall be considered major excavations.
- (2) **MINOR EXCAVATION** — All excavations not requiring a New York State mined land reclamation permit shall be considered minor excavations.

COMMERCIAL WIND ENERGY SYSTEM — A wind energy system that is operated primarily (51% or more) to put energy into the electric grid, and/or has a nameplate capacity of more than 50 kilowatts (kW), and/or a total height of more than 175 feet, and/or a blade length of more than 30 feet. **[Added 2-20-2008 by L.L. No. 2-2008]**

COMMUNITY CENTER — A meeting hall or place of assembly not operated primarily for profit.

COMMUNITY RESIDENCE — A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than 14 individuals and provides client supervision on a twenty-four-hour basis. For the purposes of this chapter an approved community residence as defined herein is considered a one-family dwelling.

CONE OF DEPRESSION — The usually inverted, cone-shaped depression in the water table that occurs due to the pumping of a well. The outermost limit of the cone of depression is a figure, generally circular in shape, defined by the point(s) where the elevation of the water table is no longer affected by the pumping of the well; also the vertical projection of that figure onto the land surface.

CONTRACTOR'S YARD — Businesses engaged in construction of buildings and structures, remodeling and repairs to existing buildings and structures, electrical services, plumbing services, excavation and grading services, roofing and siding services, masonry services, paving services, well drilling, sewage disposal system installation and services, and other similar services.

CONVALESCENT HOME OR EXTENDED CARE FACILITY — See "hospital."

COVERAGE — That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations, which change could lead to increased flood damage, excluding normal maintenance to farm roads.

DISPOSAL — The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste, radioactive material, hazardous waste, or wastewater into or on any land or water so that such solid waste, radioactive material, hazardous waste, or wastewater will remain on the land or water and will not be removed.

DISPOSAL TRANSFER STATION — A solid waste management facility, other than a recyclables handling and recovery facility exclusively handling nonputrescible recyclables, that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

DOWNGRADE — Portions of a lot defined by areas of lower land surface elevation with respect to the elevation of other portions of the same lot. In general, groundwater flows from areas of higher elevation (upgradient areas) to areas of lower elevation (downgradient areas). (See definition of "upgradient.")

DRIVE-IN BUSINESS — Includes a drive-in restaurant, refreshment stand, bank, car wash and the like where patrons are typically served in, or near, their motor vehicles.

DWELLING — A building, including a modular home, designed or used exclusively as permanent living quarters for one or more families. The term shall not be deemed to include an automobile court, hotel/motel, boardinghouse, mobile home, tourist home, tent or recreational vehicle.

DWELLING, MULTIFAMILY — A dwelling containing three or more dwelling units.

DWELLING, ONE-FAMILY — A building containing one dwelling unit only. (Double-wide or triple-wide mobile homes designed and built at the factory to be combined on site and with a minimum width of 20 feet and minimum area of 720 square feet shall be deemed to be one-family dwellings for the purpose of this chapter.)

DWELLING, TWIN HOME — A two-family dwelling in which a lot line passes between the units along a common wall. **[Added 2-20-2008 by L.L. No. 2-2008]**

DWELLING, TWO-FAMILY — A dwelling containing two dwelling units only.

DWELLING UNIT — A building, or portion thereof, providing complete housekeeping facilities (kitchen, bath, living and sleeping areas) for one family.

DWELLING UNIT, PRIMARY — A dwelling, or portion thereof, providing complete living facilities for one family, and which occupies a space equal to or greater than 50% of the total available living space within a structure.

ECHO UNIT — A separate, detached, temporary dwelling unit, with its own cooking, sanitary and sleeping facilities, accessory to a single-family dwelling, for the use of and occupied by the elderly relatives of the occupants of the one-family dwelling. Such unit shall be constructed and installed in accordance with the requirements of Chapter B of the New York State Uniform Fire Prevention and Building Code and shall not be a mobile home.

FAMILY — One or more persons who live together in one dwelling unit and maintain a common household. It may consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. It may also include domestic servants and gratuitous guests.

FAMILY DAY-CARE HOME — A family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three hours per day per child for three to six children for compensation or otherwise, as provided for under the New York State Department of Social Services. The name, description or form of the entity which operates a family day-care home does not affect its status as a family day-care home. For the purposes of

this chapter, a family day-care home shall be considered an accessory use to a one-family dwelling.

FAMILY-TYPE HOME — Adult care operated and provided for the purpose of providing long-term residential care, room, board and personal care and/or supervision to four or fewer adult persons unrelated to the operator. For the purposes of this chapter a family-type home shall be considered a home occupation.

FARM — See "agricultural use."

FENCE — An artificially constructed barrier of wood, masonry, stone, wire, metal or any other manufactured material or combination of materials, or natural plantings (i.e., living fence), other than temporary uses such as snow fences or rabbit fences.

FERTILIZED VEGETATION — Areas of vegetation being cultivated by humans that require the application of fertilizers, pesticides or other substances in order to grow or maintain their existence.

FERTILIZER — Any commercially produced mixture that contains phosphorus, nitrogen, and/or potassium which is applied to the ground to increase nutrients to plants.

FIRST FLUSH — The delivery of a disproportionately large load of accumulated pollutants that are washed from impervious surfaces and the surface of the land during the early part of storms and transported in stormwater runoff.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of the community on which FEMA has delineated the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of inland waters and/or the unusual and rapid accumulation of, or runoff of, surface waters from any source.

FLOODPLAIN OVERLAY ZONE — That area of the town identified on the Flood Insurance Rate Map (FEMA Community Number 360278) as being subject to flood and/or mudslide hazards, which area is delineated on the Zoning Map, and for which special floodplain management requirements and criteria are enumerated in Chapter 112, Flood Damage Prevention, of this Code.

FLOOR AREA OF A BUILDING — The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

FLOOR, LOWEST — The floor of the lowest enclosed level, including basement, crawl space, or garage.

FRONTAGE — The extent of a building or a lot along one public street as defined herein.

GAME ROOM — A building or place containing five or more amusement games as defined herein (see "amusement game").

GARAGE, PRIVATE — An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein, nor is space for more than two cars leased to a nonresident of the premises.

GARAGE, PUBLIC — Any garage, other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, adjusting or equipping of automobiles or other motor vehicles.

GASOLINE STATION — Any building or land used for the sale of motor fuel, oil and motor vehicle accessories which may include facilities for lubricating, washing or servicing motor vehicles, but not painting or body repairs.

GASOLINE STATION-MARKET (CONVENIENCE STORE) — A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market, food or grocery market, or a commercial use which provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

GRADE, FINISHED — The natural surface of the ground, or the surface of the ground, lawn, walks or roads after the completion of any change in contour.

GROUNDWATER — All the water found beneath the surface of the land and present in aquifers and aquifer recharge areas.

GROUP FAMILY DAY CARE — A family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three hours per day per child for seven to 12 children for compensation or otherwise, as provided for under the New York State Department of Social Services. For the purposes of this chapter, a family day-care home shall be considered a home occupation use.

HABITABLE FLOOR AREA — Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation or a combination thereof. A floor used only for storage purposes is not habitable.

HAZARDOUS SUBSTANCE — Any substance listed as a hazardous substance in 6 NYCRR Part 597, List of Hazardous Substances, or a mixture thereof.

HAZARDOUS WASTE — A waste, or combination of wastes, which is identified or listed as hazardous pursuant to 6 NYCRR Part 371, Identification and Listing of Hazardous Wastes. Hazardous waste, because of its quantity, concentration, or physical, chemical, or infectious characteristics, poses a significant hazard to human health

or safety if improperly treated, stored, transported, disposed of, or otherwise managed.

HERBICIDE — Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed, and being those substances defined as herbicides pursuant to Environmental Conservation Law § 33-0101.

HOME OCCUPATION — An accessory use of a dwelling unit for gainful employment involving the manufacture, provision or sale of goods and/or services. Home occupations are further classified as being either Category I or II, depending upon whether or not nonresident individuals are working on site and whether more than one customer visit is expected at a time (see descriptions below).

- (1) In particular, a home occupation may include, but is not limited to, the following: art studio; barbershop/beauty parlor (limited to two work stations); cleaning services; contractors; computer programmer; cook; day nursing; direct sale product distribution (Amway, Avon, Tupperware, etc.); draftsman; dressmaker or tailor; electrical/radio/television repair; financial planning and investment services; insurance agent; musician; photographer; professional offices of a physician, dentist, lawyer, accountant, engineer or architect; real estate office; teaching or tutoring (limited to two students at one time); telephone answering; upholsterer; group family day-care home; school-age child care; and family-type home.
- (2) However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and kennels, restaurants or furniture refinisher (involving dip tanks or stripping).

HOME OCCUPATION I — A home occupation which employs, on site, only resident members of the family and which expects not more than one customer visiting the site at any given time.

HOME OCCUPATION II — Any home occupation which is not considered a Home Occupation I as set forth above.

HOSPITAL — An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities.

HOSPITAL, ANIMAL — An establishment for the medical and/or surgical care of animals.

HOTEL/MOTEL — A building providing overnight accommodation for more than four transient people, which building need not be owner-occupied and may provide eating, restaurant and related facilities.

HUMAN EXCRETA — Human feces and urine.

HYDROLOGIC BUDGET RECHARGE AREA — The total area of surface land that is necessary to supply recharge to the well at an amount equal to that being withdrawn from the well each day, based on the annual average groundwater recharge area.

IMPERVIOUS SURFACE — Any man-made material, such as pavement used in parking lots or driveways or any building or other structure on a lot, that does not allow surface water to penetrate into the soil.

INDOOR RECREATION — Includes, but is not limited to, a health club, bowling alley, tennis court, table tennis, pool hall, skating rink, gymnasium, swimming pool, hobby workshop, and similar places of indoor recreation.

INDUSTRIAL PARK — A large tract of land that has been planned, developed and operated as an integrated facility for a number of individual industrial uses, with special attention to circulation, parking, utility needs, aesthetics, and compatibility.

JUNKYARD — The term "junkyard" shall be defined in the same manner as is set forth in Chapter 138, Junkyards, of this Code, together with any amendment(s) thereto.

KENNEL — A building or land used for harboring six or more dogs over six months old.

LAND APPLICATION OF HUMAN WASTE — A site where septage or sewage sludge is applied to the soil surface or injected into the upper layer of the soil to improve soil quality or to provide plant nutrients. (This use is prohibited within the town; see also § 235-16.)

LANDFILL, SANITARY — The depositing of refuse in a natural or man-made depression or trench, or dumping it at ground level, then compacting to the smallest practical volume, and covering with earth or other material in a systematic and sanitary manner.

LANDSCAPING CONTRACTOR'S YARD — An area and building(s) where a landscaping contractor stores equipment, vehicles, materials (rock, stone, bricks, fencing, fixtures, etc.), tools and other items related to his/her business provided no direct retail sales are conducted on site.

LIGHT INDUSTRIAL — The processing, fabrication, assembly or packaging of previously prepared or refined materials.

LOT — Land occupied or which may be occupied by a building and its accessory uses, together with required open spaces, having not less than the minimum area, width and depth required for a lot in the district in which such land is situated, and having frontage on a street or other means of access as may be determined by the Planning Board to be adequate as a condition for issuance of a building permit. Any land included in a public road, street or highway right-of-way shall not be considered part of the lot for zoning purposes.

LOT AREA — The total area within property lines. Any land included in a public road, street or highway right-of-way shall not be included in calculating lot area.

LOT, CORNER — A lot located at the junction of and fronting on two or more intersecting streets. (Also see the definition "lot line, front.")

LOT DEPTH — The mean horizontal distance from the street right-of-way line of the lot to its opposite rear line measured at right angles to the street right-of-way line.

LOT FRONTAGE — The horizontal distance between the side lot lines, measured at the street right-of-way line.

LOT LINE — The property lines bounding a lot as defined herein.

LOT LINE, FRONT — In the case of a lot abutting upon only one street, the line separating the lot from the street right-of-way. In the case of a lot abutting more than one street, each street line shall be considered a front lot line.

LOT LINE, REAR — The lot line which is generally opposite the front lot line. If the rear lot line is less than 10 feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line, not less than 10 feet long, lying wholly within the lot and farthest from the front lot line.

LOT LINE, SIDE — The property line or lines extending from the front lot line to the rear lot line, except in the case of corner lots which have no rear lot line.

LOT WIDTH — The horizontal distance between the side lot lines, measured at right angles to the lot depth.

MANUFACTURING — Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

MANURE — Animal feces and urine.

MOBILE HOME — A structure, whether occupied or not, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation, when connected to the required utilities. For the purpose of this chapter, an unoccupied mobile home shall be considered the same as an occupied unit.

MOBILE HOME PARK — A parcel which has been improved for the rental or lease of two or more lots and the provision of services for mobile homes for nontransient residential use.

MOTEL — See "hotel."

MOTOR VEHICLE REPAIR SHOP — Any building or land used for gain, wholly or partially, engaged in the business of service, repair or

diagnosing motor vehicle malfunctions or repairing bodies, fenders or other components damaged by accidents or otherwise.

MUNICIPAL WELL — A groundwater well operated by a city, town, village, or special district created pursuant to New York State Law for the purpose of providing a public water supply.

NATURAL VEGETATION — Existing and naturally occurring indigenous vegetation which grows and is maintained without need of applications of fertilizers, pesticides or other chemical substances.

NONCOMMERCIAL WIND ENERGY SYSTEM — A wind energy system that is operated primarily (51% or more) for on-site (may be for more than one parcel) consumption, and has a nameplate capacity of 50 kW or less, and a total height of 175 feet or less, and a blade length of 30 feet or less. These are also defined as wind energy conversion systems (WECS) or small wind energy production facilities. **[Added 2-20-2008 by L.L. No. 2-2008]**

NONCONFORMING BUILDING — A building legally existing at the time it was created which in its design or location upon a lot does not conform to the current regulations of this chapter for the district or zone in which it is located.

NONCONFORMING LOT — A lot of record legally existing at the date of the passage of this chapter which does not have the minimum frontage or contain the minimum area for the zone in which it is located.

NONCONFORMING USE — Use of a building or of land legally existing at the time it was created but not conforming to the current zoning regulations of the district in which it is located.

NURSING HOME — An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

OFFICE BUILDING — A building used primarily for conducting the affairs of a business, profession, service, industry or government, or like activity, that may include ancillary services for office workers such as a restaurant, coffee shop, or newspaper or candy stand.

ON-SITE CONSUMPTION — The use of petroleum to heat or cool a residential or nonresidential structure or to operate machinery necessary for agricultural activities. "On-site consumption" does not include on-site use of petroleum for processing or manufacturing activities or the sale or distribution of petroleum for or into vehicles, except vehicles used for agricultural operations on that site.

OUTDOOR RECREATION — Includes, but is not limited to, a golf course; golf driving range; trap, skeet, and archery range; swimming pool; skating rink; tennis court; recreation stadium; baseball and softball fields; skiing facility; hunting preserve; and similar places of outdoor recreation.

OUTDOOR SOLID-FUEL-BURNING DEVICE — A solid-fuel-burning device designed and intended for installation outside of the primary building on a lot and used to produce heat for transfer to the primary or accessory building(s) on such lot.

OWNER — An individual or individuals, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

PARKING SPACE — An off-street space available for the parking of one motor vehicle on a transient basis and having a width of 10 feet, and an area of not less than 200 square feet, exclusive of passageways and driveways, and having access to a street. Handicapped parking spaces may be larger and therefore require more space; however, regardless of its size, such space shall constitute a single parking space.

PERSONAL SERVICES — Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

PEST — Any insect, rodent, fungus, weed or other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism which the Commissioner of Environmental Conservation declares to be a pest as provided by Environmental Conservation Law § 33-0101.

PESTICIDE — Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant, and those substances defined as pesticides pursuant to Environmental Conservation Law § 33-0101 et seq.

PETROLEUM — Any petroleum-based oil of any kind which is liquid at 20° Celsius under atmospheric pressure and has been refined, re-refined, or otherwise processed for the purpose of being burned as a fuel to produce heat or usable energy, or which is suitable for use as a motor fuel or lubricant in the operation or maintenance of an engine. Waste oil which has been reprocessed or re-refined and which is being stored for sale or use as a fuel or lubricant is considered petroleum for purposes of this chapter.

PLANNING BOARD — The officially designated Town of Batavia Planning Board as established by the Town Board in accordance with § 271 of the Town Law.

POND — A body of water (other than a swimming pool) created through construction or other similar method, having a depth of two or more feet.

PUBLIC STREET/ROAD — A thoroughfare which has been dedicated or deeded to the public for public use and which has been improved in accordance with municipal standards.

RADIATION — Ionizing radiation, that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high-speed proton, and any other

atomic particle producing ionization, but shall not mean any sound or radio wave, or visible, infrared, or ultraviolet light.

RADIOACTIVE MATERIAL — Any material in any form that emits radiation spontaneously.

RECHARGE — The addition of water to an aquifer or to a pumping well; also the amount of water added to an aquifer or a pumping well. Recharge is typically expressed as a rate, e.g., inches per year or gallons per day.

RECREATIONAL VEHICLE — A unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own power or is mounted on or drawn by a motor vehicle (see also "sport recreational vehicle"). The basic entities are:

- (1) **TRAVEL TRAILER** — A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motor vehicle.
- (2) **CAMP TRAILER** — A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by a motor vehicle.
- (3) **TRUCK CAMPER** — A portable unit designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck campers are of two basic types:
 - (a) **SLIDE-IN CAMPER** — A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.
 - (b) **CHASSIS-MOUNT CAMPER** — A portable unit designed to be affixed to a truck chassis.
- (4) **MOTOR HOME** — A vehicular unit built on a self-propelled motor vehicle chassis.

RECYCLABLES HANDLING AND RECOVERY FACILITY — A solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream or at which previously separated recyclables are collected and which is regulated by 6 NYCRR Part 360.

RELIGIOUS INSTITUTION — A church, temple, parish house, convent, seminary and retreat house.

RESIDENTIAL CARE FACILITY — A residential facility, operated by either a public or private agency and regulated by the New York State Department of Social Services, exercising custody of dependent, neglected, abused, maltreated, abandoned or delinquent children; homes or shelters for unmarried mothers; residential programs for victims of domestic violence; or adult care facilities.

RESTAURANT — Any establishment, however designed, at which food is sold for consumption on the premises to patrons seated within an

enclosed building and where the taking of food and drink from said building is incidental. However, a snack bar or refreshment stand at a public, semipublic or community swimming pool, playground, play field or park operated for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

RETAIL TRADE — Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

ROADSIDE STAND — A structure of a nonpermanent nature (movable and temporary) located on the owner's property utilized during the harvest season for the sale of agricultural products grown primarily by the owner.

SATELLITE DISH — A structure which is designed and/or intended to receive, relay or send television signals to or from orbiting or geostationary satellites.

SCHOOL — Includes parochial, private and public institutions providing New York State approved educational services, including preschool and vocational programs, together with private and public schools and colleges and universities.

SCHOOL-AGE CHILD CARE PROGRAM — Care provided on a regular basis to more than six school-age children under 13 years of age or who are incapable of caring for themselves where such children attend a school higher than kindergarten or attend full-day (at least six hours) kindergarten at a public or private school, whether such care is provided for compensation or otherwise.

SECONDARY CONTAINMENT — A structure which prevents any materials that have spilled or leaked from primary containment structures, such as piping, tanks or other containers, from reaching the land surface or any water body.

SELF-SERVICE STORAGE FACILITY — A building or group of buildings divided into separate units or compartments used to meet the temporary storage needs of businesses and residential users. A warehouse operated for a specific commercial or industrial establishment shall not be considered a self-service storage facility.

SEPTAGE — The contents of a septic tank, cesspool, or other individual wastewater treatment works which receives domestic sewage wastes.

SHOPPING CENTER — A group of businesses occupying adjoining structures, having adequate space for loading and unloading and adequate off-street parking.

SIGN — Any structure or part thereof, or any device attached to a structure or painted or represented on a structure, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of, an announcement, direction or advertisement. A sign includes any

billboard but does not include the flag, pennant, or insignia of any nation, or group of nations, or of any state, city or other political unit or of any political, educational, charitable, philanthropic, civic, professional, religious, political or like campaign, drive, movement or event. However, a sign as designed herein shall not include a similar structure or device located within a building.

- (1) BUSINESS SIGN — A sign which directs attention to a business, profession and/or industry conducted or to products manufactured or sold upon the same lot.
- (2) DIRECTIONAL SIGN — A sign limited to providing information on the location of an activity, business or event.
- (3) OFF-PREMISES ADVERTISING SIGN — A sign which advertises an establishment, merchandise, service or entertainment which is not sold, produced, manufactured or furnished at the property on which said sign is located (e.g., billboards or outdoor advertising).
- (4) PORTABLE SIGN — A sign, whether on its own trailer, wheels, or otherwise, designed to be movable and not structurally attached to the ground, a building, a structure or another sign.
- (5) TEMPORARY SIGN — A sign related to a single activity or event having a duration of no more than 60 days.

SIGN AREA — The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines said sign.

SITE PLAN — A rendering, drawing or sketch prepared to specifications containing necessary elements, as set forth in this chapter, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on such plan. Plats showing lots, blocks or sites which are subject to review under § 276 of the New York State Town Law and/or any local laws of the Town of Batavia regulating the division of property shall not be subject to review as site plans under this chapter unless a zoning application is submitted.

SKILLED TRADE SHOP — A shop where an individual involved in a skilled building trade (i.e., carpenter, plumber, electrician, etc.) assembles custom fixtures, cabinets, etc., for installation by him/her at a job site location. No retail sales of materials and/or products directly to the public shall be allowed on site.

SLUDGE — The solid, semisolid or liquid waste generated from a waste processing facility, but does not include the liquid stream of effluent.

SPECIAL USE PERMIT — A specifically designated use that would not be appropriate generally without restriction in a zoning district but which, if controlled as to number, area, location, relation to the neighborhood, or otherwise, in the opinion of the Planning Board,

promotes the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity and/or the general welfare.

SPILL — Any escape of a hazardous substance or petroleum from the primary containers used in the normal course of storage, transfer, processing, or use.

SPORT RECREATIONAL VEHICLE — Motor vehicles for personal use by occupants of a household. Examples of recreational vehicles shall include motorcycles, all-terrain vehicles, snowmobiles, and boats. Examples of sport recreational vehicles shall not include vehicles for sale or lease. (See also "recreational vehicle.")

STABLE, PRIVATE — A building in which horses or other livestock are kept for private use and not for hire, remuneration, or sale.

STABLE, PUBLIC — A building in which horses or other livestock are kept for remuneration, hire or sale.

STABLING OF AGRICULTURAL ANIMALS — A concentration of animals, permitted under agricultural use, private stable and public stable, within a building, structure or other defined area for the purpose of housing or feeding.

STREET/ROAD GRADE — The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

STREET/ROAD RIGHT-OF-WAY LINE — The line determining the limit of the highway rights of the public, either existing or contemplated.

STRUCTURE — Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on or in the ground.

SWIMMING POOL — A structure intended for bathing, swimming or diving purposes, made of concrete, masonry, metal or other impervious materials, provided with a recirculating and/or controlled water supply with a depth of greater than two feet.

TEMPORARY USE — An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this chapter. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

TOWN BOARD — The Town Board of the Town of Batavia, New York.

TOWNHOUSE — An independent single-family dwelling unit, which is one of a series of dwelling units, having a common party wall between each adjacent unit, each with a private outside entrance. **[Added 2-20-2008 by L.L. No. 2-2008]**

TOWNHOUSE CLUSTER — A building, or group of buildings, with each building containing not more than eight townhouse dwelling units

connected by common party walls.**[Added 2-20-2008 by L.L. No. 2-2008]**

TOWNHOUSE DEVELOPMENT — A tract of land adequately sized to accommodate the construction of townhouse dwelling units in accordance with the density standards contained elsewhere in these regulations.**[Added 2-20-2008 by L.L. No. 2-2008]**

TRAILER — Includes any towed vehicle used for carrying goods, equipment, and/or machinery.

TRUCKING TERMINAL — An area and building(s) where trucks load and unload cargo and freight and where cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation. Trucking terminals may include the storage or parking of trucks awaiting cargo as well as facilities for servicing of trucks.

UNDERGROUND TANK — Any tank completely covered with earth or other backfill material.

UPGRADIENT — Portions of a lot defined by areas of higher land surface elevation with respect to the elevation of other portions of the same lot. In general, groundwater flows from areas of higher elevation (upgradient areas) to areas of lower elevation (downgradient areas). (See definition for "downgradient.")

USE — The specific purpose for which land, water, a structure or a building is designed, arranged, or intended or for which it is or may be occupied or maintained.

USE VARIANCE — The authorization by the Zoning Board of Appeals for use of land for a purpose which is not allowed or is prohibited by this chapter.

UTILITY, PUBLIC — Any person, firm, corporation or governmental subdivision duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television, or other similar service.

WAREHOUSE — A building used primarily for the storage and/or distribution of goods and materials.³

YARD — An unoccupied, open space on the same lot with any principal or accessory buildings or structures.

YARD, FRONT — The unoccupied, open space within and extending the full width of the lot from the front lot line to the front line of the principal building which is nearest to such front lot line.

3. **Editor's Note: The former definition of "wind energy conversion system, production model," added 6-15-2005, which immediately followed this definition, was repealed 2-20-2008 by L.L. No. 2-2008.**

YARD, REAR — The unoccupied, open space within and extending the full width of the lot from the rear lot line to the part of the principal building which is nearest to such lot line.

YARD, SIDE — The unoccupied, open space within the lot extending the full distance from the front yard to the rear yard and from the side lot line to the part of the principal building which is nearest to such side lot line.

ZONE OF CONTRIBUTION — The surface and subsurface land area surrounding a pumping municipal well that supplies direct recharge to the well.

ZONING BOARD OF APPEALS — That Board appointed by the Town Board specifically to hear all appeals as provided by these regulations and other duties specifically set forth in this chapter, New York State Town Law or as assigned to it by the Town Board.

ZONING PERMIT — A permit issued by the zoning officer stating that the purpose for which a building or land area is to be used is in conformance with the uses permitted and all other requirements of this chapter.

ARTICLE II
Establishment of Zoning Districts

§ 235-6. Classification of districts and overlay zones. [Amended 2-20-2008 by L.L. No. 2-2008]

The Town of Batavia is hereby divided into the following zoning districts and overlay zones:

AG-R	Agricultural-Residential District
R	Residential District
H	Hamlet Residential District
C	Commercial District
HC	Hamlet Commercial District
I	Industrial District
IP	Industrial Park District
MHP	Mobile Home Park District
PUD	Planned Unit Development District
PBD	Planned Business Development District
FPO	Floodplain Overlay Zone (Information Only)
WPO	Wellhead Protection Overlay Zone

§ 235-7. Zoning Map.

Said zoning districts are bounded and defined as shown on a map titled "Zoning Map of the Town of Batavia, New York." The official copy of the Zoning Map is on file at the Town Clerk's office.

§ 235-8. Interpretation of district boundaries.

- A. Where uncertainty exists as to the location of any boundaries shown on the Zoning Map, the following rules shall apply:
- (1) Zoning district boundary lines are intended to follow streets, rights-of-way, watercourses or lot lines, or be parallel or perpendicular thereto, unless such district boundary lines are fixed by dimensions, as shown on the Zoning Map.
 - (2) Where zoning district boundaries are indicated as following approximate streets, rights-of-way, or watercourses, the center lines thereof shall be construed to be such boundaries.
 - (3) Where zoning district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs or other bodies of water, mean high water lines thereof shall be construed to be the zoning district boundaries.

(4) Where zoning district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.

- B. If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine the location of said lines.

§ 235-9. Lots in two or more districts.

Where a zoning district boundary line divides a lot under single ownership on the effective date of this chapter, leaving part subject to permissive regulations and part subject to prohibitive regulations, the Board of Appeals, after public hearing, may permit an extension of the use of that lot into the district where it is prohibited provided the extension does not extend more than 50 feet into that district. Furthermore, the Board may impose conditions affecting such extension if required to protect neighboring property.

§ 235-10. Existing lots of record.

A single-family dwelling, mobile home, and/or customary accessory buildings may be placed on any vacant lot of record existing prior to the effective date of this chapter and having a minimum of 100 feet in width and 20,000 square feet in area or, if such lot is located within a water district, a minimum of 75 feet in width and 16,000 square feet. This provision shall apply even though such lot fails to meet the requirements for area, width or yard size, provided that the other requirements of this chapter are met. The minimum yard requirements for single-family dwellings on existing lots shall be as follows:

- A. Front: 50 feet.
- B. One side: 15 feet.
- C. Remaining side: eight feet.
- D. Rear: 30 feet.

ARTICLE III
General Regulations

§ 235-11. Purpose.

The provisions of this chapter shall be subject to such exceptions, additions or modifications as herein provided by the following general supplementary regulations. The dimensions and restrictions set forth in Zoning Schedule A are incorporated herein and made a part of this chapter.⁴

§ 235-12. Buildings, uses and lots.

- A. One principal building and use per lot. There shall not be more than one principal building and one principal use on any one lot in the Agricultural (AG), Agricultural-Residential (AG-R), and the Residential (R) Districts except as provided for in the following:
- (1) An approved multifamily dwelling project;
 - (2) A single-family dwelling accompanying a nonresidential use, or uses, permitted on a lot in Agricultural (AG), Agricultural-Residential (AG-R) and Residential (R) Districts, provided there is only one use of a commercial nature on the lot; or
 - (3) A single-family dwelling accompanying a nonresidential use, or uses, requiring a special use permit in Agricultural (AG), Agricultural Residential (AG-R) and Residential (R) Districts, if approved by the Planning Board as part of the special use permit application process, provided there is only one use of a commercial nature on the lot.
- B. Yard and open space for every building. No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building. Also, no yard or any other open space on one lot shall be considered as a yard or open space for a building on any other lot other than as provided for in § 235-41 for cluster residential development.
- C. Separation or subdivision of a lot. Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation or subdivision shall be effected so as not to violate any of the requirements of this chapter with respect to the existing building, including yards and other required spaces in connection therewith. No zoning permit shall be issued for the erection of a building on the new lot thus created unless there is full compliance with all the provisions of this chapter and Chapter 204, Subdivision of Land, of this Code.
- D. Irregularly shaped lots. Where a question exists as to the proper application of any of the requirements of this chapter to a particular lot

4. **Editor's Note: Zoning Schedule A is included at the end of this chapter.**

or parcel because of the peculiar or irregular shape of the lot or parcel, the matter shall be referred to the Zoning Board of Appeals and dealt with in accordance with the applicable provisions of § 235-62.

- E. Lots under water or subject to flooding.
- (1) No more than 25% of the minimum area requirements of a lot may be met by land which is always under water or land which falls within the federally designated one-hundred-year flood hazard area.
 - (2) Land which is under water and is open to use by persons other than the owner shall be excluded from the computation of the minimum area of a lot.
 - (3) Land in the bed of a stream not exceeding five feet in width at mean water level, and land in a pond not exceeding 150 square feet in area, shall not be considered as under water for the purpose of computing lot area.
 - (4) Where any part of a lot is separated by the main body of water, such separate land shall not be included in computing lot area.
- F. Required road frontage. No zoning permit shall be issued for any structure unless the lot upon which that structure is to be built has the required frontage on a road, as defined herein, which frontage provides the actual access to such structure, and which road shall have been suitably improved to Town Board standards or a bond posted therefor as provided in § 280-a of the New York State Town Law.
- G. Parts of lot not counted toward area requirements. No part of such lot less in width than 1/2 of the minimum requirements for the district in which it is located shall be counted as part of the minimum required lot area.
- H. Adjacent lots. Where two or more adjacent lots are at the time of the effective date of this chapter in the same ownership, they shall not be considered a single lot, unless they are described as one parcel in a deed recorded at the Genesee County Clerk's office.
- I. Yards on corner lots. Any yard adjoining a street shall be considered front yard for the purpose of this chapter and shall comply with all the requirements for a front yard in the district in which located. The remaining yards shall be considered side yards.

§ 235-13. Supplementary yard regulations; buffer strips; topsoil removal; excavations; height exceptions.

- A. Porches and decks. A porch or deck shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

- B. Projecting horizontal architectural features. Architectural features, such as windowsills, belt courses, chimneys, cornices, eaves or bay windows, shall not project more than four feet into any required yard.
- C. Fire escapes. Open fire escapes may extend into any required yard.
- D. Visibility at intersections. On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three feet in height shall be erected, placed or maintained within the triangular area formed by the intersecting road lines and a straight line joining said road lines at points which are 40 feet distant from the point of intersection, measured along said road lines. This subsection shall not apply to existing trees, provided that no branches are closer than six feet to the ground.
- E. Swimming pools. Swimming pools shall be considered accessory structures within the provisions of § 235-14 of this chapter and shall be set back from lot lines at least the minimum distance required for other buildings and structures. Swimming pools shall be enclosed with adequate fencing and gates as required by the New York State Uniform Code.
- F. Buffer strip. Wherever a buffer strip is required by this chapter, it shall meet the following standards:
 - (1) It shall be at least 15 feet in depth and six feet in height.
 - (2) It shall be a type of planting (as determined by the Planning Board) of such type, height and spacing as will screen the activities on the lot from view of a person standing at street level on the adjoining lot.
 - (3) A wall or fence of which the location, height, and design have been approved by the Planning Board may, upon good cause being shown, be substituted for the required planting and the minimum width of the buffer strip may be reduced accordingly.
- G. Topsoil. No person shall strip, excavate or otherwise remove topsoil for sale or for use other than on the premises from which the topsoil is taken, except in connection with the construction or alteration of a building or structure on such premises and excavating or grading incidental thereto.
- H. Excavation during construction. In any construction, open excavations shall be limited to a maximum of 60 days, with appropriate fencing, barricades or covering.
- I. Waste containers/dumpsters. The location of all waste containers and/or dumpsters for multifamily and nonresidential uses shall be determined by the Planning Board through the site plan review process. Relocation of existing waste containers and/or dumpsters shall also be subject to review and approval by the Planning Board. The Planning

Board may require screening of waste containers/dumpsters. This provision shall not apply to the temporary placement of garbage cans awaiting collection or the temporary use of dumpsters or roll-offs during a cleaning, moving or construction project.

J. Height exceptions.

- (1) District building height regulations shall not apply to flagpoles, radio or television antennas, transmission towers or cables, spires or cupolas, chimneys, elevator or stair bulkheads, penthouses, parapets or railings, water tanks or cooling towers, or any similar structures, provided that such structures are located on the roof and in their aggregate coverage occupy no more than 10% of the roof area of the building and provided such structure(s) poses no hazards to aircraft operations.
- (2) District building height regulations shall not apply to radio or television antennas and commercial communications towers provided such structure(s) poses no hazards to aircraft operations.

§ 235-14. Location of accessory buildings and structures.

A. Accessory buildings are permitted as follows:

- (1) A one-story accessory building having a total floor area of 250 square feet or less and a building height of not more than nine feet shall not be located closer than five feet to the rear and side lot lines and shall not be located within the required front yard. **[Amended 2-20-2008 by L.L. No. 2-2008]**
- (2) The location of accessory buildings having a total floor area greater than 250 square feet or a building height of greater than nine feet shall be in compliance with the required front, side and rear yard areas of the respective districts. **[Amended 2-20-2008 by L.L. No. 2-2008]**

B. Accessory structures (other than buildings) are permitted as follows:

- (1) Accessory structures (other than buildings) equal to or less than 15 feet in height, including satellite dishes with a diameter of three to 13 feet, shall not be located closer than 15 feet to the side and/or rear lot line and shall not be located within the minimum required front yard. Satellite dishes less than three feet in diameter may be located anywhere on a lot provided the minimum front and side yard setbacks are maintained along with a minimum five-foot setback from the rear property line.
- (2) Accessory structures (other than buildings) greater than 15 feet in height, including production model wind energy conversion systems (windmills), antennas and satellite dishes greater than 13 feet in diameter, shall be located in compliance with the required

yard area of the respective districts and shall be located in the rear yard.

§ 235-15. Nonconforming uses, buildings, structures and lots.

- A. Lawful existing uses, buildings, structures and lots. Except as otherwise provided in this section, the lawful use of land, a building or a structure existing at the effective date of this chapter may be continued although such use, building or structure does not conform to the regulations specified in this chapter for the zone in which such land, building or structure is located; provided, however, that:
- (1) No lot shall be reduced to a nonconforming size.
 - (2) A nonconforming lot shall not be further reduced in size.
 - (3) A nonconforming building or structure shall not be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance.
 - (4) An existing mobile home which is occupied as a one-family dwelling on any lot in an AG, AG-R, R, C or PUD District may be replaced with another mobile home provided that the following criteria, as well as the criteria in § 235-54A, are met. The new mobile home may be larger than the existing nonconforming mobile home. Otherwise, however, the new mobile home shall not increase the degree of nonconformity that exists with the existing nonconforming mobile home.
 - (5) A nonconforming use may not be expanded.
 - (6) No existing conforming use shall be changed to a nonconforming use.
 - (7) Such uses must comply with all applicable state, federal and other local laws or regulations.
- B. Abandonment. A nonconforming use shall be deemed abandoned when there occurs a cessation of any such use or activity and a failure on the part of the tenant or owner to reinstate such use within a period of one year from the date of cessation or discontinuance.
- C. Restoration and repair. Nothing in this chapter shall prevent the restoration and repair or continuation of use of a nonconforming building or structure destroyed or partly destroyed by a disaster, provided that restoration is commenced within eight months after the date of destruction and is completed within 16 months after the date of destruction.
- D. Reversion. No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

- E. Alterations. A nonconforming building or structure may not be improved during its life to an extent exceeding, in aggregate cost, 50% of the assessed value of the building unless said building is changed to conform to the requirements of this chapter.
- F. District changes. If a nonconforming use is established by a transfer of an area from one district to another after the effective date of this chapter, then the foregoing provisions shall apply to any nonconforming use created by such change.

§ 235-16. Uses not permitted.

Uses which are not specifically allowed by this chapter are prohibited.

§ 235-17. Minimum enclosed living area.

- A. One-family dwellings shall have a minimum enclosed living area (not including a garage but also not limited to only habitable floor area) of at least 720 square feet.
- B. Two-family dwellings shall have a minimum enclosed living area of at least 720 square feet for the first unit and the second unit as follows:

Number of Bedrooms Per Unit	Minimum Square Footage
Efficiency	300
1	550
2	650
3	800
4	1,000
5+	As determined by Planning Board

- C. Multiple-family dwellings shall have a minimum enclosed living area per unit as follows:

Number of Bedrooms Per Unit	Minimum Square Footage
Efficiency	300
1	550
2	650
3	800
4	1,000
5+	As determined by Planning Board

§ 235-18. Minimum dimensional criteria.

All one- and two-family dwelling units located on individual lots shall have a minimum outside width of at least 20 feet. This provision shall not prohibit the construction of smaller additions or projections from larger units (less than 20 feet wide) provided a twenty-foot minimum width is clearly established for the overall unit.

§ 235-19. Front yard grade for dwellings.

The surface grade of front yards of dwellings measured at the midpoint of the front wall shall be at least one foot above the elevation of the road's center line, unless adequate site drainage is provided otherwise and approved by the appropriate authority having jurisdiction over the road (Town or County Highway Superintendent or New York State Department of Transportation).

§ 235-20. Stabling agricultural animals.

There shall be no stabling of animals or storage of manure, fertilizer, or similar odor- or dust-producing substance within the R District. Such stabling or storage shall be permitted in the AG, AG-R, I, IP or C Districts provided the following restrictions are observed:

- A. No such stabling or storage shall take place within 500 feet of an R District.
- B. No such stabling or storage shall take place within 100 feet of a lot line.

§ 235-21. Fences.

- A. Fences erected on residential lots in the Town of Batavia shall adhere to the following standards:
 - (1) Before a fence (other than a temporary one) shall be erected, a zoning permit must be obtained from the Building Inspector. A request for a permit shall be accompanied by a site plan which shall show the height and location of the fence in relation to all other structures and buildings and in relation to all streets, lot property lines and yards. These restrictions shall not be applied so as to require a permit for, nor restrict, the erection, alteration, or reconstruction of fences for agricultural uses on farms or temporary fences (i.e., snow fences, garden fences, etc.), provided such temporary fences shall not exceed four feet in height, shall be at least 50% open construction and shall not pose a hazard to persons or traffic circulation. A temporary fence shall be removed once it is no longer being used or is necessary for its intended purpose.
 - (2) Fences may be erected, altered or reconstructed to a height not to exceed three feet above ground level when located within 20 feet of the street right-of-way.

- (3) Fences may be erected, altered or reconstructed to a height not to exceed eight feet above ground level when located more than 20 feet from the street right-of-way line.
 - (4) These restrictions shall not be applied so as to restrict the erection of a wall for the purpose of retaining earth.
 - (5) Fencing used to enclose a tennis court may be permitted up to 10 feet in height provided that such fencing is not closer than 25 feet to a side or rear property line.
 - (6) No fence shall be erected in a special flood hazard area, except for fences connected with an agricultural use when it can be demonstrated that such fence would not restrict the flow of floodwaters nor have an adverse impact on any buildings.
 - (7) The finished side of the fence shall face the adjoining properties.
- B. Commercial and industrial fences shall be reviewed and approved by the Planning Board as part of the site plan approval process.

§ 235-22. Land abutting a residential use.

Where in any district a commercial or industrial use is created adjacent to an existing residential use, a buffer strip shall be established by the nonresidential use along the lot line adjacent to the residential use.

§ 235-23. Outside solid-fuel-burning devices.

Outside solid-fuel-burning devices shall not be installed in an R District or within 500 feet of such district. When installed outside the R District (and the required five-hundred-foot buffer), such units shall be installed and operated in a manner as will not allow smoke or fumes to enter buildings on surrounding properties.

ARTICLE IV
Zoning District Regulations

§ 235-24. (Reserved)⁵

§ 235-25. Agricultural-Residential District (AG-R). [Amended 2-20-2008 by L.L. No. 2-2008]

The Agricultural-Residential (AG-R) District is designed primarily to preserve farmland and secondarily to preserve the rural nature of the Town. Agricultural and residential uses have a number of inherent conflicts between them. The purpose of this district is to minimize these conflicts by separating the uses by providing an area where agricultural uses are the primary use and low-density residential development is a secondary use.

A. Permitted uses. The following uses are permitted in the Agricultural-Residential District:

- (1) Agricultural uses.
- (2) One- and two-family dwellings.
- (3) Mobile homes (see § 235-54).
- (4) Religious institutions.
- (5) Public parks, public playgrounds, and municipal uses.
- (6) Private stable.
- (7) Schools.
- (8) Home Occupation I (see § 235-44).
- (9) Accessory buildings, structures and uses.
- (10) Cluster residential development (see § 235-41).

B. Uses requiring special use permit. The following uses are permitted in an Agricultural-Residential District upon the issuance of a special use permit:

- (1) Multifamily dwellings, townhouse development and twin home development (see § 235-41.1).
- (2) Home Occupation II (§ 235-44).
- (3) Noncommercial wind energy system.
- (4) Outdoor recreation facility.
- (5) Club.

5. Editor's Note: Former § 235-24, Agricultural District (AG), was repealed 2-20-2008 by L.L. No. 2-2008.

- (6) Airport landing strip.
 - (7) Kennel.
 - (8) Community center.
 - (9) Public utility (see § 235-38).
 - (10) Public stable.
 - (11) Commercial greenhouse.
 - (12) Commercial excavation (see § 235-40).
 - (13) Cemetery.
 - (14) Campground (see § 235-43).
 - (15) Animal hospital.
 - (16) Residential care facility.
 - (17) Auction house.
 - (18) Day-care center.
 - (19) Bed-and-breakfast.
 - (20) Boardinghouse.
 - (21) Animal waste storage facilities (see § 235-46).
 - (22) Animal shelter.
 - (23) Pond (see § 235-48).
 - (24) Farm equipment sales, service and repair (see § 235-37).
 - (25) Skilled trade shop (see § 235-47).
 - (26) ECHO unit (see § 235-51).
 - (27) Self-service storage facility.
 - (28) Commercial communication tower (see § 235-52).
 - (29) Landscaping contractor's yard (see § 235-53).
 - (30) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).
- C. Uses requiring special use permit on arterial highways. The following uses are permitted in the Agricultural-Residential District upon the issuance of a special use permit, provided the affected lot and proposed use front directly upon an arterial highway and the lot involved is not located within 300 feet of a lot with an existing residential use (other

than residential uses located on the involved lot) (such measurements shall be made between the nearest respective lot lines):

- (1) Hotel/motel.
- (2) Motor vehicle repair shop (see § 235-37).
- (3) Hospital.
- (4) Indoor recreation facility.
- (5) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).

D. Area regulations. See Zoning Schedule A.⁶

§ 235-26. Residential District (R). [Amended 2-20-2008 by L.L. No. 2-2008]

The Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 16,000 square feet (provided public water or sewer is available) or 20,000 square feet (no public water or sewer available). The purpose of this district is to encourage residential growth in areas of the Town which have existing concentrations of residential uses. The Residential District will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A. Permitted uses. The following uses are permitted in the Residential District:

- (1) One- and two-family dwellings.
- (2) Religious institutions.
- (3) Public parks, public playgrounds, and municipal uses.
- (4) Agricultural uses, excluding the stabling of animals or the storage of manure, fertilizer, or similar odor- or dust-producing substances.
- (5) Schools.
- (6) Accessory buildings, structures and uses.

B. Uses requiring special use permit. The following uses are permitted in the Residential District upon issuance of a special use permit:

- (1) Multifamily dwellings, townhouse development and twin home development (see § 235-41.1).
- (2) Home Occupation I (see § 235-44).

6. Editor's Note: Zoning Schedule A is included at the end of this chapter.

- (3) Home Occupation II (see § 235-44).
 - (4) Outdoor recreation facility.
 - (5) Community center.
 - (6) Residential care facility.
 - (7) Public utility (see § 235-38).
 - (8) Cluster residential development (see § 235-41).
 - (9) Day-care center.
 - (10) Boardinghouse.
 - (11) Bed-and-breakfast.
 - (12) Pond (see § 235-48).
 - (13) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).
- C. Uses requiring special use permit on arterial highways. The following uses are permitted in the Residential District upon the issuance of a special use permit, provided the affected lot and proposed use front directly upon an arterial highway:
- (1) Hotel/motel.
 - (2) Hospital.
 - (3) Indoor recreation facility.
 - (4) Self-service storage facility.
 - (5) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).
- D. Area regulations. See Zoning Schedule A.⁷

§ 235-26.1. Hamlet Residential District (HR). [Added 2-20-2008 by L.L. No. 2-2008]

- A. Purpose. The purpose of the HR - Hamlet Residential District is to encourage a mix of residential uses and styles on lots of varying sizes, in order to create and maintain residential neighborhoods with high potential for socialization.
- B. Permitted uses:

7. Editor's Note: Zoning Schedule A is included at the end of this chapter.

- (1) One- and two-family dwellings.
 - (2) Agricultural uses, excluding the stabling of animals or the storage of manure, fertilizer, or similar odor- or dust-producing substances.
 - (3) The following public and semipublic uses:
 - (a) Public and private parks not operated for profit.
 - (b) Public buildings such as fire, police, or water stations.
 - (4) Schools.
 - (5) Accessory buildings, structures and uses.
- C. Uses requiring a special use permit:
- (1) Multifamily dwellings, townhouse or twin home development (see § 235-41.1).
 - (2) Home Occupation I (see § 235-44).
 - (3) Hospital, nursing home or convalescent home.
 - (4) Public utilities, excluding telecommunications facilities.
 - (5) Community center.
 - (6) Public utility (see § 235-38).
 - (7) Day-care center.
 - (8) Boardinghouse.
 - (9) Bed-and-breakfast.
 - (10) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).
- D. Area regulations. See Zoning Schedule A.⁸

§ 235-27. Commercial District (C). [Amended 5-17-2006; 2-20-2008 by L.L. No. 2-2008]

The Commercial (C) District is designed to provide areas within the Town for concentrations of commercial uses. These districts are located along major highways to provide for maximum development potential.

- A. Permitted uses. The following uses are permitted in the Commercial District:
- (1) Retail/service trade.

8. Editor's Note: Zoning Schedule A is included at the end of this chapter.

- (2) Restaurant (excluding drive-in restaurants).
 - (3) Hotel/motel.
 - (4) Commercial greenhouse.
 - (5) Office buildings.
 - (6) Wholesale trade.
 - (7) Theaters.
 - (8) Banks (excluding drive-in banks).
 - (9) Agricultural uses.
 - (10) Accessory buildings, structures and uses.
- B. Uses requiring special use permit. The following uses are permitted in the Commercial District upon the issuance of a special use permit:
- (1) Drive-in business, including drive-in restaurants and drive-in banks (see § 235-37).
 - (2) Motor vehicle repair shop (see § 235-37).
 - (3) Gasoline station (see § 235-37).
 - (4) Gasoline station-market (see § 235-37).
 - (5) Indoor recreation facility.
 - (6) Light industrial.
 - (7) Motor vehicle sales, service and repair.
 - (8) Recreational vehicle and mobile home sales and service.
 - (9) Public utility (see § 235-38).
 - (10) Residential uses, provided the predominant land use within 500 feet of the proposal is also residential.
 - (11) Warehouse.
 - (12) Shopping center.
 - (13) Day-care center.
 - (14) Contractor's yard.
 - (15) Car wash.
 - (16) Self-service storage facility.
 - (17) Farm equipment sales, service and repair (see § 235-37).
 - (18) Recyclables handling and recovery facility.

- (19) Pond (see § 235-48).
- (20) Off-premises advertising sign (see § 235-39).
- (21) Commercial communication tower (see § 235-52).
- (22) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).
- (23) Outdoor recreation facility.
- (24) Noncommercial wind energy system.

C. Area regulations. See Zoning Schedule A.⁹

§ 235-27.1. Hamlet Commercial District (HC). [Added 2-20-2008 by L.L. No. 2-2008]

- A. Purpose. The purpose of this district is to provide for business development in the hamlet of East Pembroke business area, including retail, office and service uses, public and semipublic uses, as well as other business uses that are compatible with the surrounding residential neighborhoods. Such businesses are intended to serve a small amount of transient vehicular traffic, but mostly the neighboring residential community. This district is intended to accommodate a mix of uses within the district as well as multiple uses within individual lots.
- B. Permitted uses. The following uses are permitted in the Hamlet Commercial District:
 - (1) Retail/service trade.
 - (2) Restaurant (excluding drive-in restaurants).
 - (3) Professional and business offices.
 - (4) Mortuary or funeral home.
 - (5) Banks (excluding drive-in banks).
 - (6) Residential uses.
 - (7) Accessory buildings, structures and uses.
- C. Uses requiring special use permit.
 - (1) Drive-in business, including drive-in restaurant and drive-in banks (see § 235-37).
 - (2) Motor vehicle repair shop (see § 235-37).
 - (3) Gasoline station (see § 235-37).

9. Editor's Note: Zoning Schedule A is included at the end of this chapter.

- (4) Gasoline station-market (see § 235-37).
 - (5) Public utility (see § 235-38).
 - (6) Day-care center.
 - (7) Multifamily dwellings, townhouse or twin home development (see § 235-41.1).
 - (8) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).
- D. Dimensional requirements. See Zoning Schedule A.¹⁰
- E. Multiple uses permitted. Multiple uses may be permitted upon a single lot, or in a single building, subject to site plan review.

§ 235-28. Industrial District (I). [Amended 2-14-2001; 10-19-2005; 2-20-2008 by L.L. No. 2-2008]

The Industrial (I) District is designed to provide areas within the Town which are appropriate for industrial-type uses. In limiting industrial uses to the Industrial District, it is the Town's intention to minimize the potential adverse impacts of such uses.

- A. Permitted uses. The following uses are permitted in the Industrial District:
- (1) Warehouse.
 - (2) Manufacturing (enclosed).
 - (3) Wholesale trade.
 - (4) Retail/service trade.
 - (5) Existing residential uses.
 - (6) Agricultural uses.
 - (7) Adult uses (see § 235-49).
 - (8) Accessory buildings, structures and uses.
- B. Uses requiring special use permit. The following uses are permitted in the Industrial District upon the issuance of a special use permit:
- (1) Junkyard (see § 235-42).
 - (2) Industrial park.
 - (3) Motor vehicle repair shop (see § 235-37).

10. Editor's Note: Zoning Schedule A is included at the end of this chapter.

- (4) Recyclables handling and recovery facility.
- (5) Self-service storage facility.
- (6) Manufacturing (unenclosed).
- (7) Contractor's yard.
- (8) Truck stop.
- (9) Trucking terminal.
- (10) Public utility (see § 235-38).
- (11) Heavy machinery and truck sales and service (see § 235-37).
- (12) Disposal transfer station.
- (13) Pond (see § 235-48).
- (14) Off-premises advertising sign (see § 235-39).
- (15) Commercial communication tower (see § 235-52).
- (16) Kennels.
- (17) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).
- (18) Commercial excavation.
- (19) Noncommercial wind energy system.

C. Area regulations. See Zoning Schedule A.¹¹

§ 235-29. Industrial Park District (IP). [Amended 2-20-2008 by L.L. No. 2-2008]

The Industrial Park (IP) District is designed to provide areas within the Town for the design of and development as industrial parks. The IP District will encompass properties that typically are not accessed directly from a major highway but instead are serviced by a road system designed and intended for use by operations within or immediately adjacent to the industrial park. The IP District is designed to blend commercial and enclosed industrial uses, thus maximizing the development potential by encouraging land uses which will complement, rather than detract from, one another. Given the industrial park setting, the required minimum lot frontages, lot widths and yard setbacks are less than those required within the general Industrial (I) Districts.

A. Permitted uses. The following uses are permitted in the Industrial Park (IP) District:

11. Editor's Note: Zoning Schedule A is included at the end of this chapter.

- (1) Warehouse.
 - (2) Manufacturing (enclosed).
 - (3) Wholesale trade.
 - (4) Commercial or professional office or service.
 - (5) Research and development facility.
 - (6) Governmental facilities.
 - (7) Public utility (see § 235-38).
 - (8) Recyclables handling and recovery facility.
 - (9) Pond (see § 235-48).
 - (10) Accessory buildings, structures and uses.
- B. Uses requiring a special use permit. The following uses are permitted in the Industrial Park (IP) District upon the issuance of a special use permit: **[Amended 4-20-2016 by L.L. No. 1-2016]**
- (1) Retail store.
 - (2) Restaurant.
 - (3) Hotel or motel.
 - (4) Gasoline station (see § 235-37).
 - (5) Gasoline station-market (see § 235-37).
 - (6) Noncommercial wind energy system.

§ 235-30. Mobile Home Park District (MHP).

- A. Purpose. The purpose of the Mobile Home Park District is to provide an area within the town for development of additional mobile home parks and for campgrounds.
- B. Requirements. A mobile home park may be located in the Mobile Home Park District upon the issuance of a special use permit as provided for in § 235-63, provided the proposed mobile home park meets the requirements and conditions set forth in Chapter 150, Mobile Home Parks, of this Code.

§ 235-31. Planned Unit Development District (PUD).¹²

- A. Purpose. The purpose of the Planned Unit Development District is to permit greater flexibility, more creative and imaginative design and

12. Editor's Note: Specific planned unit development regulations are included at the end of this chapter.

utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities; to provide for both individual building sites and common property which are planned and developed as a unit; to provide harmonious land uses which offer a high level of amenities; to permit a variety of residential types and/or nonresidential uses; and to preserve natural and scenic qualities of the site during the development process.

B. General requirements.

- (1) Minimum area. The minimum area required to qualify for a planned unit development shall be 10 contiguous acres of land.
- (2) Ownership. The tract of land for a planned unit development may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. A petition must be filed by the owner, or jointly by owners, of all property included in a project. In the case of multiple ownership, the approved planned unit development plan is binding on all owners.
- (3) Location. The Planned Unit Development District shall be applicable to any zoning district or parts of zoning districts where the applicant can demonstrate that the characteristics of his holdings and plan will meet the objectives of this section.
- (4) Common open space. Common open space in a planned unit development may be one or more sites for use in common by all of the occupants within the project area or by the residents of the town as a whole, depending upon dedication of such sites. Such common open space may be retained in private ownership or received in dedication by the town. If the open space remains in private ownership, arrangements for the operation, maintenance, improvement and liability of such common property and facilities must be approved by the Town Board. No common open space, so designated by the proposal and approved by the Town Board, may be thereafter developed or disposed of except with the approval of the Town Board.
- (5) Permitted uses. Any uses identified as permitted uses or uses allowed by special use permit as set forth in this chapter for any district may be permitted in a planned unit development.
- (6) Mix of uses. The mix of permissible uses shall be determined by the Town Board.

C. Application procedure and approval process.

- (1) Conceptual review. Before submission of a petition for rezoning as a planned unit development, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of his proposal before entering into any binding

commitments or incurring substantial expenses of site plan preparation and the required documentation.

- (2) Rezoning procedure.
 - (a) Submission of petition. A petition for the establishment of planned unit development districts shall be submitted to the Town Clerk by the developer [see Subsection C(2)(d) of this section].
 - (b) Notification and referral. Within five working days, the Town Clerk shall notify the Town Board of the petition and shall refer the petition and all supporting documentation to the Planning Board for its review and recommendations.
 - (c) Planning Board review. Within 62 days of receipt of the petition, the Planning Board shall review it and recommend approval, approval with modifications or disapproval thereof to the Town Board. Failure to act within 62 days or such longer period as may be consented to by the developer shall constitute approval of said petition by the Planning Board.
 - (d) Submission requirements. The developer shall submit a minimum of four sets of such plans and drawings (additional sets may be required). These four sets shall be submitted to the Town Clerk. The preliminary plans shall be accompanied by such maps, charts and written material necessary for the Boards to make a preliminary judgment on the suitability and impact of the proposed planned unit development on the town. Preliminary plans should include the following:
 - [1] A preliminary site plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multifamily housing areas, commercial and open space areas, etc.); the number and type of residential structures and dwelling units within each residential area; the approximate square footage of nonresidential use within each nonresidential area; the amount of open space; traffic circulation; and the surrounding land uses.
 - [2] A written preliminary description of the proposal, including the total number of acres in the site; the estimated number and type of housing units; the estimated residential and nonresidential density; the major planning assumptions and objectives; the probable effect on adjoining properties; and the effect on the overall town development plan and the effect on this chapter.
 - (e) Review considerations. In review of the preliminary plans, the Planning Board shall consider the manner with which the

proposal fits the general pattern of land use established by this chapter and the impact on the established land uses in the area, overall density of development, traffic circulation, the provision of open spaces, and the effect on schools and other municipal facilities.

- (f) Town Board review and approval. Upon receipt of the Planning Board's recommendation, the Town Board may, after a public hearing and review of the proposed zone change by the County Planning Board, pursuant to General Municipal Law §§ 239-l and 239-m, amend this chapter so as to establish and define the boundaries of the planned unit development. If the rezoning request is approved for the planned unit development, such action does not authorize improvements to the rezoned land.
- (3) Final plan.
- (a) Ownership. Before final approval of the planned unit development, the developer must show evidence of the full legal ownership in the land.
 - (b) Submission of final plan. Upon approval of the zone change, the applicant has five years in which to submit a final plan to the Town Clerk.
 - (c) Notification and referral. Within five working days, the Town Clerk shall notify the Town Board of the filing of the final plan and shall refer the final plan and all supporting documentation to the Planning Board for its review and recommendation.
 - (d) Planning Board review. Within 62 days of receipt of the final plan, the Planning Board shall review the final plan and recommend approval, approval with modifications or disapproval to the Town Board. Failure to act within 62 days or such longer period as may be consented to by the developer shall constitute approval of the final plan by the Planning Board.
 - (e) Submission requirements. The applicant shall submit a minimum of four complete sets of the final plan and drawings (additional sets may be required). These four sets shall be submitted to the Town Clerk. The final plan shall be accompanied by a detailed justification for the proposal, including such maps, charts and written material necessary for the Town Board to make an impartial judgment on the suitability and impact of the proposed planned unit development on the town. Such material shall include, but not be limited to, the following:

[1] A mapped development plan of the property covered by the development showing the size and location of the

various development areas (road rights-of-way, single-family housing areas, multifamily housing areas, commercial and open space areas, etc.), the location of proposed residential structures and dwelling units within each residential area, the square footage of nonresidential use within each nonresidential area and the amount of open space.

- [2] A written description of the proposal, including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall town development plan and the effect on this chapter.
 - [3] Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of nonresidential floor area, including the approximate selling and/or rental price, the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.
 - [4] Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the town. Such material shall include, but not be limited to, the need for new public facilities and the adequacy of existing facilities, including a statement of the intent to which the developer intends to provide needed facilities, a fiscal impact statement, including a summary of new costs and revenues to the town due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.
- (f) Review considerations. In review of the final plan, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by this chapter and the protection of the established and permitted uses in the area. It shall consider the location of main and accessory buildings and their relation to one another; the circulation pattern of the site and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan and the safeguards provided to minimize possible detrimental effects of the proposed development on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the town; the effect on

schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.

- (g) Town Board review and approval. Upon receipt of the Planning Board's recommendation, the Town Board shall, after a public hearing and review of the final plan by the County Planning Board, pursuant to General Municipal Law §§ 239-l and 239-m, approve, approve with modifications or disapprove the final plan. The Town Board shall make its decision in accordance with official town development policies and may impose conditions relating to that plan. The decision of the Town Board shall immediately be filed in the office of the Town Clerk and a copy mailed to the applicant by regular mail.

D. Design standards.

- (1) Area requirements. The least restrictive area, yard, coverage, height, density and supplementary regulation requirements applicable to a specific use under this chapter shall apply, except where the Planning Board finds that it is in the public interest to modify these requirements and the Town Board approves such modifications.
- (2) Traffic and circulation.
 - (a) All proposed public roads shall meet the design and construction specifications set forth by the Town Highway Superintendent and/or Engineer.
 - (b) Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.
- (3) Common open space. All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:
 - (a) Public dedication.
 - (b) Establishment of a homeowners' association.
 - (c) Retention of responsibilities, control and maintenance by the developer.
- (4) Security. Performance and maintenance bonds or other security may be required in the discretion of the Town Board.

§ 235-31.1. Planned Business Development District (PBD). [Added 2-20-2008 by L.L. No. 2-2008]

- A. Purpose. The purpose of the Planned Business Development (PBD) District is to:

- (1) Establish an area for new commercial, industrial, recreational and/or mixed use development on a large scale that will provide the Town and region with employment opportunities, additional tax base and other community benefits, while minimizing impacts on public services;
 - (2) Prevent piecemeal development that would compromise the availability and future marketability of a large area for significant new development;
 - (3) Accommodate continued agricultural use in an area that is highly suited for agriculture;
 - (4) Provide greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities;
 - (5) Provide for both individual building sites and common property which are planned and developed as a unit; to provide harmonious land uses which offer a high level of amenities;
 - (6) Permit a variety of industrial, commercial and/or recreational uses; and
 - (7) Preserve natural and scenic qualities of the site during the development process.
- B. Requirements. Any development proposed for the Planned Business Development District shall meet the following requirements:
- (1) A coordinated development plan that addresses the requirements in this section and advances the purposes stated in Subsection A shall be presented for a contiguous land area that comprises at least 100 acres within the Planned Business Development District. Smaller developments would require an area variance from the Zoning Board of Appeals.
 - (2) The preservation of open space and the preservation of trees, outstanding natural topography and sensitive environmental features shall be an integral part of the plan, while allowing sufficiently intensive development to support the extension of infrastructure to the PBD.
 - (3) The development shall make creative and efficient use of land and related physical development resulting in smaller networks of utilities and streets and thereby lowering costs for construction and maintenance.
 - (4) Adequate public services. No development shall be approved within the Planned Business Development District unless the Town Engineer submits a satisfactory report to the Planning Board regarding the following:

- (a) The project will be connected to municipal water and sewer.
 - (b) The project will not overburden the municipal water and sewer system.
 - (c) Adequate levels of water pressure are available for fire service.
 - (d) A traffic impact study, detailing impacts and mitigation measures, has been prepared by each developer.
 - (e) Any costs associated with improvements or upgrades to public facilities may be included in the developer's construction costs and carried out by the developer under the supervision of the Town Engineer.
- (5) Utilities. New public and private utilities and those relocated or replaced shall be underground, unless specifically exempted by the Planning Board.
- (6) Topography, landscaping and site appearance.
- (a) Landscaping shall contribute to prevention of water runoff and erosion problems. Temporary or permanent protection shall be provided during construction to prevent such problems.
 - (b) All developments within the district shall be designed to take maximum advantage of the topography of the land, to provide for water storage and control of water runoff, to protect natural drainage courses, to reduce the amount of grading and maximize the conservation of trees and topsoil.
 - (c) The design of the perimeter landscaping and improvements of each development should be visually harmonious and compatible with adjoining development.
- (7) Development in phases. If the applicant wishes to construct the development in phases, or if the Planning Board wishes to require that development be phased, the applicant may submit final site plans for only those phases for review per the approved phasing plan, provided that such final site plans are consistent with the coordinated development plan and approved preliminary site plan for the entire site. Any plan anticipated to require more than 24 months to be completed shall be required to be completed in phases, and a phasing plan must be developed. The Code Enforcement Officer may withhold the issuance of building permits if the approved phasing plan is not being followed.
- (8) Performance. The Planning Board may require bonding, a letter of credit or other instrument to ensure that public and private improvements are carried out as specified in the plans and approvals, as provided for in § 235-63C(8).

- (9) Expiration. If no evidence of progressive activity has occurred within two years of the date of approval or upon expiration of any extension of time for starting development granted by the Planning Board, the Planning Board may, with twenty-day-advance-notice to the applicant, declare the approved plan to be null and void. Upon the request of the applicant, the Planning Board shall automatically grant a two-year extension for starting the development, and may thereafter consider further extensions in its discretion.

C. Permitted uses.

- (1) The following uses are permitted in the Planned Business Development District:
- (a) Warehouse.
 - (b) Manufacturing (enclosed).
 - (c) Wholesale trade.
 - (d) Commercial or professional office or service.
 - (e) Research and development facility.
 - (f) Governmental facilities.
 - (g) Public utility (see § 235-38).
 - (h) Recyclables handling and recovery facility.
 - (i) Pond (see § 235-48).
 - (j) Agriculture.
 - (k) Agricultural products processing or distribution facilities.
 - (l) Accessory buildings, structures and uses.
- (2) Uses requiring a special use permit. The following uses are permitted in the Planned Business Development District upon the issuance of a special use permit and provided the parcel fronts on, and is directly accessed from, a state highway:
- (a) Retail store.
 - (b) Restaurant.
 - (c) Hotel or motel.
 - (d) Gasoline station (see § 235-37).
 - (e) Gasoline station-market (see § 235-37).

D. Area regulations. See Zoning Schedule A.¹³

13. Editor's Note: Zoning Schedule A is included at the end of this chapter.

E. Procedures.

- (1) Applicant. The applicant may be an individual, corporation or a group of individuals or corporations. An application shall be filed by the owner or jointly by the owners of all property included in a project. In the case of multiple ownership, the approved plan shall be binding on all owners.
- (2) Application for site plan approval for a planned business development. Application for a site development plan for a planned business development shall be made to the Planning Board. The applicant shall furnish basic data pertaining to the boundaries of the proposed development and the existing zoning, topography, drainage and soil conditions. A site development plan shall be provided in sufficient detail as may be required for an understanding of the type, uses and design of the proposed development. Information shall be provided to demonstrate that adequate public services exist or will exist to serve the proposed development.
- (3) Planning Board review of site plan.
 - (a) The Planning Board shall review the proposed site plan in accordance with the criteria and procedures established in § 235-63C.
 - (b) The Planning Board shall also consider the following criteria in its review of a proposed planned business development within the PBD District:
 - [1] The suitability of the tract for the general type of development proposed and the physical characteristics of the land.
 - [2] The relation of the proposed development to surrounding areas, existing and probable future development, including the extension of utilities to adjacent properties and the interconnection of road access to adjacent properties.
 - [3] The relation to major roads, utilities and other facilities and services.
 - [4] The adequacy of evidence on unified control and suitability of any proposed agreements, contracts, deed restrictions, sureties, dedications, contributions, guaranties or other instruments or the need for such instruments or for amendments in those proposed.
 - [5] The suitability of plans proposed or the desirability of amendments, with reasons therefor.

- (4) Public hearing on the application for site plan approval. Within 62 days of receipt of the application, the Planning Board shall hold a public hearing, after public notice, on the application for site plan approval for the initial planned business development. A public hearing shall be optional for subsequent development within an approved planned business development that may be subject to site plan review pursuant to § 235-63C.
- (5) Changes in approved final plans. Changes in the types of uses within an approved planned business development and other changes to approved final plans and reports may be approved by the Planning Board only upon findings identical to those required for original approval.
- (6) Upon approval of final plans and reports, building permits shall be issued in the same manner as for building permits generally, provided that any requirements concerning the order and location in which building permits are to be issued in the particular planned business development shall be observed. Except as provided below, final plans and reports as approved shall be binding on the applicants and any successors in title so long as PBD zoning applies to the land.
- (7) Expiration of time limits on planned business development site plan approvals.
 - (a) The Planning Board may require that certain actions be taken within specified time frames, as a condition of approval of the site development plan.
 - (b) If actions required in any approval of a site plan in a PBD are not taken within any time limits set in connection with such approval, the Planning Board shall review the circumstances and prepare a written report specifying the circumstances and recommending that:
 - [1] Site plan approval for the entire area be continued with revised time limits;
 - [2] Site plan approval be continued for part of the area, with or without revised time limits;
 - [3] Site plan approval be rescinded; or
 - [4] Other appropriate actions taken.
 - (c) Such recommendations shall include proposals for appropriate action in respect to any legal instruments in the case.

§ 235-32. Floodplain Overlay Zone (FPO).

- A. The Floodplain Overlay Zone is shown on the Zoning Map of the Town of Batavia for information purposes only to identify potential areas of

special flood hazard, to ensure coordinated review of zoning and flood damage prevention regulations, and to minimize the threat of flood damages. Exact boundaries of the special flood hazard areas can be found on the Federal Emergency Management Agency's most current Flood Insurance Rate Map (FIRM) or equivalent map for the Town of Batavia (Community Number 360278).

- B. In addition to this chapter, areas within special flood hazard areas are regulated by Chapter 112, Flood Damage Prevention, of this Code, which is administered by the Building Inspector or other designee of the Town Board. These requirements are in addition to those contained in the underlying zoning district.

§ 235-33. Wellhead Protection Overlay Zone (WPO).

- A. Purpose. The Wellhead Protection Overlay Zone (WPO) is established to preserve and protect those areas of the town which are important to ensuring a safe and healthful drinking water supply for the Batavia area, local residents, employees and the general public through the preservation of the town's groundwater sources. The designation of two Wellhead Protection Areas (WPA) within the Wellhead Protection Overlay Zone and the careful regulation of activities within these zones will reduce the potential for groundwater contamination. The Wellhead Protection Overlay Zone will preserve and maintain the existing and potential groundwater supplies, aquifers, and aquifer recharge areas of the town and protect them from adverse development or land use practices. The Wellhead Protection Overlay Zone will also conserve the natural resources of the town and prevent pollution.
- B. General process. The Wellhead Protection Overlay Zone shall be considered as overlaying other districts as shown on the Zoning Map for the Town of Batavia. Any use not permitted in the underlying zoning districts shall not be permitted in the Wellhead Protection Overlay Zone. Any uses permitted in underlying zoning districts shall be permitted in the Wellhead Protection Overlay Zone, except where the Wellhead Protection Overlay Zone prohibits or imposes greater or additional restrictions and requirements. In those instances where the Wellhead Protection Overlay Zone prohibits a use, such use shall not be allowed. In those instances where the Wellhead Protection Overlay Zone contains additional or greater restrictions or regulations, such uses shall not be allowed until such restrictions and/or regulations are complied with. In any cases where conflicts arise between these regulations and any other existing regulations, the more restrictive regulations shall apply.
- C. Zone boundaries. Where the bounds of a particular Wellhead Protection Overlay Zone or any Wellhead Protection Areas as delineated on the Zoning Map are in doubt, the burden of proof shall be upon the owner(s) of the land in question or his official designee to show that the boundaries differ from those that are indicated. At the request of the owner(s) whose land has been designated as part of a Wellhead

Protection Overlay Zone, the town may engage a professional hydrogeologist or geologist to determine more accurately the location and extent of an aquifer or recharge area and may charge the owner(s) for all or part of the cost of the investigation. Based upon acceptable documentation that the boundary of a Wellhead Protection Overlay Zone should be modified, the Town Board may consider amendment of such district boundary on the Town of Batavia Zoning Map pursuant to Article VIII of this chapter.

- D. Determination of presence and significance of the Wellhead Protection Overlay Zone. For the purposes of this Wellhead Protection Overlay Zone, there are hereby established within the Town of Batavia certain Wellhead Protection Areas which consist of any aquifer, the land above an aquifer, and significant aquifer recharge areas. The establishment of these areas is confirmed by information set forth in the City of Batavia Wellhead Protection Study (DATE) and recommendations by the Wellhead Protection Project Technical Committee and the Water Quality Advisory Committee. These Wellhead Protection Areas are delineated on the Wellhead Protection Area Map and are described as follows:
- (1) Wellhead Protection Area 1 (WPA1). As delineated, Wellhead Protection Area 1 shall include those areas within the Primary Wellhead Protection Area delineated WPA1 on the Wellhead Protection Area Map.
 - (2) Wellhead Protection Area 2 (WPA2). As delineated, Wellhead Protection Area 2 shall include those areas outside of Wellhead Protection Area 1 but within the area delineated as Secondary Wellhead Protection Area or Wellhead Protection Area 2 (WPA2) on the Wellhead Protection Area Map.
- E. Compliance with SEQR for actions within the Wellhead Protection Overlay Zone. Wellhead Protection Area 1 (WPA1) is hereby designated as a critical environmental area pursuant to the State Environmental Quality Review Act (SEQR), 6 NYCRR 617.4(h) and 617.12(12). As such, any unlisted action under SEQR shall automatically be reviewed as a Type 1 action. Refer to 6 NYCRR 617.11 for specific review criteria for Type 1 actions.
- F. Use regulations for the Wellhead Protection Overlay Zone.
- (1) Prohibited uses and activities. Within all of the Wellhead Protection Areas of the Wellhead Protection Overlay Zone, the following uses and activities are specifically prohibited:
 - (a) Sanitary landfills, including construction and demolition debris landfills;
 - (b) Junkyards or motor vehicle salvage operations;
 - (c) Outside storage of road salt or other de-icing chemicals;

- (d) Disposal of snow that contains de-icing materials and that has been transported from areas outside the Wellhead Protection Overlay District;
 - (e) Storage of animal manure, not being used for the primary purpose of agriculture;
 - (f) Surface land application of septage, sludge, or human excreta; and
 - (g) The discharge, surface land application or disposal of any hazardous substance, hazardous waste, petroleum, or radioactive material.
- (2) Permitted uses. All uses currently permitted in the underlying district are permitted in the Wellhead Protection Overlay Zone subject to the additional requirements as indicated in Subsection F(3).
- (3) Additional requirements for the Wellhead Protection Overlay Zone. The following requirements and standards shall be observed for proposed land uses other than single- and two-family dwellings and their accessory uses located within any portion of the Wellhead Protection Overlay Zone or particular Wellhead Protection Areas, described as follows:
- (a) Runoff/drainage.
 - [1] Post-development conditions for a proposed use within a Wellhead Protection Overlay Zone shall result in no increase in the frequency and occurrence of stormwater runoff from predevelopment conditions. In addition, the off-site impacts of erosion and sedimentation from the proposed use shall not be any greater during and following land disturbance activities than under predevelopment conditions.
 - [2] Stormwater runoff shall be treated to prevent water quality degradation of the receiving water body, including groundwater.
 - [3] All stormwater runoff from impervious surface areas shall be diverted to a nearby surface water body. If a nearby surface water body is unavailable or if other physical constraints prevent such diversion, all stormwater runoff from impervious surfaces shall be recharged into the groundwater on the site via infiltration trenches or infiltration basins.
 - [4] The stormwater recharge area shall be at the farthest point practical from the municipal wells.

- [5] Supplemental stormwater management practices, such as open vegetated swales, vegetated buffer zones or filter strips, may be used to compliment the infiltration trenches and infiltration basins. Supplemental stormwater management practices shall not be used as a substitute for infiltration trenches and infiltration basins.
- [6] The design of infiltration trenches, infiltration basins, open vegetated swales, vegetated buffer zones and filter strips shall be in accordance with the design criteria for these stormwater management techniques as described in Chapter 6 of the Department of Environmental Conservation (DEC) manual "Reducing the Impacts of Stormwater Runoff from New Development."
- [7] Dry wells shall be used only where other methods may not be feasible, as determined by the Planning Board, due to physical constraints of the site. Dry wells shall be equipped with oil, grease, and sediment traps.
- [8] Practices for controlling erosion and sedimentation shall be selected from the New York Guidelines for Urban Erosion and Sediment Control and the DEC manual "Reducing the Impacts of Stormwater Runoff from New Development."
- [9] The applicant shall prepare a stormwater management and erosion control plan using the outline presented in Chapter 4 of the DEC manual "Reducing the Impacts of Stormwater Runoff from New Development." The stormwater management and erosion control plan prepared by the applicant shall include, at a minimum, the following components:
 - [a] Background information about the scope of the project;
 - [b] A statement of stormwater management and erosion and sediment control objectives;
 - [c] A comparison of post-development stormwater runoff conditions with predevelopment conditions. The applicant shall submit calculations of the volume of stormwater runoff and peak stormwater discharge rates under predevelopment and post-development conditions for each of the following: the one-year, two-year, ten-year and one-hundred-year twenty-four-hour storm event. The applicant shall use the methodology described in the Soil Conservation Service's TR-20 or TR-55;

- [d] A description of proposed structural and vegetative stormwater management measures, including treatment for the first flush, to ensure that the quantity, temporal distribution, and quality of stormwater runoff during and after development is not substantially altered from predevelopment conditions. The applicant shall apply the standards and criteria for designing stormwater facilities to capture and treat the first flush as described in Chapters 5 and 6 of the DEC manual "Reducing the Impacts of Stormwater Runoff from New Development";
 - [e] A description of the temporary erosion and sediment control facilities to be used during land clearing, land grading, and the construction phase;
 - [f] A description of permanent erosion and sediment control facilities;
 - [g] A description of the implementation schedule for staging of all stormwater management facilities that includes coordination with staging of erosion and sediment control facilities and construction activities; and
 - [h] A maintenance plan that describes the type and frequency of maintenance required by the stormwater management and erosion and sediment control facilities, arrangements for ensuring long-term maintenance of stormwater management and erosion and sediment control facilities, backup contingency plans, and the person(s) responsible for implementing the maintenance plan and performing the described maintenance.
- [10] The Planning Board may require that, in addition to the preparation of a stormwater management and erosion control plan, the applicant prepare a concise summary report that presents the pertinent information and conclusions contained in the stormwater management and erosion control plan.
- (b) Petroleum storage. Proposed uses within the Wellhead Protection Overlay Zone are required to meet the following standards for storage of petroleum in new or replacement storage tanks and/or containers:
- [1] The storage of petroleum in underground or aboveground tanks with a combined storage capacity of over 1,100 gallons shall be in accordance with the standards of the New York State Department of Environmental Conservation Rules and Regulations for Petroleum Bulk

Storage, 6 NYCRR 614. Additional design requirements for underground and aboveground storage tanks shall include the following:

- [a] Piping for all underground storage tanks and all aboveground storage tanks shall be equipped with secondary containment constructed of product-tight materials.
 - [b] Piping for all underground storage tanks and all aboveground storage tanks shall be equipped with a leak monitoring system.
 - [c] All aboveground tanks shall be equipped with a dike, berm or other secondary containment structure constructed of material that is impervious to the product stored in the tank. This containment structure shall be designed to contain at least 120% of the volume of the largest tank enclosed by the containment structure.
 - [d] All outdoor storage areas, loading docks, and product transfer areas shall be equipped with a permanent covering of roof to protect tanks from adverse weather conditions and to prevent stormwater from accumulating in the containment areas.
 - [e] All loading docks and product transfer areas shall be equipped with a spill pump which empties into a holding tank to catch and store any spilled petroleum and accumulated stormwater within the containment area until such time as it can be removed and properly treated and/or disposed of.
 - [f] All aboveground tanks shall be equipped with visual gauges to monitor fluid levels.
 - [g] Storage areas shall be secured against unauthorized entry.
- [2] Indoor storage areas for petroleum shall meet all applicable local, state and federal requirements and the design requirements listed below. Indoor storage areas for petroleum used for on-site consumption and the indoor storage of petroleum in quantities necessary for household use (operating lawn care equipment, recreational vehicles, snow blowers, etc.) shall be exempt from the design requirements for indoor storage areas.
- [a] Petroleum shall be stored in containers equipped with a lid.

- [b] All storage areas shall be equipped with a pad and a dike, berm or other secondary containment structure constructed of material that is impervious to the product stored in the tank. This containment structure shall be designed to contain at least 120% of the volume of the largest container enclosed by the structure.
 - [c] No storage areas shall be located in proximity to floor drains.
 - [d] Storage areas shall be secured against unauthorized entry.
- [3] A spill control plan shall be prepared for any facility that stores petroleum. Facilities that only store petroleum for on-site consumption and the storage of petroleum in quantities necessary for normal household use (operating lawn care equipment, recreational vehicles, snow blowers, etc.) shall be exempt from the requirement to prepare a spill control plan. The spill control plan shall be posted in a conspicuous location. The spill control plan shall include, at a minimum, the following components:
- [a] A site plan illustrating the direction of stormwater and groundwater flow;
 - [b] A description of operational procedures;
 - [c] A description of potential spill sources;
 - [d] The spill response training program for the employees;
 - [e] The names and telephone numbers of the person or persons responsible for responding to the spill;
 - [f] The procedures for containing and cleaning up the spill; and
 - [g] The procedure for notifying the Town of Batavia Fire Department, Town of Batavia Town Supervisor, Town of Batavia Water and Sewer Personnel, and other appropriate local and state officials of a spill, leak or other reportable discharge as defined in 6 NYCRR 613.
- [4] Following site development, periodic inspections of facilities involved in petroleum bulk storage may be performed to ensure that these facilities pose no threat to the water supply. To conduct such periodic inspections, the Building Inspector or his/her designee(s) will notify the owner and/or his/her designee(s) by telephone and in

writing of the planned inspection. The owner and/or his/her designee(s) shall grant the Building Inspector or his/her designee(s) access to the site and the petroleum bulk storage facilities for the purpose of a periodic inspection at a mutually agreeable time within 72 hours of notice of the inspection. This aforementioned requirement for prior notification may be waived and the site accessed immediately by the Building Inspector if he/she has reason to suspect an imminent threat exists to the public health, safety and/or welfare. The purpose of these inspections is to ascertain whether petroleum bulk storage facilities are in good operating condition and the facility is in compliance with the applicable requirements and standards of this section.

- (c) Hazardous substance storage. Proposed uses within the Wellhead Protection Overlay Zone are required to meet the following standards for storage of hazardous substances in new or replacement storage tanks or containers:
- [1] The underground storage or outdoor, aboveground storage of hazardous substances, including pesticides, herbicides, and fertilizers, is prohibited.
 - [2] Indoor storage areas for quantities of hazardous substances, including pesticides, herbicides, and fertilizers, that total more than 250 pounds dry weight or 50 gallons liquid shall meet all applicable federal and state requirements and the additional design standards and requirements listed below. The indoor storage of hazardous substances, including pesticides, herbicides and fertilizers, in their original, sealed containers for the purposes of resale, shall only be exempt from the following three requirements and standards for indoor storage areas as specified in this Subsection F(3)(c), Hazardous substance storage: Subsection F(3)(c)[2][c], [d] and [e].
 - [a] All products shall be stored in product-tight containers equipped with a lid.
 - [b] Each container shall be clearly and visibly labeled.
 - [c] Drip pans shall be located under the spigots of drums or containers that are stored in a horizontal position on racks to catch spills/leaks. Drip pans shall be routinely emptied and the contents recycled, reused, or disposed of appropriately.
 - [d] All storage areas shall be equipped with a pad and a dike, berm or other containment structure constructed of material that is impervious to the product stored in the tank, This containment structure

shall be designed to contain at least 120% of the volume of the largest containers enclosed by the structure.

- [e] Storage areas shall be inspected by the applicant at least once a week for signs of leaks or spills and the aisle space between containers shall be adequate to allow for inspections. A summary report, noting the results of weekly inspections, shall be prepared every six months and sent to the Building Inspector.
 - [f] Absorbent materials such as kitty litter, sawdust, soil, or clay shall be kept on hand for emergency cleanups and containment in the event of a spill.
 - [g] No storage areas shall be located in proximity to floor drains.
 - [h] Storage areas shall be secured against unauthorized entry.
 - [i] An accurate log or inventory of materials stored on site shall be maintained and provided to the Building Inspector annually.
- [3] A spill control plan shall be approved and shall be posted in a conspicuous location. The indoor storage of hazardous substances, including pesticides, herbicides, and fertilizers, in quantities necessary for normal household use or agricultural use, shall be exempt from the requirement to prepare a spill control plan. The spill control plan shall include, at a minimum, the following components:
- [a] A site plan illustrating the direction of stormwater and groundwater flow;
 - [b] A description of operational procedures;
 - [c] A description of potential spill sources;
 - [d] The spill response training program for the employees;
 - [e] The names and telephone numbers of the person or persons responsible for responding to the spill; and
 - [f] The procedure for notifying the Town of Batavia Fire Department, Town of Batavia Town Supervisor, Town of Batavia Water and Sewer Personnel, and other appropriate local and state officials of a spill, leak or other reportable discharge as defined in 6 NYCRR 595 and 597.

- [4] Following site development, periodic inspections of facilities that use or store hazardous substances may be performed to ensure that these facilities pose no threat to the water supply. To conduct such periodic inspections, the Building Inspector or his/her designee(s) will notify the owner and/or his/her designee(s) by telephone and in writing of the planned inspection. The owner and/or his/her designee(s) shall grant the Building Inspector or his/her designee(s) access to the site and the hazardous substance storage facilities for the purpose of a periodic inspection at a mutually agreeable time within 72 hours of notice of the inspection. This aforementioned requirement for prior notification may be waived and the site accessed immediately by the Building Inspector if he/she has reason to suspect an imminent threat exists to the public health, safety and/or welfare. The purpose of these inspections is to ascertain whether aboveground storage containers for hazardous substances are in good operating condition and the facility is in compliance with the applicable requirements and standards of this section.
- (d) Individual sewage treatment system design requirements.
- [1] Individual sewage treatment systems shall comply with all applicable requirements of the Genesee County Sanitary Code and any applicable rules and regulations of the New York Health Department or Department of Environmental Conservation.
- [2] A proposed use in the Wellhead Protection Overlay District is also required to meet the following standards for the design of residential and nonresidential individual sewage treatment systems:
- [a] No floor drains shall be connected to the septic system.
- [b] All individual sewage treatment systems installed to serve uses other than one- and two-family dwelling units shall be equipped with oil/grease separators to prevent clogging of the leaching field by fats, grease, and oil.
- (e) Monitoring wells.
- [1] At its sole discretion, the Planning Board may require the provision of monitoring wells as a condition of site plan approval for uses located within the Wellhead Protection Overlay District. When monitoring wells are required, a minimum of three groundwater monitoring wells shall be installed prior to site development for the purposes of evaluating predevelopment and post-development

groundwater quality, groundwater flow direction, and groundwater elevation.

- [2] As other regulations and setback requirements permit, one well shall be installed near an upgradient property boundary, one well shall be installed near a downgradient property boundary, and one well shall be installed between the two upgradient and downgradient wells to facilitate the calculation of groundwater flow direction.
- [3] The specific location of the monitoring wells shall be determined by a professional geologist, hydrogeologist, engineer, or other qualified expert trained and experienced in hydrogeology. The location of the monitoring wells shall be approved by the Planning Board prior to site development.
- [4] Prior to site development, a groundwater sample shall be collected from each of the monitoring wells and submitted to a New York State certified analytical laboratory for analysis of nitrate-nitrogen, sodium, chloride, coliform bacteria and other appropriate parameters that represent each of the petroleum or hazardous substances proposed to be used, stored or disposed of on site. Groundwater elevations shall also be recorded and groundwater flow direction shall be calculated.
- [5] Three months after site development has been completed, a groundwater sample shall be collected from each of the monitoring wells and submitted to a New York State certified analytical laboratory for analysis of each of the parameters tested for under predevelopment conditions. Groundwater elevations shall also be recorded and groundwater flow direction shall be calculated.
- [6] An initial summary report shall be prepared that describes predevelopment and post-development groundwater quality, groundwater elevation and groundwater flow direction. This initial summary report shall be submitted to the Building Inspector within six months of the completion of site development.
- [7] Following the submission of the initial summary report, the applicant shall begin a monitoring program that includes one sampling event each year during the wet season, defined as the months of March, April, May, September, October and November. Groundwater samples shall be collected from each of the monitoring wells and submitted to a New York State certified analytical laboratory for analysis of the parameters evaluated under predevelopment conditions and/or additional parameters

to reflect a change in the type of substances used, stored, or disposed of on site. Groundwater elevations shall be recorded, and groundwater flow direction shall be calculated. An annual summary report that describes trends in groundwater quality and groundwater flow direction shall be provided to the Building Inspector within three months of the annual sampling event.

- [8] The costs of installing and operating the monitoring wells, including sampling and laboratory analysis, and preparing the required summary reports shall be borne by the owner or applicant. Access to the monitoring wells shall be provided to the Planning Board and/or its designee(s) for purposes of any additional water quality sampling deemed appropriate by the Planning Board.
- (f) Floor drains. Floor drains for other than one- and two-family dwellings are required to be connected to a holding tank or an oil and grit separating tank that is connected to either an approved on-site wastewater treatment system or a municipal sanitary sewer system. Floor drains which are connected to the sanitary sewer must meet discharge limits and permit requirements established by the authority having jurisdiction.
- (g) Hazardous waste storage and disposal.
 - [1] Proposed uses within the Wellhead Protection Overlay Zone are required to meet the following standards for hazardous waste disposal:
 - [a] The underground storage or outdoor, aboveground storage of hazardous waste is prohibited.
 - [b] The owner or applicant shall demonstrate the availability and feasibility of indoor storage and proper disposal methods which are in conformance with all applicable local, state and federal laws for any hazardous waste to be produced in quantities greater than those associated with normal household or agricultural use. The owner or applicant shall also demonstrate that wastes will be properly handled and stored until disposed of by a licensed waste hauler.
 - [2] If a spill control plan is required by this chapter for the storage of petroleum or hazardous substances, the spill control plan shall include provisions for responding to an accidental discharge of hazardous waste and shall include, at a minimum, the following additional components that specifically address hazardous waste:
 - [a] A description of potential hazardous waste spill sources;

- [b] The hazardous waste spill response training program for the employees;
 - [c] The names, addresses, and telephone numbers of the person or persons responsible for responding to the hazardous waste spill;
 - [d] The procedures for containing and cleaning up the hazardous waste spill; and
 - [e] The procedure for notifying the Fire Department, Building Inspector, Town of Batavia officials and other appropriate local and state officials of a hazardous waste spill, leak or other reportable discharge as defined in 6 NYCRR 372, Hazardous Waste Manifest System and Related Standards for Generators, Transporters, and Facilities.
- [3] Following site development periodic inspections of facilities that use or store hazardous substances may be performed to ensure that these facilities pose no threat to the water supply. To conduct such periodic inspections, the Building Inspector or his/her designee(s) will notify the owner and/or his/her designee(s) by telephone and in writing of the planned inspection. The owner and/or his/her designee(s) shall grant the Building Inspector or his/her designee(s) access to the site and the hazardous substance storage facilities for the purpose of a periodic inspection at a mutually agreeable time within 72 hours of notice of the inspection. This aforementioned requirement for prior notification may be waived and the site accessed immediately by the Building Inspector if he/she has reason to suspect an imminent threat exists to the public health, safety and/or welfare.
- (h) Road salt storage and application.
- [1] Safe alternatives to road salt, defined as sodium chloride, such as calcium chloride and sand, shall be used whenever possible. Signs shall be posted along roadways that receive no salt or reduced salt application to inform motorists.
 - [2] A proposed use within the Wellhead Protection Overlay Zone is required to meet the following standards:
 - [a] The outdoor storage of road salt is prohibited; and
 - [b] The use of more than a 1:5 ratio of salt to sand (20% salt is a sand and salt mixture) is discouraged.
- (i) Pesticide application.

- [1] A proposed use within the Wellhead Protection Overlay Zone is required to meet the following standards:
- [a] The application of liquid or solid pesticides, herbicides, or chemical fertilizers shall be performed in accordance with the recommendations and label of the manufacturer.
 - [b] Nonagricultural use of liquid or solid fertilizers, pesticides, and herbicides shall be in conformance with the Best Management Practices described in materials developed by the Cornell Cooperative Extension which are available from the Municipal Clerk's office and the Planning Board.
 - [c] Empty containers and unused pesticides and herbicides shall be disposed of properly.
 - [d] Property owners who enlist the services of a commercial pesticide or herbicide applicator shall ensure that the applicator is certified and licensed by the New York State Department of Environmental Conservation.
 - [e] Agricultural use of liquid or solid fertilizers, including the land application of manure, and the use of liquid or solid pesticides and herbicides shall be in conformance with the Best Management Practices described in the DEC manual "Controlling Agricultural Nonpoint Source Water Pollution in New York State - A Guide to the Selection of Best Management Practices to Improve and Protect Water Quality" and/or Best Management Practices as developed by the New York State Soil and Water Conservation Committee and implemented by the use of farm plans prepared by the Genesee County Soil and Water Conservation District.
- [2] As applicable, all pesticide and herbicide use and application shall be under permit as provided in the New York State Environmental Conservation Law, Article 33.
- [a] Disposal of containers or unused pesticides and herbicides is prohibited except in accordance with the permit issued as provided in the New York State Environmental Conservation Law, Article 33.
 - [b] Disposal of water used for makeup water or for washing of equipment is prohibited except pursuant to permit issued as provided in the New York State Environmental Conservation Law, Article 33.

- [c] Use of streams or watercourses for makeup water or washing equipment used in conjunction with pesticides and herbicides is prohibited.

§ 235-33.1. Table of uses. [Added 2-20-2008 by L.L. No. 2-2008]

A summary of the permitted uses and uses allowed with a special use permit for each zoning district is provided in Schedule B, which is incorporated herein and made a part of this chapter.¹⁴

14. Editor's Note: Schedule B is included at the end of this chapter.

ARTICLE V
Supplementary Regulations

§ 235-34. Off-street parking space requirements.

For every building hereafter erected, altered or changed in use, there shall be provided at least the minimum number of off-street parking spaces set forth under this section. All off-street parking for nonresidential and multifamily use shall be designed in such a manner as to allow vehicles to exit onto a street without backing out onto it.

A. Residential uses.

- (1) One- and two-family dwellings (inclusive of the driveway):
 - (a) Two parking spaces for each dwelling unit with three or fewer bedrooms; or
 - (b) Three parking spaces for each dwelling unit with four or more bedrooms.
- (2) Multifamily dwelling (exclusive of driveway, except with Planning Board approval):
 - (a) One parking space for each efficiency unit.
 - (b) Two parking spaces for each dwelling unit with two or fewer bedrooms.
 - (c) Two and one-half parking spaces for each unit with three or more bedrooms.
- (3) Mobile home park residential parking standards are set forth in Chapter 150, Mobile Home Parks.
- (4) Home occupations: the number of parking spaces required for the existing residential use (see above), plus whatever additional parking spaces are deemed necessary by the Planning Board.

B. Hotel/motel: three parking spaces, plus one space for every guest room.

C. Places of public assembly: one parking space for every three seats.

D. Offices and banks: four parking spaces for every 1,000 square feet of gross floor area.

E. General retail: five parking spaces for every 1,000 square feet of gross floor area.

F. Restaurant, eating and drinking establishment (other than drive-in, see Subsection H below): one parking space for every three seats.

G. Industrial, wholesale, warehouse, storage, freight, and trucking uses: one parking space for every motor vehicle used directly in the business,

plus additional employee and visitor parking as required by the Planning Board.

- H. Drive-in, service and unspecified uses: as required by the Planning Board, based upon use intensity, turnover, customers, employees and vehicles used.

§ 235-35. Off-street loading space requirements.

Every building occupied for the purpose of business or industry shall provide adequate space for off-street loading and unloading vehicles as determined by the Planning Board.

§ 235-36. Modification of parking and loading requirements.

The Planning Board, under its powers of site plan review and approval, may modify the requirements for parking and loading spaces herein upon good cause being shown.

§ 235-37. Motor vehicle, farm and heavy equipment related uses.

Gasoline stations, gasoline station-markets, motor vehicle repair shops, motor vehicle sales and service, truck stop, trucking terminal, heavy machinery and truck sales and service, farm equipment sales and service, recreational vehicles sales and service and drive-in business shall require a special use permit and shall comply with the following:

- A. Such uses shall be effectively buffered from existing residential uses in a manner that is acceptable to the Planning Board. **[Amended 2-20-2008 by L.L. No. 2-2008]**
- B. Lot size shall be at least 40,000 square feet.
- C. Lot frontage shall be at least 200 feet.
- D. Lot depth shall be at least 150 feet.
- E. Pumps, other service devices, and aboveground fuel and oil storage shall be located at least 30 feet from all lot lines.
- F. Any underground storage of fuel and oil of sufficient volume not regulated by the New York State Department of Environmental Conservation shall be located at least 30 feet from all lot lines.
- G. Motor vehicle and equipment parts and dismantled vehicles and equipment shall be stored within a building or structure, or within a fence of a height to be determined by the Planning Board, within its sole discretion, so as to prevent public view of such items from any direction. All work connected with the uses covered by this section shall be performed to the extent possible indoors.
- H. There shall be no more than two access driveways from any street. Maximum width of each access driveway shall be 30 feet.

§ 235-38. Public utility facilities.

Public utility installations (other than commercial communication towers, see § 235-52) shall require a special use permit and shall comply with the following:

- A. Such facility shall be surrounded by a fence approved by the Planning Board.
- B. The facility shall be landscaped in a manner approved by the Planning Board.
- C. To the extent practicable, equipment shall be stored so as not to be visible from surrounding properties.
- D. Any other requirements as determined by the Planning Board.

§ 235-38.1. Wind energy systems. [Added 2-20-2008 by L.L. No. 3-2008]

- A. Purpose. The purpose of this section is to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system and to allow for the orderly development of land, and to protect property values and aesthetic conditions. This section does not repeal, annul, impair, or interfere with any existing ordinance or local law.
- B. Authority. The Town Board of the Town of Batavia enacts this section under the authority granted by:
 - (1) Article IX of the New York State Constitution, § 2(c)(6) and (10).
 - (2) New York Statute of Local Governments, § 10(1) and (7).
 - (3) New York Municipal Home Rule Law, § 10, Subdivision 1(i) and (ii) and § 10, Subdivision 1a(6), (11), (12), and (14).
 - (4) New York Town Law § 130, Subdivision 1 (Building Code), Subdivision 3 (Electrical Code), Subdivision 5 (Fire Prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of Driveways), Subdivision 11 (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).
 - (5) The supersession authority of New York Municipal Home Rule Law § 10, Subdivision 1d(3), specifically as it relates to determining which body shall have the power to grant variances under this section to the extent such grant of power is different than under Town Law § 267.
 - (6) New York Town Law § 64, Subdivision 17-a (Protection of aesthetic interests), and Subdivision 23 (General powers).

(7) The State Environmental Quality Review Act ("SEQRA").

- C. Intent. The Town of Batavia intends to accommodate the use of alternative and sustainable energy sources, including wind, while protecting the quality of life of residential neighborhoods and the viability of existing businesses, including agriculture. These regulations are intended to permit noncommercial wind energy systems subject to suitable restrictions regarding setbacks and height. Commercial wind energy systems are not permitted at this time but may be permitted in the future with the Town's passage of additional zoning amendments to accommodate such systems.
- D. Definitions. As used in this section, the following terms shall have the meanings indicated:

COMMERCIAL WIND ENERGY SYSTEM — A wind energy system that is operated primarily (51% or more) to put energy into the electric grid, and/or has a nameplate capacity of more than 50 kilowatts (kW), and/or a total height of more than 175 feet, and/or a blade length of more than 30 feet.

ELECTROMAGNETIC INTERFERENCE (EMI) — The interference to communication systems created by the scattering of electromagnetic signals.

NONCOMMERCIAL WIND ENERGY SYSTEM — A wind energy system that is operated primarily (51% or more) for on-site (may be for more than one parcel) consumption, and has a nameplate capacity of 50 kW or less, and a total height of 175 feet or less, and a blade length of 30 feet or less. These are also defined as wind energy conversion systems (WECS) or small wind energy production facilities.

ROTOR DIAMETER — The largest diameter formed by the blades when assembled and mounted on the wind energy system.

SHADOW FLICKER — The alternating pattern of sun and shade caused by wind tower blades casting a shadow.

STRAY CURRENT — The inappropriate application of current to the ground or earth. For the purpose of this section, it is the measurable addition of current to ground resulting from improper installation or deterioration of the electrical portion of a wind energy system. The National Electrical Safety Code set the conditions that grounding connection points shall be so arranged that under normal circumstances there will be no objectionable flow of current over the grounding conductor. The National Electrical Safety Code set the conditions that earth (ground) should not be part of a supply circuit for both safety and service reasons. The most current revision of the National Electrical Safety Code shall apply.

TOTAL HEIGHT — The vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point.

WIND ENERGY SYSTEM — Equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities, or any other components used in the system. A wind energy system can consist of one or more wind towers. Wind energy systems do not include small lawn decoration, pond aerators, or remaining portions of mechanical water pumping windmills.

WIND TOWER — The monopole, freestanding, or guyed structure that supports a wind turbine generator.

- E. Compliance. It is unlawful for any person to construct, install, maintain, modify, or operate a wind energy system that is not in compliance with this section or with any condition contained in a special use or zoning permit issued pursuant to this chapter.
- F. Commercial wind energy systems shall not be allowed in any area or zone within the Town of Batavia.
- G. Permit requirements.
 - (1) Special use permit. A special use permit is required for noncommercial wind energy systems and for any wind energy system or a component thereof, except for noncommercial wind energy systems located in county-adopted, state-certified agricultural districts for primary on-farm use.
 - (2) Zoning permit. A zoning permit and site plan review are required for the installation of any wind tower that is part of a wind energy system.
 - (3) Ownership. In cases where the owner of the property is not the applicant/owner of the wind energy conversion system, a clear order of liability will be established. A signed and notarized legal document from the owner of record of the property on which a wind energy system will be located shall be required which acknowledges liability for compliance to all requirements of this section if the applicant/owner of the wind energy system is unable to comply.
 - (4) Expiration. A permit issued pursuant to this chapter expires if:
 - (a) The wind energy system is not installed and functioning within two years from the date the permit is issued; or
 - (b) The wind energy system is out of service or otherwise unused for a continuous twelve-month period.
 - (5) Fees.
 - (a) The application for a special use permit for a noncommercial wind energy system, except for noncommercial wind energy

systems located in country adopted, state-certified agricultural districts, must be accompanied by the fee required for a special use permit.

- (b) The application for a zoning permit for each tower in a noncommercial wind energy system must be accompanied by the fee required for a zoning permit.

H. Restoration requirement (see also "Restoration" section under "Agricultural mitigation").¹⁵

- (1) A wind energy system that is out of service for a continuous twelve-month period or any wind energy system found to be unsafe by the Building Code Enforcement Officer and not repaired by the owner to meet federal, state and local safety standards within six months will be deemed to have been abandoned. The Zoning Enforcement Officer may issue a notice of abandonment in the form of a letter to the owner of a wind energy system that is deemed to have been abandoned. The Zoning Enforcement Officer will withdraw the notice of abandonment if the owner provides information within 30 days from the date of the notice that causes the Zoning Enforcement Officer to determine that the wind energy system has not been abandoned.
 - (2) The owner of a wind energy system must provide the Zoning Enforcement Officer with a written notice of termination of operations if the operation of a wind energy system is terminated.
 - (3) Within three months of receipt of a notice of abandonment or within six months of providing a notice of termination of operations, the owner of a wind energy system must:
 - (a) Remove all wind turbines, aboveground improvements, and outdoor storage;
 - (b) Remove all foundations, pads, and underground electrical wires to a depth of four feet below the surface of the ground;
 - (c) Remove all hazardous material as defined by NYSDEC from the property and dispose of the hazardous material in accordance with federal and state law; and
 - (d) Ensure that all disturbed areas are decompacted and the topsoil replaced to original depth reestablishing original contours where possible.
- I. Special use permit or zoning permit requirements. In addition to those criteria set forth under other sections of this chapter, the Planning Board shall consider the following factors when setting conditions upon special use permits or site plans issued for all wind energy systems and

15. Editor's Note: See § 235-38.IV(3).

may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense:

- (1) Proposed ingress and egress.
- (2) Proximity to transmission lines to link the system to the electric power grid.
- (3) Number of wind towers and their location.
- (4) Nature of land use on adjacent and nearby properties.
- (5) Location of other wind energy systems in the surrounding area.
- (6) Surrounding topography.
- (7) Proximity to residential structures, residential zoning districts, or areas identified for future residential use.
- (8) Design characteristics that may reduce or eliminate visual obtrusiveness.
- (9) Possible adverse effects on migratory birds, and other animals and wildlife.
- (10) Possible adverse effects of stray voltage, interference with broadcast signals, shadow flicker, and noise.
- (11) Impact on the orderly development, property values, and aesthetic conditions.
- (12) Possible adverse effects on groundwater quality or quantity.
- (13) Recommendations of the County Planning Board.
- (14) Any other factors that are relevant to the proposed system.

J. Standards.

- (1) Location.
 - (a) A wind energy system may only be located in areas that are zoned Agricultural-Residential (AG-R), Commercial (C), Industrial (I), Industrial Park (IP) or Planned Business Development (PBD).
- (2) Setbacks. Each wind tower in a wind energy system must be set back twice the height of each wind tower or 10 rotor diameters, whichever is longer (as measured from the center of the base of the tower), from the following:
 - (a) From any state forest, public park, or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a state, federal or local government.

- (b) From important bird areas.
 - (c) From the property line of the parcel on which the wind tower is located.
 - (d) Of any public access building that is on any parcel.
 - (e) From the right-of-way of any public road.
 - (f) From any residence or building that is on any parcel.
- K. Spacing and density. A wind tower must be separated from any other wind tower by a minimum distance equal to twice the height of the wind tower and by a sufficient distance so that the wind tower does not interfere with the other wind tower.
- L. Structure. A wind tower must be of monopole construction to the extent practicable. If monopole construction is not practicable, a wind tower must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a wind tower may be guyed.
- M. Height. The total height of a wind energy system shall not exceed 175 feet. Other maximum building/structure height restrictions within other sections of this chapter are not applicable.
- N. Clearance. The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least 30 feet.
- O. Access and safety.
- (1) Security. A wind tower, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence shall be required at a minimum height of eight feet.
 - (2) Climbing aids. Monopole wind towers shall have all climbing aids and any platforms locked and wholly inside the tower.
 - (3) Operational safety. Wind towers shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
 - (4) Lightning. All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.
 - (5) Access roads. All wind energy systems shall use existing roads to provide access to the facility site or, if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.
- P. Electrical wires.

- (1) Location. All electrical wires associated with a wind energy system must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices (see also "Construction" section under "Agricultural mitigation").¹⁶
 - (2) Transmission lines. All wind energy systems shall combine transmission lines and points of connection to local distribution lines.
 - (3) Substations. All wind energy systems shall connect the facility to existing substations or, if new substations are needed, minimize the number of new substations.
 - (4) Stray current. Properly installed wind energy systems will not generate this form of electrical pollution, often referred to as stray or ground current. A measurement before and after installation to insure no gain in existing electrical pollution is required for all wind energy systems over 10kw. Wind energy systems of any size may be measured on an on/off basis to resolve any complaint of electrical pollution. Mitigation must be immediate with the wind energy system shut down until complete. Compliance with the National Electric Safety Code for both installation and testing protocol is required.
- Q. Lighting. A wind tower and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e., Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town Planning Board reserves the right to choose the least obtrusive lighting option available.
- R. Buildings and outdoor storage. Any ancillary buildings and any outside storage associated with a wind energy system must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment (i.e., in an agricultural setting accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from roads and adjacent residences.
- S. Aesthetics.
- (1) Appearance, color, and finish. The exterior surface of any visible components of a wind energy system must be a nonreflective, neutral color.
 - (2) Visual impact assessment. The applicant shall complete a visual environmental assessment form (Visual EAF - SEQR), as well as a

16. Editor's Note: See § 235-38.1V(2).

visual impact assessment of any proposed wind energy systems or any proposed modifications to existing wind energy systems. The visual impact assessment shall include assessment of visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the wind energy system identified by the Town or County Planning Board or Town Board.

- T. Signs. No wind tower, turbine, building, or other structure associated with a wind energy system may be used to advertise or promote any product or service. A weather-resistant sign plate no greater than two square feet in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other word or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a wind energy system so as to be visible from any public road.
- U. Agricultural mitigation. The following shall apply to construction areas for wind energy systems located in county-adopted, state-certified agricultural districts. The applicant is required to coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. When required by the Town, the applicant shall hire an environmental monitor to oversee the construction and restoration in agricultural fields. The person or company hired as an environmental monitor shall be approved by the Town and paid by the applicant.
- (1) Siting.
- (a) Minimize impacts to normal farming operations by locating structures along field edges where possible.
 - (b) Locate access roads which cross agricultural fields along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
 - (c) Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.
 - (d) All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

(2) Construction.

- (a) The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
- (b) Where necessary, culverts and waterbars shall be installed to maintain natural drainage patterns.
- (c) All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and laydown areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the environmental monitor.
- (d) Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.
- (e) In cropland, hayland and improved pasture, a minimum depth of 48 inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of 36 inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to 48 inches, the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use, whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.
- (f) All excess subsoil and rock shall be removed from the site. On-site disposal of such material may be allowed if approved by the landowner and, when applicable, the environmental monitor, with appropriate consideration given to any possible agricultural or environmental impacts. (NOTE: Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)
- (g) In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.
- (h) All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after

the unloading and packing of turbine components so that these objects will not be mixed with any topsoil. (NOTE: Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)

- (i) Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.
 - (j) Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas. (NOTE: Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)
- (3) Restoration.
- (a) Restoration scheduling will be consistent with the seasonal limitations identified by Ag. and Markets and will be incorporated into the project's agricultural district notice of intent (if applicable) as well as the stormwater management plan (general permit).
 - (b) Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with Ag. and Markets. All parties involved should be cognizant that areas restored after October 1 may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.
 - (c) All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.
 - (d) All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

- (e) All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.
 - (f) Following restoration, all construction debris will be removed from the site.
- (4) Two-year monitoring and remediation.
- (a) The applicant will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two-year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration. The applicant will provide to the Town all testing, data and reports necessary to document compliance with Subsection U(4)(a) through (e) herein.
 - (b) General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on-site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and Ag. and Markets.
 - (c) Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.
 - (d) When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the applicant's responsibility to fully redress all project impacts.
 - (e) Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on

the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm representative subsoil density of the unaffected areas; additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

- V. Noise. Audible noise due to the operation of any part of a wind energy system shall not exceed 45 decibels (dBA) for any period of time when measured at any residence, school, hospital, church, public park, public library or place of public assembly. Audible noise due to the operation of any part of a wind energy system shall not exceed 30 decibels (dba) when measured inside any residence.
- W. Electromagnetic interference (EMI). No individual tower facility shall be installed in any location where proximity with existing broadcast, retransmission or reception antenna (including residential antenna) for radio, television, wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. Alternatively, wind energy systems shall be properly filtered or shielded in order to avoid electromagnetic interference and shall comply with rules and regulations of the Federal Communication Commission contained in 47 CFR Parts 15 and 18.
- X. Insurance. Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance, to be determined by the Town Board in consultation with the Town's insurer and attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility. If the insured is not the owner of the property, the applicant must show the owner of the property as coinsured and must allow for the property owner to continue coverage if the applicant is unable to continue coverage.
- Y. Tax exemption. The Town hereby exercises its right to opt out of tax exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by Paragraph 8 of that law.
- Z. Inspections. The Town Code Enforcement Officer or designated representative shall have the right at any reasonable time to enter the premises on which a wind energy system has been placed to inspect any and all parts of said installation. After conducting said inspection, the Code Enforcement Officer may order the owner of the wind energy system to render it inoperative for reasons related to safety, noise, electrical pollution or electromagnetic interference. If unable to contact the owner, the Code Enforcement Officer may execute an emergency shutdown procedure which has been provided in advance by the owner/

applicant in the form of a clear and concise check sheet as part of the permit process. All liability for the execution of an emergency shutdown shall be with the owner of the wind energy system.

- AA. Penalties. Any person, firm, corporation or entity which may violate any provision of this section shall be guilty of a violation and, upon conviction thereof, shall be subject to the penalties set forth in § 235-65 of Town of Batavia Zoning Ordinance. Any person, firm, corporation or entity which may violate any provision of this section shall become liable to the Town for any actual expense or loss or damage occasioned by the Town by reason of such violation; in addition to any actual losses or damages sustained by the Town, such expense shall also include but not be limited to statutory costs, disbursements and reasonable attorney fees in the event legal action is commenced to enforce this section. The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceedings to prevent a violation of this section or to restrain or enjoin the use or occupancy of premises or any part thereof in violation of this section.
- BB. Severability. The provisions of this section are severable, and the invalidity of any section, subdivision, paragraph, or other part of this chapter shall not affect the validity or effectiveness of the remainder of the chapter.

§ 235-39. Signs. [Amended 2-19-2003; 2-20-2008 by L.L. No. 2-2008]

- A. General standards. Except as provided in Subsection B, every sign (other than those identified in Subsection B below) shall require a zoning permit.
- (1) Also, every sign shall be designed, attached, supported, and located in such a manner as to:
- (a) Not impair public safety.
 - (b) Not restrict clear vision between a sidewalk and street, a driveway and a street or between two streets.
 - (c) Not be confused with any traffic sign or signal.
 - (d) Not prevent free access to any door, window, or fire escape.
- (2) Signs may be illuminated by a steady light provided that lighting does not illuminate adjacent property. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare.
- B. Signs permitted in all districts without a zoning permit:
- (1) Identification signs.

- (a) One number and/or nameplate identifying residents, mounted on house, apartment or mailbox, not exceeding one square foot in area.
 - (b) One lawn sign identifying residents, not exceeding one square foot, or two square feet if double-faced. Such signs are to be nonilluminated except by a light which is an integral part of a lamppost if used as a support, with no advertising message thereon.
 - (c) One sign identifying the name of the farm owner or name of the farm not exceeding 24 square feet in area and located not less than five feet from a lot line.
- (2) One "For Sale" or "For Rent" sign not exceeding an area of six square feet. Such sign shall not be greater than six feet in height and shall be located not less than five feet from a lot line. Such signs shall be removed upon completion of the sale or rental.
- (3) Directional signs. No more than two directional signs shall be permitted per street entrance to any lot. There shall be no limit to the number of directional signs providing directional information interior to a lot. The maximum total area for directional signs shall be eight square feet.
- (4) Temporary signs. A sign used on a temporary basis to identify or announce an activity or function such as a construction project and the specialists concerned, elections, sporting events, carnivals, garage sales, meetings, etc. Such signs shall not exceed 12 square feet and shall not be located less than five feet from a lot line. Temporary signs shall be removed within 10 days after the activity or function ends. Garage sales and farm produce sales temporary signs used more than 60 days per year shall require a permit as set forth in Subsection D(3).
- (5) Window signs. Window signs shall be permitted in all nonresidential zoning districts, subject to the following limitations:
 - (a) The aggregate area of all such signs shall not exceed 25% of the window area on which such signs are displayed. Window panels separated by mullions shall be considered as one continuous window area.
 - (b) Window signs shall not be assessed against the sign area permitted for other sign types.
 - (c) Any window sign hung or mounted within 12 inches of the interior of the window will be assessed against the allowable twenty-five-percent total window coverage area.

- (6) Noncommercial speech signs; Residential Districts (AG-R, R, HR). Noncommercial speech signs may be permitted in any residential district without a sign permit, subject to the following conditions:
- (a) The maximum number of noncommercial speech signs per lot shall be two.
 - (b) Of the total number of signs, only one shall be a window sign. No window sign shall exceed 25% of the total window opening, or two square feet, whichever is smaller.
 - (c) A building-mounted sign may not exceed two square feet in total area. Any building mounted sign shall be located in proximity to an exterior entrance.
 - (d) A freestanding sign, unless otherwise specified herein, shall:
 - [1] Not exceed six square feet in sign area;
 - [2] Not exceed four feet in height above grade;
 - [3] Maintain a minimum ground clearance of two feet;
 - [4] Not be closer to any lot line than five feet;
 - [5] Not interfere with vehicle site distances either from, along or to a public way; and
 - [6] Not be illuminated, except indirectly.
- (7) Noncommercial speech signs; Business and Industrial Districts (C, I, IP, PBD, HC). Noncommercial speech signs associated with a residential use in a business or industrial district shall comply with the standards specified in Subsection B(6) above. Noncommercial speech signs associated with nonresidential uses may be allowed in any business or industrial district without a sign permit, subject to the following conditions:
- (a) The maximum number of noncommercial speech signs per lot shall be two.
 - (b) Such signs shall not exceed 32 square feet in area.
 - (c) Freestanding noncommercial speech signs shall not be closer to any lot line than five feet.
 - (d) Freestanding noncommercial speech signs shall not exceed six feet in height above grade level.
 - (e) Building-mounted noncommercial speech signs shall be located on the first floor front facade of the structure.
 - (f) Noncommercial speech signs shall not be illuminated, except indirectly.

C. Permit requirements.

- (1) Permits required. Unless specifically exempted, a permit must be obtained from the Zoning Officer for the erection and maintenance of all signs erected or maintained within this jurisdiction and in accordance with other ordinance or local laws of this jurisdiction. Exemptions from the necessity of securing a permit, however, shall not be construed to relieve the owner of the sign involved from responsibility for its erection and maintenance in a safe manner and in a manner in accordance with all the other provisions of this section.
- (2) Construction documents. Before any permit is granted for the erection of a sign or sign structure requiring such permit, construction documents shall be filed with the Zoning Officer showing the dimensions, materials and required details of construction, including loads, stresses, anchorage and any other pertinent data. The permit application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and by engineering calculations signed and sealed by a registered design professional where required by the New York State Building Code.
- (3) Changes to signs. No sign shall be structurally altered, enlarged or relocated except in conformity to the provisions herein, nor until a proper permit, if required, has been secured. The changing or maintenance of moveable parts or components of an approved sign that is designed for such changes shall not be deemed a structural alteration.
- (4) Permit fees. Permit fees to erect, alter or relocate a sign shall be in accordance with the fee schedule adopted within this jurisdiction.

D. Other signs permitted in Agricultural, Agricultural-Residential, Residential or Hamlet Residential Districts. The following signs are permitted in AG-R, R or HR Districts upon issuance of a zoning permit:

- (1) One home occupation or skilled trade shop sign not exceeding four square feet in area and located not less than five feet from a lot line.
- (2) One sign identifying a mobile home park in an Agricultural-Residential District, not exceeding 20 square feet in area and located not less than five feet from a lot line.
- (3) One sign identifying farm produce sales or garage sales not exceeding 12 square feet in area and located not less than five feet from a lot line when used 60 or more days per year.
- (4) One sign identifying a school, church, public park or public building, not exceeding 40 square feet in area on any one side and located not less than five feet from a lot line.

- (5) One business sign for uses which have a valid special use permit to operate. Such sign may either be wall-mounted with a maximum size of 20 square feet or freestanding with a maximum size of eight square feet per side. Freestanding signs shall be limited in height to 25 feet and not be located within 10 feet of a property line. The final location/placement of all signs for uses allowed by special use permits in the AG-R and R Districts shall be determined by the Planning Board.
- E. Other signs permitted in Commercial, Industrial, or Industrial Park Districts. The following business signs are permitted in C, I, or IP Districts upon issuance of a zoning permit. Site plan review is required for all totally new signs. Replacement signs (same type, size and location) require a zoning permit but are not subject to site plan review.
- (1) Two business signs, one of which may be freestanding (except for shopping centers), shall be allowed for each permitted use. If attached, such signs shall not exceed a total area of 200 square feet or an area equal to 10% of the wall area of the building or portion thereof devoted to such use or activity, whichever is less. No sign shall project more than one foot from the facade of the building.
 - (2) Freestanding business signs shall be permitted. Such signs shall conform to the following provisions relating to their number and size:
 - (a) Each commercial or industrial use, except as limited by Subsection E(2)(b), may have one freestanding business sign, except businesses located on through lots which may have two. Such freestanding sign shall have a sign area proportional to the size of the building as set forth below, shall be not more than 35 feet in height, and shall be located not less than five feet from a lot line.

Size of Building (square feet)	Maximum Size of Freestanding Sign (square feet, one side)
Less than 5,000	50
5,000 to 34,999	75
35,000 to 100,000	100
Greater than 100,000	150

- (b) Freestanding signs in a shopping center or industrial park shall be limited to one directory sign at any location thereon not exceeding five square feet in area for each acre of land in the shopping center or industrial park, provided that no such sign shall exceed 50 square feet in area.

- (3) Off-premises directional signs for businesses located in the Town of Batavia not exceeding 32 square feet in size and limited to two signs per use shall be permitted. Such signs shall be located not less than five feet from a lot line.
- (4) Off-premises advertising signs are allowed by special use permit in compliance with Subsection G.
- (5) Portable signs. Any sign not permanently attached to the ground or a building. In addition, any temporary sandwich-type, sidewalk, or curb sign over 12 square feet in area and/or over four feet in height is considered to be a portable sign. Such signs shall be located not less than five feet from a lot line.
- (6) Awning signs. Awning signs shall be permitted in all nonresidential zoning districts, subject to the following limitations:
 - (a) The copy area of awning signs shall not exceed an area equal to 25% of the background area of the awning or awning surface to which such a sign is affixed or applied, or the permitted area for wall or fascia signs, whichever is less.
 - (b) Neither the background color of an awning, nor any graphic treatment or embellishment thereto, such as striping, patterns or valances, shall be included in the computation of sign copy area.
- (7) Canopy signs. Canopy signs shall be permitted in all nonresidential zoning districts, subject to the following limitations:
 - (a) The permanently affixed copy area of canopy signs shall not exceed an area equal to 25% of the face area of the canopy or architectural projection upon which such sign is affixed or applied and shall not exceed the total sign area allowed.
 - (b) Graphic striping, patterns or color bands on the face of a building, canopy or architectural projection shall not be included in the computation of sign copy area. However, any numbers or verbiage will be included in the computation of the sign copy area.
- (8) Under-canopy signs. Under-canopy signs shall be permitted in all nonresidential zoning districts, subject to the following limitations:
 - (a) Under-canopy signs shall be limited to no more than one such sign per public entrance to any occupancy, and shall be limited to an area not to exceed four square feet.
 - (b) Such signs shall maintain a clear vertical distance above any sidewalk or pedestrian way a minimum of 10 feet.
- (9) Projecting signs. Projecting signs shall be permitted in all nonresidential zoning districts, subject to the following limitations:

- (a) Projecting signs shall be permitted in lieu of freestanding signage on any street frontage limited to one sign per occupancy along any street frontage with a public entrance to such an occupancy, and shall be limited in height and area to 1.5 square feet per each one lineal foot of building frontage, except that no such sign shall exceed an area of 60 square feet.
- (b) No such sign shall extend vertically above the highest point of the building facade upon which it is mounted.
- (c) Such signs shall not extend over a public sidewalk in excess of two feet, measured from the face of the building or supporting structure to the outside edge of the sign.
- (d) Such signs shall maintain a clear vertical distance above any public sidewalk a minimum of 10 feet measured from grade to the bottom of the sign.

(10) A-frame (temporary).

F. Signs for development complexes.

- (1) Master sign plan required. All landlord or single owner controlled multiple-occupancy development complexes such as shopping centers, multiple-family housing units or planned industrial parks shall submit to the Planning Board a master sign plan prior to issuance of individual sign permits. The master sign plan shall establish standards and criteria for all signs in the complex that require permits, and shall address, at a minimum, the following:
 - (a) Proposed sign locations.
 - (b) Materials.
 - (c) Type of illumination.
 - (d) Design of freestanding sign structures.
 - (e) Size.
 - (f) Quantity.
 - (g) Uniform standards for nonbusiness signage, including directional and informational signs.
- (2) Development complex sign. In addition to the freestanding business identification signs otherwise allowed by this section, every multiple-occupancy development complex shall be entitled to one freestanding sign per street front, at the maximum size permitted for business identification freestanding signs, to identify the development complex. No business identification shall be permitted on a development complex sign. Any freestanding sign otherwise permitted under this section may identify the name of the development complex.

- (3) Compliance with master sign plan. All applications for sign permits for signage within a multiple-occupancy development complex shall comply with the master sign plan. The Zoning Officer shall ensure that individual signs are in conformance with the master sign plan prior to issuing permits for the individual signs.
 - (4) Amendments. Any amendments to a master sign plan must be signed and approved by the owner(s) within the development complex before such amendment will become effective.
- G. Off-premises advertising signs. Off-premises advertising signs shall be located and maintained only in the C, I and IP Districts upon issuance of a special use permit and in accordance with the standards set forth in this chapter.
- (1) Only one off-premises advertising sign shall be permitted per parcel of property and such parcel must meet the minimum required lot dimensions (e.g., lot frontage, lot area, etc.) for the district in which it is located.
 - (2) Off-premises advertising signs shall not exceed 300 square feet of sign area nor exceed 35 feet in height.
 - (3) Off-premises advertising signs of 25 square feet or less in sign area may be placed not closer than 10 feet to a property line. Off-premises advertising signs greater than 25 square feet in sign area must meet all the minimum required yard setbacks for the respective district.
- H. Nonconforming signs.
- (1) Nonconforming signs, whether on premises or off premises, shall be removed at the expense of the property owner when the use is discontinued. This shall include portable, temporary and permanent signs.
 - (2) Nonconforming signs may not be enlarged, extended, relocated or altered in any way, except to make them conform to provisions of this chapter. This provision shall not restrict routine maintenance of nonconforming signs involving replacement of electrical parts and repainting.
- I. Prohibited signs. The following types of signs are prohibited and shall not be permitted, erected, or maintained in any zoning district, and the owner thereof shall, upon written notice of the Building Inspector, forthwith, in the case of immediate danger, or otherwise within 10 days, make such sign conform to the provisions of this chapter or remove it. If the order is not complied with, the Building Inspector may cause said sign to be removed at the expense of the owner.
- (1) Any sign which by reason of its size, location, content, coloring or manner of illumination constitutes a traffic hazard or a detriment to

traffic safety by obstructing the vision of drivers, or by obstruction or detraction from the visibility of any traffic control device on public streets and roads.

- (2) Signs which obstruct free ingress to or egress from a required door, window, fire escape or other required exit way.
 - (3) Signs which make use of words such as "Stop," "Look," "Danger," and other words, phrases, symbols, or characters in such a manner as to interfere with, mislead or confuse traffic.
 - (4) Any sign which has any visible moving part, visible revolving parts or visible mechanical movement of any description (except time and temperature revolving signs as allowed) or other apparent visible movement achieved by electrical or kinetic means, including intermittent electrical pulsations, or by action of normal wind current.
 - (5) Signs or other exterior advertising structures displaying any obscene, indecent, or immoral matter.
 - (6) Any sign attached to, or placed on, a vehicle or trailer parked on public or private property, except for signs meeting the following conditions:
 - (a) The primary purpose of such a vehicle or trailer is not the display of signs.
 - (b) The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer and do not break the silhouette of the vehicle.
 - (c) The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.
 - (d) Vehicles and trailers are not used primarily as static displays, advertising a product or service, nor utilized as storage, shelter or distribution points for commercial products or services for the general public.
 - (7) Balloons, inflatable devices, streamers, sandwich board signs or pinwheels, except those temporarily displayed as part of a special sale, promotion or community event. For the purposes of this subsection, "temporarily" means no more than 21 days in any calendar year.
- J. Definitions (see also graphic representations).¹⁷ For the purpose of this section, the terms used herein are defined as follows:

17.Editor's Note: The graphic representations are on file in the Town offices.

ABANDONED SIGN — A sign structure that has ceased to be used, and the owner intends no longer to have used, for the display of sign copy, or as otherwise defined by state law.

ANIMATED SIGN — A sign employing actual motion or the illusion of motion. Animated signs, which are differentiated from changeable signs as defined and regulated by this Code, include the following types:

- (1) **ELECTRICALLY ACTIVATED** — Animated signs producing the illusion of movement by means of electronic, electrical or electromechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:
 - (a) **FLASHING** — Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of nonillumination. For the purposes of this section, flashing will not be defined as occurring if the cyclical period between on-off phases of illumination exceeds four seconds.
 - (b) **PATTERNED ILLUSIONARY MOVEMENT** — Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.
- (2) **ENVIRONMENTALLY ACTIVATED** — Animated signs or devices motivated by wind, thermal changes or other natural environmental input. Includes spinners, pinwheels, pennant strings, and/or other devices or displays that respond to naturally occurring external motivation.
- (3) **MECHANICALLY ACTIVATED** — Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

ARCHITECTURAL PROJECTION — Any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, but that does not include signs as defined herein. See also "Awning"; "Backlit awning"; "Canopy, attached"; and "Canopy, freestanding."

AWNING — An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a nonrigid material and/or fabric on a supporting retractable framework.

AWNING SIGN — A sign displayed on or attached flat against the surface or surfaces of an awning. See also "Wall" or "Fascia sign."

BACKLIT AWNING — An awning with a translucent covering material and a source of illumination contained within its framework.

BANNER — A flexible substrate on which copy or graphics may be displayed.

BANNER SIGN — A sign utilizing a banner as its display surface.

BILLBOARD — See "Off-premises sign" and "Outdoor advertising sign."

BUILDING ELEVATION — The entire side of a building, from ground level to the roofline, as viewed perpendicular to the walls on that side of the building.

CANOPY, ATTACHED — A multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and cantilevered from such building. The surface(s) and/or soffit of an attached canopy may be illuminated by means of internal or external sources of light.

CANOPY, FREESTANDING — A multisided overhead structure supported by columns, but not enclosed by walls. The surface(s) and/or soffit of a freestanding canopy may be illuminated by means of internal or external sources of light.

CANOPY SIGN — A sign affixed to the visible surface(s) of an attached or freestanding canopy. For reference, see figure.¹⁸

CHANGEABLE SIGN — A sign with the capability of content change by means of manual or remote input, including signs which are:

- (1) MANUALLY ACTIVATED — Changeable sign whose message copy or content can be changed manually.
- (2) ELECTRICALLY ACTIVATED — Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See also, "Electronic message sign or center."

COMBINATION SIGN — A sign that is supported partly by pole and partly by a building structure.

COPY — Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

DEVELOPMENT COMPLEX SIGN — A freestanding sign identifying a multiple-occupancy development, such as a shopping center or planned industrial park, which is controlled by a single owner or landlord, approved in accordance with § 235-39F(2) of this chapter.

18. Editor's Note: The figures are on file in the Town offices.

DIRECTIONAL SIGN — Any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

DOUBLE-FACED SIGN — A sign with two faces, back to back.

ELECTRIC SIGN — Any sign activated or illuminated by means of electrical energy.

ELECTRONIC MESSAGE SIGN OR CENTER — An electrically activated changeable sign whose variable message capability can be electronically programmed.

EXTERIOR SIGN — Any sign placed outside a building.

FACADE — See "Building facade."

FASCIA SIGN — See "Wall sign."

FLASHING SIGN — See "Animated Sign, electrically activated."

FREESTANDING SIGN — A sign principally supported by a structure affixed to the ground and not supported by a building, including signs supported by one or more columns, poles or braces placed in or upon the ground. For visual reference, see figure.¹⁹

FRONTAGE (BUILDING) — The length of an exterior building wall or structure of a single premises oriented to the public way or other properties that it faces.

FRONTAGE (PROPERTY) — The length of the property line(s) of any single premises along either a public way or other properties on which it borders.

GROUND SIGN — See "Freestanding sign."

IDENTIFICATION SIGN — A sign used to identify a specific property by address, occupant or use.

ILLUMINATED SIGN — A sign characterized by the use of artificial light either projecting through its surface(s) (internally illuminated); or reflecting off its surface(s) (externally illuminated).

INTERIOR SIGN — Any sign placed within a building, but not including window signs as defined by this section. Interior signs, with the exception of window signs as defined, are not regulated by this chapter.

MANSARD — An inclined decorative roof-like projection that is attached to an exterior building facade.

MENU BOARDS — Any sign attached to the restaurant building listing menu food items.

MULTIPLE-FACED SIGN — A sign containing three or more faces.

19. Editor's Note: The figures are on file in the Town offices.

NONCOMMERCIAL SPEECH SIGN — A sign which contains a message that is not related to any business purpose, but which expresses an opinion, political message or other noncommercial statement.

OFF-PREMISES SIGN — See "Outdoor advertising sign."

ON-PREMISES SIGN — A sign erected, maintained or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of, products sold on, or the sale or lease of the property on which it is displayed.

OUTDOOR ADVERTISING SIGN — A permanent sign erected, maintained or used in the outdoor environment for the purpose of the display of commercial or noncommercial messages not appurtenant to the use of, products sold on, or the sale or lease of the property on which it is displayed.

PARAPET — The extension of a building facade above the line of the structural roof.

POLE SIGN — See "Freestanding sign."

POLITICAL SIGN — A temporary sign intended to advance a political statement, cause or candidate for office. A legally permitted outdoor advertising sign shall not be considered to be a political sign.

PORTABLE SIGN — Any sign not permanently attached to the ground or to a building or building surface.

PROJECTING SIGN — A sign other than a wall sign that is attached to or projects more than 12 inches from a building face or wall or from a structure whose primary purpose is other than the support of a sign. For visual reference, see figure.²⁰

REAL ESTATE SIGN — A temporary sign advertising the sale, lease or rental of the property or premises upon which it is located.

REVOLVING SIGN — A sign that revolves 360° about an axis. See also "Animated sign, mechanically activated."

ROOFLINE — The top edge of a peaked roof or, in the case of an extended facade or parapet, the upper most point of said facade or parapet.

ROOF SIGN — A sign mounted on, and supported by, the main roof portion of a building, or above the uppermost edge of a parapet wall of a building and which is wholly or partially supported by such a building. Signs mounted on mansard facades, pent eaves and architectural projections such as canopies or marquees shall not be considered to be roof signs. For a visual reference example of a roof sign, and a comparison of differences between roof and fascia signs, see figure.²¹

20. Editor's Note: The figures are on file in the Town offices.

21. Editor's Note: The figures are on file in the Town offices.

SIGN — Any device visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations. Noncommercial flags or any flags displayed from flagpoles or staffs will not be considered to be signs.

SIGN AREA — The area of the smallest geometric figure, or the sum of the combination of regular geometric figures, which comprise the sign face. The area of any double-sided or "V" shaped sign shall be the area of the largest single face only. The area of a sphere shall be computed as the area of a circle. The area of all other multiple-sided signs shall be computed as 50% of the sum of the area of all faces of the sign.

SIGN COPY — Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, exclusive of numerals identifying a street address only.

SIGN FACE — The surface upon, against or through which the sign copy is displayed or illustrated, not including structural supports, architectural features of a building or sign structure, nonstructural or decorative trim, or any areas that are separated from the background surface upon which the sign copy is displayed by a distinct delineation, such as a reveal or border.

- (1) In the case of panel- or cabinet-type signs, the sign face shall include the entire area of the sign panel, cabinet or face substrate upon which the sign copy is displayed or illustrated, but not open space between separate panels or cabinets.
- (2) In the case of sign structures with routed areas of sign copy, the sign face shall include the entire area of the surface that is routed, except where interrupted by a reveal, border, or a contrasting surface or color.
- (3) In the case of signs painted on a building, or individual letters or graphic elements affixed to a building or structure, the sign face shall comprise the sum of the geometric figures or combination of regular geometric figures drawn closest to the edge of the letters or separate graphic elements comprising the sign copy, but not the open space between separate groupings of sign copy on the same building or structure.
- (4) In the case of sign copy enclosed within a painted or illuminated border, or displayed on a background contrasting in color with the color of the building or structure, the sign face shall comprise the area within the contrasting background or within the painted or illuminated border.

SIGN STRUCTURE — Any structure supporting a sign.

STRUCTURE — That which is built or constructed, or a portion thereof.

TEMPORARY SIGN — A sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Portable

signs or any sign not permanently embedded in the ground or not permanently fixed to a building or sign structure that is permanently embedded in the ground are considered temporary signs.

UNDER-CANOPY SIGN OR UNDER-MARQUEE SIGN — A sign attached to the underside of a canopy or marquee.

V SIGN — Signs containing two faces of approximately equal size, erected upon common or separate structures, positioned in a "V" shape with an interior angle between faces of not more than 90° with the distance between the sign faces not exceeding five feet at their closest point.

WALL OR FASCIA SIGN — A sign that is in any manner affixed to any exterior wall of a building or structure and that projects not more than 12 inches from the building or structure wall, including signs affixed to architectural projections from a building, provided the copy area of such signs remains on a parallel plane to the face of the building facade or to the face or faces of the architectural projection to which it is affixed. For visual reference and comparison examples of differences between wall or fascia signs and roof signs, see figure.²²

WINDOW SIGN — A sign affixed to or within 12 inches directly behind the surface of a window with its message intended to be visible to and readable from the public way or from adjacent property.

ZONING OFFICER — The agent or representative of the Town of Batavia, or his delegates or deputies, responsible for the enforcement of the ordinances and codes of the Town.

§ 235-40. Commercial excavation.

Except when incidental to the construction of a building on the same lot, the excavation, processing or sale of sand, gravel or clay or other natural mineral deposits or the quarrying of any kind of rock formation shall require a special use permit from the Planning Board as provided for in § 235-63.

A. Major excavation.

(1) State permit. In order to obtain said special use permit, the applicant shall furnish evidence of a valid permit from the New York State (NYS) Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law.

(2) Reclamation. The applicant shall further be required to comply with the reclamation standards established by the New York State Department of Environmental Conservation while carrying out such use.

B. Minor excavation. As part of the application process for a special use permit, the applicant's plan shall be presented to the Genesee County

22. Editor's Note: The figures are on file in the Town offices.

Soil and Water Conservation District for its review and comments. Also, before issuing a special use permit, the Planning Board must find that such excavation will not endanger the stability of adjacent land or structures or the quality or quantity of groundwater and that it does not constitute a detriment to public health, safety, or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition. In granting said special use permit, the Planning Board shall specify any reasonable requirement, including the following:

- (1) Minimum lot area. The minimum lot area shall be 10 acres.
- (2) Minimum setback requirements. All buildings shall be located not less than 100 feet from any street or property line. The top of the slope of all excavation operations shall be located or shall occur not less than 100 feet from any street or property line. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one public notice sign identifying the use of the property, fencing, berms, buffers, access roads and/or parking.
- (3) Slope. During mining the banks of all excavations shall be maintained at a slope not to exceed the normal angle of repose of such material.
- (4) Drainage. All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc., from flowing onto public roads or adjacent property or into any stream. Excavation areas shall be planned and graded to avoid collections of stagnant water.
- (5) Dust. All storage areas, yards, service roads, or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust or other windblown air pollutants.
- (6) Roadside landscape. Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented in the entire area of the roadside setback for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back the overburden around the perimeter of the excavation site to create a berm for the purpose of screening and noise reduction. No berm shall be constructed within 25 feet of any right-of-way line or property boundary lines.
- (7) Fencing. Fencing may be required depending upon the existence of an earthen berm, the nature of the operations, distance from developed areas, distance from property lines, depth of pit water and slope of pit walls.

- (8) Topsoil. All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the reclamation plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams, or adjacent property.
 - (9) Erosion. The applicant's plan shall also include a provision for the control of soil erosion.
 - (10) Hours of operation. All operations shall be conducted between the hours of 7:00 a.m. and 6:00 p.m. with no Sunday or holiday operations, except in the case of public or private emergency (i.e., flooding, spills, utility line breaks, etc.) or whenever any reasonable or necessary repairs to equipment are required to be made.
 - (11) Blasting and/or processing. Operations involving blasting and on-site processing of mineral deposits shall not be allowed.
 - (12) Reclamation plan. The applicant shall submit a reclamation plan.
 - (a) "Reclamation plan" means the applicant's proposal for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation.
 - (b) Where feasible, reclamation shall be a continuing operation. Grading, topsoil replacement and replanting of the area designated for restoration shall continue during the permit period. All reclamation work shall be complete within one year after the termination of operations, at the expense of the operator.
 - (13) Performance bond. A performance bond or some other financial security may be required in the discretion of the Planning Board to assure that the conditions stipulated in the approval of the special use permit are carried out. Any such security shall be in a form and amount acceptable to the Planning Board.
- C. Duration of special use permit.
- (1) The special use permit for a minor excavation shall be issued for a period of one year, subject to a subsequent annual review and recertification by the Planning Board based on a written request for such continuance, which request shall be submitted to the Town Building Inspector at least 60 days prior to the expiration of each such one-year period. A public hearing shall not be required for such annual recertification, except upon motion of the Planning or Town Board.

- (2) The special use permit for a major excavation shall continue as long as its New York State Department of Environmental Conservation permit remains in effect, it complies with the terms thereof, and it meets the reclamation standards established by the New York State Department of Environmental Conservation.
- (3) If on-site mining or processing operations are not carried out continuously for one year for a major or minor excavation, the site shall be considered abandoned, and, prior to any further excavation or processing, a new special use permit shall be required.

§ 235-41. Cluster residential development. [Amended 2-20-2008 by L.L. No. 2-2008]

The Planning Board shall have the authority to require or allow a cluster residential development, also referred to as a "conservation subdivision," of one- and/or two-family dwellings, as specified in the New York State Town Law § 278, in any district that permits residences, provided that the following conditions are observed, in addition to the requirements in Chapter 204, Subdivision of Land:

- A. (Reserved)
- B. The developer shall provide for the permanent protection of open space in a manner that is acceptable to the Town Board. In no case shall such lands be less than 25% of the total project area. All such lands shall be suitable, in the opinion of the Planning Board, for the intended use.
- C. The developer shall seek preliminary, nonbinding, informal conditional approval of the Planning Board of the design and arrangement of streets, lots, open spaces, and other elements of the project prior to filing the application for subdivision approval.
- D. The maximum building height and maximum lot coverage requirements as set forth in Zoning Schedule A²³ of this chapter for the district involved apply to the entire cluster development project, whereas the minimum frontage and side and rear yard requirements for the applicable district apply only to the outer lots of said cluster residential development. All other area requirements as set forth in Zoning Schedule A may be modified by the Planning Board.
- E. The permitted number of dwelling lots shall not exceed the number that would be permitted if the land were subdivided into lots for single-family dwellings that fully conform to the minimum lot sizes established in Schedule A.²⁴

§ 235-41.1. Multifamily dwellings, townhouses and twin homes. [Added 2-20-2008 by L.L. No. 2-2008]

23. Editor's Note: Zoning Schedule A is included at the end of this chapter.

24. Editor's Note: Zoning Schedule A is included at the end of this chapter.

- A. Each multiple residence building, twin home dwelling or townhouse structure shall be constructed and maintained in compliance with the requirements of the Multiple Residence Law and the New York State Uniform Fire Prevention and Building Code, as applicable. Such structure shall, however, conform to the local Code if the Town has established more stringent requirements.
- B. Each multiple residence, twin home dwelling or townhouse development shall have a lot area of not less than two acres.
- C. There shall be a lot area of not less than 4,000 square feet for each dwelling unit located on the lot.
- D. The minimum enclosed living area for each dwelling unit shall be in conformance with the requirements of § 235-17. Twin homes shall meet the requirements for two-family dwellings.
- E. No building shall contain more than eight dwelling units.
- F. Each dwelling unit shall have its own separate full bathroom.
- G. All multiple residence, twin home dwelling and townhouse developments shall provide safe and efficient pedestrian circulation and site lighting.
- H. All multiple residence buildings, twin home dwellings and townhouse structures shall be served by publicly owned, operated and maintained water supply and sanitary sewage disposal facilities.
- I. Each building shall be provided with suitable containers for the storage of recyclable materials and refuse collections. Such containers shall be screened from public view by use of fences or solid walls.
- J. Access to public roads.
 - (1) All multiple residence, twin home dwelling and townhouse developments shall have direct access from the common parking area(s) to a dedicated highway.
 - (2) No individual dwelling unit shall have direct access to a dedicated highway.
- K. Two parking spaces shall be provided for each dwelling unit. Each parking space shall have a minimum width of 10 feet, and a minimum length of 20 feet. Not less than one parking space for each dwelling unit shall be enclosed.
- L. In addition to the required parking spaces for each dwelling unit, one additional space shall be provided in common parking lots for every four dwelling units for the convenience of residents and their guests. The location of common parking lots shall be determined by the Planning Board as part of the site plan review process.

- M. Each dwelling unit shall have a rear yard adjacent to the unit which shall be reasonably secluded from view from neighboring property or streets and which shall include at least 500 square feet of usable open space.
- N. No multiple residence, twin home dwelling or townhouse development shall have more than two stories or be more than 35 feet in height. Spires, chimneys, cupolas, flagpoles and antennas are exempt from this limitation, provided that the antennas are visually integrated into the building lines.
- O. No multiple residence, twin home dwelling or townhouse building shall be less than 18 feet in width.
- P. No exterior wall shall exceed 50 feet in length unless there is a lateral offset of at least four feet in its alignment.
- Q. Except for an accessory structure to an individual dwelling unit, the minimum distance between a multiple residence or townhouse dwelling structure and any other structure on a proposed development site shall be 40 feet, and the minimum distance between a twin home dwelling and any other structure on a proposed development site shall be 20 feet.
- R. No swimming pool shall be located within 40 feet of a multiple residence or townhouse dwelling structure or 20 feet from a twin home dwelling.
- S. Not less than 20% of the land area within a multiple residence, twin home dwelling or townhouse development, excluding parking areas and vehicle access facilities, shall be established and maintained as open space for the use and enjoyment of residents and their guests.
- T. The coverage of all buildings and structures within a multiple residence, twin home dwelling or townhouse development shall not exceed 25% of the area of the entire site.
- U. No structure within a multiple residence, twin home dwelling or townhouse development shall be set back less than 20 feet from any common parking area.
- V. No structure within a multiple residence, twin home dwelling or townhouse development shall be set back less than 50 feet from a public road and not less than 50 feet from the external property line for the development. However, side yard setbacks for individual lots shall be zero feet from the property line wherever two townhouse, twin home dwelling or multifamily dwelling units are joined by a common wall along the parcel boundary.
- W. Notwithstanding the provisions of § 235-21, the height of a privacy fence built upon a deck or other structure shall be limited to a height of four feet from the surface of the deck or other structure.

§ 235-42. Junkyards.

No person shall establish, operate, or maintain a junkyard until he has obtained a special use permit in compliance with § 235-63 and shall have obtained an annual license in compliance with Chapter 138, Junkyards, of this Code.

§ 235-43. Recreational vehicles and campgrounds.**A. Recreational vehicles.**

- (1) Recreational vehicles may only be temporarily occupied as a dwelling as follows:
 - (a) As provided in Subsection B.
 - (b) For not more than two separate periods, per year, not exceeding two weeks each, one recreational vehicle may be used as a temporary dwelling while parked on the same lot as a permanent dwelling.
 - (c) With a temporary use permit, a recreational vehicle may be used as a temporary dwelling for a period not to exceed six months and subject to the following conditions:
 - [1] Approval shall be granted by the Genesee County Health Department.
 - [2] Any connections must be removed and the recreational vehicle moved to an approved parking location upon expiration of such permit.
- (2) An unoccupied recreational vehicle may be stored anywhere except in the required front or side yard areas of a lot not less than 15 feet from any lot line or public right-of-way. When so stored, no connections shall be permitted.

B. Campgrounds.

- (1) Location. A campground shall be located and maintained only in AG-R and MHP Districts upon issuance of a special use permit and in accordance with the standards set forth in this chapter.
- (2) Existing campgrounds. In addition to the nonconforming use regulations set forth in § 235-15, all existing campgrounds must comply with this section whenever any addition, expansion or alteration (changes affecting lot size or layout, streets and utilities) of the use or operation is proposed.
- (3) Standards and requirements for the construction of campgrounds. Before a special use permit for a campground is issued under § 235-63, the Planning Board shall determine that the proposed use

is designed and arranged in accordance with the following standards:

- (a) Site. The campground shall be located on a well-drained site which is properly graded to ensure rapid drainage so as to be free at all times from stagnant pools of water.
- (b) Lots. Each campground shall be divided into lots. The total number of lots shall not exceed 12 per gross acre. Each lot shall have a total area of not less than 2,500 square feet with a minimum width of 30 feet. Only one recreational vehicle or tent shall be permitted to occupy any one lot. Each lot shall have a stand of sufficient size and durability to provide for the placement and removal of a recreational vehicle and for the retention of such recreational vehicle in a stable condition. The stand shall be suitably graded to permit rapid surface drainage.
- (c) Setbacks. All recreational vehicles or occupied tents situated in campgrounds shall not be located nearer than a distance of:
 - [1] Twenty-five feet from an adjacent property line, except residential property.
 - [2] One hundred feet from any adjacent residential property line.
 - [3] One hundred feet from the right-of-way of a public street/highway.
 - [4] Ten feet from the nearest edge of any street located within the park.
- (d) Accessibility. Each campground shall be easily accessible from an existing public road with entrances and exits designed and strategically located for safe and convenient movement into and out of the campground to minimize conflicts with the movement of traffic on a public road. All entrances and exits shall be at right angles to existing public roads and of sufficient width to facilitate the turning movements of recreational vehicles.
- (e) Street system.
 - [1] Each campground shall have improved streets to provide convenient access to all lots and other important facilities within the campground.
 - [2] The street system shall be so designed to permit safe and convenient vehicular circulation within the campground.
 - [3] All streets shall have the following minimum width:

- [a] One-way traffic movement: 12 feet.
- [b] Two-way traffic movement: 20 feet.
- [4] Except in cases of emergency, no parking shall be allowed on such streets.
- [5] Adequate access shall be provided for each lot. Such access shall have a minimum width of 10 feet.
- (f) Utilities. All campground sewer and water facilities shall comply with the regulations of the Genesee County Department of Health and the New York State Department of Environmental Conservation. All other utilities shall comply with the New York State Uniform Code and the authority having jurisdiction.
- (g) Open space. Any campground designed for 20 or more sites shall provide a common open area suitable for recreation and play purposes. Such open space shall be conveniently located. The open space area shall be at least 10 percent of the gross land area of the campground but not less than one acre.
- (h) Improvements. Lighting, landscaping and buffer areas may be required by the Planning Board and shall be in keeping with surrounding development, the unique features of the site and the health and safety of occupants of the campground.
- (i) Management. Every campground shall be managed from an office located on the premises. The management shall maintain the campground in a clean and attractive manner and take reasonable steps to protect the health, safety and comfort of all persons accommodated therein.
- (j) Removal of wheels. Unless written consent is received from the Planning Board, it shall be unlawful to remove wheels from any recreational vehicle or otherwise permanently affix such recreational vehicle to the ground. Such removal shall be grounds for the revocation of the special use permit for such campground.
- (k) Fence. The Planning Board is authorized to require that some or all of the campground be fenced if circumstances warrant. The Planning Board shall decide what type of fencing is suitable.
- (l) Where dwellings on surrounding properties are located within 1,000 feet of the campground, it shall be the responsibility of the campground owner to maintain relative quiet during the hours of 10:00 p.m. to 7:00 a.m.
- (m) Campground special use permits.

- [1] Pursuant to § 235-63D, the Building Inspector shall inspect at least annually the operation of a campground to make sure it complies with provisions of this chapter and any and all conditions prescribed by the Planning Board when issuing the special use permit.
- [2] Before receiving a special use permit for a campground, the owner thereof shall make an adequate showing that the subject property complies with the provisions of this section.

§ 235-44. Home occupations.

- A. Purpose. The purpose of this provision is to allow for home occupations which are compatible with the neighborhoods in which they are located. Some home occupations by the extent of the investment required therefor and/or the nature of their operation have a tendency of increasing beyond the scope of a home occupation and thereby violating the use provisions of the zoning district in which such home occupation exists and adversely affecting surrounding property values.
- B. Process. An applicant shall apply to the Building Inspector for a determination as to whether his/her proposed home occupation is a Category I or II. Home occupations classified as Home Occupation I are considered permitted uses in the AG, AG-R and C Districts and may be issued a zoning permit by the Building Inspector. In the R District a Home Occupation I shall require the issuance of a special use permit by the Planning Board. Home Occupation II uses shall require the issuance of a special use permit in all districts where home occupations are allowed. Expansion of an existing Home Occupation I use to a Home Occupation II shall require the issuance of a special use permit by the Planning Board.
- C. Conditions. The following conditions are intended to ensure both that the home occupation is secondary to the residential use and that it is compatible with the residential character of the neighborhood:
 - (1) The home occupation shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
 - (2) No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.
 - (3) Nonresident family members shall not be employed in any Home Occupation I and no more than two nonresident persons shall be employed actually on site at the residence in a Home Occupation II.
 - (4) Not more than 25% of the floor area of the principal dwelling may be used for the home occupation, and the total floor area to be

utilized (not including accessory buildings and structures) shall not exceed 500 square feet.

- (5) There shall be no exterior advertising of the home occupation, except for a sign no larger than four square feet for which a permit has been obtained pursuant to the provisions of § 235-39C(1).
- (6) There shall be no exterior storage of materials used in the home occupation.
- (7) No home occupation shall result in:
 - (a) Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.
 - (b) Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or groundwater.
 - (c) Radiation or interference with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.
- (8) Adequate parking shall be provided as set forth in § 235-34. Such off-street parking shall be located not less than 10 feet from any property line.
- (9) No residential lot shall contain more than one home occupation. No residential lot shall contain a home occupation together with a skilled trade shop or any other nonresidential use requiring a special use permit.

§ 235-45. Roadside stands.

- A. Roadside stands may be located in any district.
- B. Goods sold shall primarily be home grown.
- C. There shall be a front yard setback of at least 20 feet and side yard setbacks of at least 25 feet each.
- D. Stands shall be of a portable nature and must be removed when not in use.
- E. Off-street parking shall be provided for a minimum of three vehicles with additional provisions if traffic warrants.
- F. Two signs of not more than 12 square feet each may be permitted, located not less than 10 feet from a lot line.

§ 235-46. Animal waste storage facilities.

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation District (GCSWCD) or United States Natural Resources Conservation Service (NRCS) for its review and determination as to acceptability. If a proposal is acceptable to GCSWCD or NRCS then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

§ 235-47. Skilled trade shop.

The purpose of this provision is to allow for residents within the AG-R District who are self-employed skilled trades persons to operate a shop for fabrication of fixtures, cabinets, etc., for installation by them at their various job sites. It is recognized that operation of such shops without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

- A. Process. An applicant may apply to the Planning Board for a special use permit to establish a skilled trade shop in the AG-R District.
- B. Conditions. The following conditions are intended to ensure both that the skilled trade shop is secondary to the residential use and that it is compatible with the residential character of the neighborhood:
 - (1) The skilled trade shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
 - (2) No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.
 - (3) No more than one nonresident person shall be employed in the skilled trade shop.
 - (4) Not more than 25% of the floor area (with a maximum of 500 square feet) of the principal dwelling may be used for the skilled trade shop. Occupation of accessory buildings to be utilized shall not exceed 2,000 square feet.
 - (5) There shall be no exterior advertising of the skilled trade shop, except for a sign no larger than four square feet for which a permit has been obtained pursuant to the provisions of § 235-39C(1).
 - (6) There shall be no exterior storage of materials used or products/ fixtures made in the skilled trade shop.
 - (7) No skilled trade shop shall result in:
 - (a) Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries

of the immediate site of the building in which such use is conducted.

- (b) Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or groundwater.
 - (c) Radiation or interference with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.
- (8) Adequate parking shall be provided as set forth in § 235-34. Such off-street parking shall be located not less than 10 feet from any property line.
- (9) No residential lot shall contain more than one skilled trade shop. No residential lot shall contain a skilled trade shop together with a home occupation or any other nonresidential use requiring a special use permit.
- (10) The Planning Board may require as a condition of the special use permit that the applicant install and maintain a buffer strip and/or fencing between the proposed skilled trade shop and neighboring residential uses if the Board determines such condition is a reasonable mitigation factor.

§ 235-47.1. Auction houses. [Added 2-20-2008 by L.L. No. 2-2008]

The Planning Board may approve a special use permit for an auction house in the AG/R and C Districts, provided that the following requirements are met, in addition to the standards and procedures for special use permits included in § 235-63.

- A. The site must be located on a New York State highway that can handle the anticipated traffic volume before and after auctions.
- B. The use as an auction house shall not be detrimental to adjacent properties when considering traffic, safety, parking, noise, light, or glare.
- C. Outdoor lighting shall be shielded so as to prevent light from directly hitting adjacent property or any public right-of-way. The site plan shall indicate the style and location of all outdoor lighting.
- D. There shall be no outdoor storage permitted except for during the three days before and after an advertised auction.

§ 235-48. Ponds.

The purpose of this section is to provide for the construction of ponds that are adequately designed and located so as to not pose adverse impacts upon

surrounding land uses. Farm water supply, conservancy, stormwater/erosion control and fire protection or other ponds may be located within the AG, AG-R, C, I and IP Districts upon issuance of a special use permit provided the following criteria are met:

- A. The proposed pond is located not less than 100 feet from any property line.
- B. The proposed pond design is considered acceptable by the Genesee County Soil and Water Conservation District.
- C. The pond is constructed in conformance with the design specifications in Subsection B of this section, including any reseeding or revegetation requirements.

§ 235-49. Adult uses.

- A. Purposes. The Town of Batavia has conducted a study of the potential secondary affects posed by adult businesses. This study, along with other similar studies, has shown that buildings and establishments operated as adult uses pose secondary effects that are detrimental and harmful to the health, safety, morals and general welfare of a community. In order to promote the health, safety, morals and general welfare of the residents of the Town of Batavia, this section is intended to control those secondary effects of adult businesses by restricting adult uses to nonresidential areas of the town and otherwise regulating their operation.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ADULT ESTABLISHMENT — A commercial establishment, including but not limited to an adult bookstore, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:

(1) ADULT BOOKSTORE:

- (a) A bookstore which has as a substantial portion (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined any one or more of the following:

- [1] Books, magazines, periodicals or other printed matter which is characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or
- [2] Photographs, films, motion pictures, videocassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

- (b) For the purpose of determining whether a substantial portion (equal to or greater than 25%) of an establishment includes an adult bookstore, the following factors shall be considered:
 - [1] The amount of floor area and cellar space accessible to customers and allocated to such uses; and
 - [2] The amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment.
- (c) For the purpose of determining whether a bookstore has a substantial portion (equal to or greater than 25%) of its stock in materials defined in Subsection (1)(a)[1] or [2] hereof, the following factors shall be considered:
 - [1] The amount of stock accessible to customers as compared to the total stock accessible to customers in the establishment;
 - [2] The amount of floor area and cellar space accessible to customers containing such stock; and
 - [3] The amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.
- (2) ADULT EATING OR DRINKING ESTABLISHMENT — An eating or drinking establishment which regularly features any one or more of the following:
 - (a) Live performances which are characterized by an emphasis upon the depiction or description of specified anatomical areas or specified sexual activities; or
 - (b) Films, motion pictures, videocassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; and
 - (c) Employees who as part of their employment, regularly expose to patrons specified anatomical areas, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.
- (3) ADULT THEATER:
 - (a) A theater which regularly features one or more of the following:

- [1] Films, motion pictures, videocassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or
 - [2] Live performances which are characterized by an emphasis upon the depiction or description of specified anatomical areas or specified sexual activities, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.
- (b) "Adult theater" shall include commercial establishments where such materials or performances are viewed from individual enclosures.
- (4) **ADULT MASSAGE ESTABLISHMENT** — Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist, or barbershops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.
- (5) **NUDE MODEL STUDIO** — Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the laws of New York State.
- (6) **OTHER ADULT COMMERCIAL ESTABLISHMENT** — A facility, other than an adult bookstore, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio, commercial studio, or business or trade school, which features employees who, as part of their employment, regularly expose to patrons specified anatomical areas and which is not customarily open to the general public during such features because it excludes minors by reason of age.

PERSON — A person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

SPECIFIED ANATOMICAL AREAS —

- (1) Less than completely and opaquely concealed human genitals, pubic region, human buttock, anus or female breast below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

SPECIFIED SEXUAL ACTIVITIES — For the purpose of defining adult establishments:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

SUBSTANTIAL — An amount equal to or greater than 25% of the total.

- C. Restrictions affecting adult uses. Adult uses, including but not limited to an adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, and adult entertainment cabaret, shall be permitted subject to the following restrictions (all distance measurements are from respective property and/or district lines):
 - (1) No such adult uses shall be within 200 feet of another existing adult use.
 - (2) No such adult use shall be located within 100 feet of the boundaries of any Agricultural-Residential (AG-R), Agricultural (A), Residential (R) or Mobile Home Park (MHP) Zoning District or within 500 feet of any existing residential use located on another lot.
 - (3) No such adult use shall be located within 1,000 feet of a preexisting school or church, day-care center, park, playground or community center.
 - (4) No such adult use shall be located in any zoning district except the Industrial District.
- D. Prohibition regarding public observation. No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

§ 235-50. Driveway entrances and exits onto highways.²⁵

No person, firm or corporation shall, after the effective date of this chapter, cut, construct or locate any driveway entrance or exit into a highway in the Town of Batavia without having first received written permission to do so from the appropriate Highway Department or authority having jurisdiction, namely the New York State Department of Transportation, Genesee County Highway Department, Town of Batavia Highway Department, Town of Batavia Planning Board or Town Board. Three copies of such written permission shall be submitted, one to each of the following: Town of Batavia Highway Superintendent, Town Building Inspector, and Town Clerk. If the proposed driveway is in a designated wetland, then the appropriate Department of Environmental Conservation permits shall also be required and three copies provided as above.

§ 235-51. ECHO unit.

- A. The purpose and intent of this provision is to allow by special use permit the installation of elderly cottage housing opportunity (ECHO) units on the same lots with single-family dwelling units in the Agricultural-Residential (AG-R) District. The reasoning behind providing this type of housing option is to:
- (1) Foster and support extended families;
 - (2) Permit adult children to provide small, temporary homes for their aging parents who are in need of support, while maintaining as much of the independence of the two generations as possible;
 - (3) Reduce the degree to which elderly homeowners have to choose between increasing isolation in their homes and institutionalization in nursing homes;
 - (4) Encourage the continued development and use of small homes specifically designed and built for elderly people which include such features as easy adaptation to handicapped accessibility, safe exit features, and fire-resistant construction;
 - (5) Permit ECHO housing in a manner that protects the property values and character of neighborhoods by ensuring that the units are compatible with the neighborhood and are easily removable; and
 - (6) Enable the elderly living in homes too large for their needs to move to more appropriate housing and thereby make larger homes available to house larger families.
- B. Application process. Application for a special permit for an ECHO unit shall be made to the Building Inspector in accordance with the

25. Editor's Note: See also Ch. 127, Highways; Vehicles and Traffic, Art. IV.

standards and procedures set forth in § 235-63, subject to the following additional provisions:

- (1) These special use permits do not run with the land inasmuch as they represent the nonpermanent (temporary) placement of an ECHO unit for a period of time which is determined by the actual occupancy of the ECHO unit and the principal use (single-family dwelling).
- (2) The applicant must certify that he or she understands that the permit is issued solely for the use of the named occupants; has made plans for the removal of the unit; agrees to provide the annual recertification required by this section; and recognizes the possible sanctions for failure to promptly remove the ECHO unit upon termination or revocation of the special use permit.
- (3) Failure to remain in compliance with the requirements set forth in this section may result in revocation of the special use permit.

C. Occupancy.

- (1) At the time the special permit is issued, at least one intended occupant of the ECHO unit must be at least 60 years of age, and any other occupant must be at least 55 years of age. Subsequently, if the occupant who is 60 no longer occupies the ECHO unit, and all other conditions continue to apply, the special permit may be continued for the other occupant, even if the person is less than 60 years of age.
- (2) At least one occupant of the principal dwelling and at least one occupant of the ECHO unit must be related by blood, marriage, or adoption.
- (3) In no case shall there be more than two occupants of an ECHO unit.
- (4) The special use permit shall be issued to the owner of the principal dwelling and lot and shall specify the occupants of the ECHO unit by name.

D. Construction and installation. The unit shall be constructed and installed in accordance with Chapter B of the New York State Uniform Fire Prevention and Building Code, the New York State Energy Code and any other applicable laws, ordinances and/or regulations of the Town of Batavia. No additional buildings or structures shall be allowed on a lot which would hinder the removal of an ECHO unit. The applicant shall provide the necessary documentation from the Genesee County Health Department that the water supply and wastewater treatment systems are adequate for both the principal dwelling and ECHO unit.

E. Size of unit. The minimum floor area of an ECHO unit shall be 300 square feet, the maximum floor area 1,000 square feet, and the maximum height 16 feet or one story.

- F. Placement of an ECHO unit. The ECHO unit shall only be placed in a side or rear yard and shall comply with all minimum yard setback and maximum lot coverage requirements (see Zoning Schedule A).²⁶
- G. Lot size. An ECHO unit shall only be installed on a lot which meets the current minimum lot size for the AG-R District; installation on undersized preexisting lots shall not be allowed (see Zoning Schedule A).
- H. Parking. In addition to the parking required for the principal dwelling, one parking space per additional vehicle (minimum of one additional space) shall be required together with the provision of a turnaround as required in § 235-34.
- I. Number of dwelling units per lot. ECHO units shall only be placed on a lot with a single-family dwelling, limited to one ECHO unit per lot.
- J. Removal. The ECHO unit shall be removed within 90 days of the date its occupancy ceases to comply with the requirements of this section [i.e., death or permanent change of residence of the original occupant(s) of the ECHO unit]. Once the ECHO unit is removed, the site shall be restored so that no visible evidence remains of the ECHO unit and its accessory elements. If the ECHO unit has not been removed by the end of this ninety-day period, in addition to the existing penalties of this chapter, additional actions may be taken to ensure removal, including removal and salvage by the town with a lien imposed to defray any costs incurred. The Planning Board, upon a showing of extraordinary circumstances making removal of the ECHO unit impossible during the ninety-day grace period, may grant one extension of up to 90 days for removal of the ECHO unit.
- K. Annual recertification. Each year, two weeks prior to the anniversary date of the original issuance of a special use permit for an ECHO unit, the property owner shall provide certification to the Building Inspector that all the terms, conditions and requirements associated with said special use permit are being fully complied with.

§ 235-52. Commercial communication towers.

No commercial communication tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

- A. Shared use of existing towers and/or structures. At all times, shared use of existing towers and/or structures (i.e., a water tower, building, etc.) shall be preferred to the construction of new commercial communication towers. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use

26. Editor's Note: Zoning Schedule A is included at the end of this chapter.

of existing facilities as an alternative to a proposed new commercial communication tower.

- (1) The installation of a commercial communications antenna(s) on an existing structure located within the AG, AG-R and C Districts shall be considered a permitted use not subject to site plan review, provided the following criteria are met:
 - (a) The existing structure is not increased in height or otherwise modified so as to change its visual appearance;
 - (b) The antenna(s) does not extend above such structure more than 10 feet; and
 - (c) The applicant provides the necessary documentation to the Building Inspector to verify the existing structure and proposed antenna(s) installation would comply with the New York State Uniform Fire Prevention and Building Code.
- (2) An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.

B. New or altered towers and/or structures.

- (1) The Planning Board may, at its sole discretion, consider a new or altered (including towers or structures which are modified, reconstructed or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers/structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.
- (2) The applicant shall be required to submit a site plan in accordance with § 235-63 (site plan review provisions need to be added) for all commercial communication towers that are proposed to be erected, moved, reconstructed, changed or altered. Site plan review will also be required in those instances when antennas are being added to existing structures not in compliance with the criteria set forth in Subsection A of this section. In addition to § 235-63, the site plan shall show all existing and proposed structures and improvements, including roads, buildings, tower(s), guy wire anchors, parking and landscaping, and shall include grading plans for new facilities and roads.

C. Supporting documentation. The Planning Board shall require that the site plan include a completed visual environmental assessment form (Visual EAF - SEQ) and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or

antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this subsection and Subsections J and K of this section.

- D. Shared usage of site with new tower. Where shared usage of an existing tower/structure is found to be impractical, as determined by the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower/structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection B(1) and (2) of this section. Any new commercial communication tower approved for an existing tower/structure site shall be subject to the standards of Subsections F through N of this section.
- E. New tower at a new location. The Planning Board may consider a new commercial communication tower on a site not previously developed with an existing tower/structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined by the sole discretion of the Planning Board, and submits a report as described in Subsection B of this section.
- F. Future shared usage of new towers. The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived, in the sole discretion of the Planning Board, provided that the applicant demonstrates that provision of future shared usage of the facility is not feasible and is an unnecessary burden, based upon:
 - (1) The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
 - (2) The kind of tower site and structure proposed;
 - (3) The number of existing and potential licenses without tower spaces;
 - (4) Available spaces on existing and approved towers; and
 - (5) Potential adverse visual impact by a tower designed for shared usage.
- G. Setbacks for new towers. All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient

to contain on site substantially all icefall or debris from tower failure and preserve the privacy of adjoining residential properties.

- (1) All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this subsection may be increased at the discretion of the Planning Board or it may be decreased in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Town Engineer and the Planning Board.
 - (2) Accessory structures must comply with the minimum setback requirements in the underlying district.
- H. Visual impact assessment. The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to the relevant guidelines and criteria below that are determined, by the sole discretion of the Planning Board, at the presubmission conference to be appropriate:
- (1) Assessment of before and after views from key viewpoints both inside and outside of the town, including from state highways and other major roads, from state and local parks and other public lands, from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers.
 - (2) Assessment of alternative tower designs and color schemes, as described in Subsection I below.
 - (3) Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
- I. New tower design. Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which does not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:

- (1) Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons and other hazard-avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.
 - (2) Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennas).
 - (3) The Planning Board may request a review of the application by the Town Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.
 - (4) Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
 - (5) No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.
 - (6) The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.
 - (7) Space on communication towers shall be made available for public safety purposes (i.e., Genesee County Public Safety Radio System) at no cost to public safety agencies.
- J. Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to approval of the special permit. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
- K. Screening. Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required: for all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure

plant survival. Plant height in these cases shall include the height of any berm.

- L. Access. Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- M. Parking. Parking shall be provided in accordance with § 235-34. No parking space shall be located in any required yard.
- N. Fencing. Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the Planning Board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.
- O. Maintenance and/or performance bond. Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.
- P. Removal of obsolete/unused facilities. Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication tower facilities shall take place within 12 months of cessation of use. The applicant shall submit an executed removal agreement with his application to ensure compliance with this requirement.

§ 235-53. Landscaping contractor's yard.

The purpose of this provision is to allow for operation of storage yards for landscaping contractors within the AG-R District. It is recognized that operation of such business is somewhat similar in operation to agricultural uses and that without adequate regulations and conditions it may pose adverse impacts upon neighboring residential uses.

- A. Process. An applicant may apply to the Planning Board for a special use permit to establish a landscaping contractor's yard in an AG-R District.
- B. Conditions. The following conditions are intended to ensure the landscaping contractor's yard is compatible with the agricultural and residential character of the AG-R District:
- (1) The landscaping contractor's yard shall comply with all the minimum required yard setbacks for the AG-R District by maintaining such minimum yard setback requirements as buffer areas in which no storage of equipment, vehicles, materials (rock, stone, bricks, fencing, fixtures, etc.), tools and other items related to his/her business is allowed.
 - (2) No direct retail sales shall be permitted on site.
 - (3) There shall be no exterior advertising of the landscaping contractor's yard, except for a sign no larger than four square feet for which a permit has been obtained pursuant to the provisions of § 235-39C(1).
 - (4) The Planning Board, through site plan review, shall determine the location and extent of storage of equipment, vehicles, materials (rock, stone, bricks, fencing, fixtures, etc.), tools and other items related to the business.
 - (5) No landscaping contractor's yard shall result in:
 - (a) Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.
 - (b) Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or groundwater.
 - (6) Adequate parking shall be provided as set forth in § 235-34. Such off-street parking shall be located not less than 10 feet from any property line.
 - (7) The Planning Board may require as a condition of the special use permit that the applicant install and maintain a buffer strip and/or fencing between the proposed landscaping contractor's yard and neighboring residential uses if the Board determines such condition is a reasonable mitigation factor.

§ 235-53.1. Solar energy systems. [Added 11-18-2015 by L.L. No. 6-2015]

- A. Purpose. The purpose of this section is to provide requirements for and limitations on the installation and use of solar energy systems and to

provide the opportunity to utilize solar energy systems and equipment. This section does not repeal, annul, impair, or interfere with any existing ordinance or local law.

B. Intent. The Town of Batavia intends to accommodate the use of solar energy systems to provide a cleaner energy source. Solar energy is a renewable and nonpolluting energy resource that can prevent fossil fuel emissions and reduce a municipality's demand for energy produced by other methods.

C. Definitions. As used in this section, the following terms shall have meanings as indicated:

SETBACK — The distance from a front, side or rear lot line to the portion of that lot where a solar energy system is installed. No solar energy systems shall be permitted on the front-facing side of any building or within the setbacks required by the applicable zoning district.

SOLAR ENERGY SYSTEM — A system that uses photovoltaic equipment to convert solar energy into electricity. Examples of solar energy systems include, but are not limited to, flush-mounted solar panels installed on the roof of a building and freestanding or ground-mounted solar panels supported by posts fixed to the ground and not attached to an existing building.

SOLAR FARM — An area of land used primarily for the purpose of producing electricity by means of a solar energy system.

D. Applicability.

(1) The requirements of this section shall apply to all solar energy systems modified or installed after the effective date of this section.

(2) All solar energy systems shall be designed, erected and installed in accordance with all applicable codes and regulations, as referenced in the New York State Uniform Code, the New York State Property Maintenance Code and the Code of the Town of Batavia.

E. Where allowed. Solar energy systems and solar farms may be located in any zoning district, but freestanding or ground-mounted solar energy systems, including solar farms, shall require a special use permit in all zoning districts, pursuant to all criteria set forth in § 235-63D of the Code of the Town of Batavia.

F. Multiple uses on one lot. Construction and installation of a solar energy system or solar farm shall not be considered as creating more than one principal building and/or one principal use on any one lot in Agricultural (AG),²⁷ Agricultural-Residential (AG-R), and Residential (R) Districts in violation of § 235-12 of the Code of the Town of Batavia.

27. Editor's Note: The Agricultural District (AG) was repealed 2-20-2008 by L.L. No. 2-2008.

- G. Compliance. It is unlawful for any person to construct, install, maintain, modify or operate a solar energy system or solar farm that is not in compliance with this chapter or with any conditions contained in a special use or zoning permit issued pursuant to this chapter.
- H. Permits required.
- (1) Zoning permit. A zoning permit is required for all solar energy systems prior to installation and construction within the Town of Batavia.
 - (2) Building permit. A building permit is required for buildings or structures associated with solar energy systems.
- I. Special use permit considerations. In addition to those criteria set forth in § 235-63D of the Code of the Town of Batavia, the Planning Board shall consider the following factors when setting conditions upon a special use permit issued for a solar energy system within the Town of Batavia:
- (1) Ingress and egress.
 - (2) Size and location of panels.
 - (3) Nature of land use on existing, adjacent and nearby properties.
 - (4) Location of other solar energy systems in the surrounding area.
 - (5) Topography.
 - (6) Proximity to residential structures.
 - (7) Design characteristics.
 - (8) Possible adverse effects on wildlife.
 - (9) Glare and reflectivity issues.
 - (10) Any other factors that are relevant to the proposed system.
- J. Design standards.
- (1) Height. Systems, equipment and structures shall not exceed the maximum height allowed in the applicable zoning district as set forth in Chapter 235, Attachment 1, Schedule A, of the Code of the Town of Batavia.²⁸
 - (2) Size. The size of a solar energy system or solar farm shall not exceed 20 acres.
 - (3) Setbacks. A solar farm shall comply with the setback requirements of the zoning district in which it is located.

28. Editor's Note: Schedule A is included as an attachment to this chapter.

- (4) Distribution lines. New electricity distribution lines may be located above or below the ground.
 - (5) Approval. All components must have a UL listing or equivalent.
 - (6) Security. A security fence shall surround the perimeter of a solar farm.
 - (7) Accessibility. The site of a solar energy system shall be accessible for all emergency service vehicles.
 - (8) Signage. All signage shall be prohibited on a solar farm or its fencing except as authorized in a special use permit.
- K. Abandonment. It is the responsibility of the property owner to remove all obsolete or unused solar energy systems or solar farms within 12 months of cessation of operations. Reusable components are to be recycled whenever feasible.
- L. Decommissioning bond. Prior to issuance of a special use permit for a solar energy system or solar farm, the Planning Board shall determine if a bond must be required to be issued in the name of the Town of Batavia in an amount specified by the Planning Board after consultation with the Town Attorney and Town Engineer, to be used by the Town for remediation in the event that all obsolete or unused solar energy systems or solar farm components are not removed within 12 months of the cessation of operations as required herein.
- M. Penalties. Any person, firm, corporation or entity which may violate any provisions of this chapter shall be guilty of a violation and, upon conviction thereof, shall be subject to the penalties set forth in § 235-65 of the Code of the Town of Batavia Zoning Ordinance. Any person, firm, corporation or entity which may violate any provisions of this chapter shall become liable to the Town for any actual expense or loss or damage occasioned by the Town by reason of such violation; in addition to any actual losses or damages sustained by the Town, such expense shall also include, but not be limited to, statutory costs, disbursements and reasonable attorney's fees in the event that an action is commenced to enforce this chapter. The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceedings to prevent a violation of this chapter or to restrain or enjoin the use or occupancy of premises or any part thereof in violation of this chapter.

ARTICLE VI
Mobile Homes and Mobile Home Parks

§ 235-54. Mobile homes.

- A. Permanent residence. A mobile home may be located on an individual lot in the AG and AG-R Districts as a one-family dwelling provided the following criteria are met:
- (1) The mobile home unit shall comply with the current construction and safety standards set forth by the United States Department of Housing and Urban Development and have a minimum habitable floor area of 720 square feet, exclusive of any porches, additions or other extensions.
 - (2) Placement of the mobile home must comply with the minimum dimensional and area requirements for a one-family dwelling specified in Zoning Schedule A²⁹ for the AG-R District and Article III, including §§ 235-12, 235-13, 235-17, 235-18 and 235-19.
 - (3) Mobile homes shall be installed upon a permanent foundation that extends a minimum of 42 inches below finished grade to the underside of the floor. The foundations shall have either a concrete footer or a trenched concrete wall. The bottom of all excavations shall be on virgin, undisturbed earth and shall be inspected by the Code Enforcement Officer prior to placement of the concrete.
 - (4) The water supply system and sewage disposal system shall be approved by the Genesee County Health Department.
 - (5) Additions, alterations and extensions to such mobile homes shall comply with the New York State Fire Uniform Prevention and Building Code and shall be placed on a permanent foundation.
- B. Temporary residence.
- (1) Restrictions.
 - (a) A mobile home may be temporarily occupied as a one-family dwelling on any lot in the R, AG-R or AG District for a maximum period of two years upon the issuance of a temporary use permit if the owner of a vacant lot has been issued an active, valid zoning permit by the Town of Batavia for the construction of a private dwelling on the lot in question. The placement of such temporary mobile home shall comply with all the dimensional and area requirements of the respective zoning district as set forth in Zoning Schedule A and Article III, other than § 235-18.

- (b) Where the existing dwelling on the lot has been damaged in such a manner as to make it uninhabitable, the Building Inspector may grant a nonrenewable emergency housing permit for a period of time not exceeding one year. A temporary use permit is required for a time period exceeding one year, but such temporary use permit and original nonrenewable emergency housing permit combined cannot exceed a total time period of two years.
- (2) Criteria. Mobile homes occupied as temporary dwellings shall meet the following criteria:
- (a) The mobile home units shall comply with the current construction and safety standards set forth by the United States Department of Housing and Urban Development and have a minimum habitable floor area of 600 square feet, exclusive of any porches, additions or other extensions.
 - (b) Placement of the mobile home must comply with the minimum area requirements for a one-family dwelling in that district, including but not limited to lot size and width, yard areas, parking and finished grade.
 - (c) Mobile homes shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code.
 - (d) The water supply system and sewage disposal system for the mobile home shall be approved by the Genesee County Health Department.
 - (e) No extensions of the time period (two years) shall be granted.
 - (f) The mobile home must be occupied by the owner of the lot upon which it is situated.
 - (g) The owner shall remove the mobile home within 30 days of the issuance of a certificate of occupancy for the permanent dwelling.
 - (h) There shall be no additions, alterations and extensions to mobile homes used as a temporary residence.

§ 235-55. Mobile home parks.

- A. New mobile home parks. A new mobile home park may be located, or an existing one modified, in the Mobile Home Park District upon the issuance of a special use permit as provided for in § 235-63, provided the proposed mobile home park meets the requirements and conditions set forth in Chapter 150, Mobile Home Parks, of this Code.
- B. Modification of existing mobile home parks outside the Mobile Home Park District. Existing mobile home parks outside of the MHP District

may be modified in compliance with Chapter 150, Mobile Home Parks, of this Code.

ARTICLE VII
Administration and Enforcement

§ 235-56. Enforcement officers.

The responsibility of administering and enforcing the provisions of this chapter is hereby conferred upon the Building Inspector and his/her duly authorized assistants, who shall have the powers conferred upon him/her by this chapter, those as may be reasonably implied therefrom and those powers conferred upon him/her by other applicable laws. The Building Inspector and his/her duly authorized assistants shall be appointed by the Town Board and receive such compensation as determined by the Town Board. All references to duties and/or authority of the Building Inspector shall be deemed to also include any duly authorized assistants.

§ 235-57. Duties of Building Inspector.

- A. Applications and permits. It shall be the duty of the Building Inspector, or his/her duly authorized assistants, to process applications and issue the permits required by this chapter.
- B. Inspection and review. It shall also be the duty of the Building Inspector, or his/her duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected so as to determine whether or not they are in violation of the provisions of this chapter. He/she shall have the right to enter any building or premises with the consent of the owner, or by a court order, during reasonable hours in the course of his/her duties.
- C. Violations and written orders. When the Building Inspector determines that any plans, buildings or premises are in violation of the provisions of this chapter, he/she shall issue a written notice of violation to the owner and/or other responsible party directing that said violation be remedied. Said written notice shall specify the nature of the violation found to exist, the remedy ordered, the time permitted for such remedial action, the penalties and remedies which may be invoked by the town and the violator's rights of appeal.
- D. Revocation of certificate of compliance. On service of the above-described notice of violation, the certificate of compliance for such building or use shall be held null and void. A new certificate of compliance shall be required for any further use of such building or premises.
- E. Records. The Building Inspector shall maintain a permanent record of all matters considered and all action taken by him/her. Such records shall form a part of the records of his/her office and shall be available for the use of the Town Board and other officials of the town. The records to be maintained shall include at least the following:

- (1) Application file. A separate, permanent file shall be established for each application for a permit required by this chapter at the time said application is filed. Such file shall contain one signed copy of the application and all supporting documents and plans, notations regarding pertinent dates and fees, etc., one copy of any resolution and/or decision of the Planning Board and/or Board of Appeals adopted in connection with the application, and the date the permit applied for was issued or denied by the Building Inspector, together with a copy of such permit or denial.
- (2) Monthly report. The Building Inspector shall submit a monthly written report for the Town Board. Said report shall cite all actions taken by the Building Inspector, including all referrals made by him/her, all permits and certificates issued and denied, all complaints of violations received, all violations found by him/her, and any action taken by him/her in connection with each such violation. A copy of this monthly report shall also be provided by the Building Inspector to the Tax Assessor, Planning Board and Board of Appeals.

§ 235-58. Certificates and permits.

The following certificates and permits are hereby established for the equitable enforcement and administration of the provisions of this chapter:

- A. Zoning permit. The Building Inspector is hereby empowered to issue a zoning permit for any plans involving the construction or alteration of a building or structure or part of any building or structure, including signs, or the change in use of any land, building or structure or part thereof, where he/she determines that such plans comply with the provisions of this chapter. A zoning permit is not a building permit. An applicant may need both permits.
- B. Temporary use permit. Upon written direction of the Planning Board, the Building Inspector is hereby empowered to issue a temporary use permit pursuant to §§ 235-54B and 235-63B(4). Except as otherwise provided in § 235-54B, a temporary use permit shall only be effective for a period not exceeding 12 months, and such permit may be extended by the Planning Board for an additional consecutive period not exceeding six months.
- C. Emergency housing permit. The Building Inspector is hereby empowered to issue a nonrenewable emergency housing permit when a dwelling unit is rendered uninhabitable (e.g., fire, flooding, etc.), for a period not exceeding one year in conformance with § 235-54B.
- D. Special use permit. The Building Inspector is hereby empowered to issue a special use permit when granted by the Planning Board as provided for in § 235-63.

- E. Certificate of compliance. The Building Inspector is hereby empowered to issue a certificate of compliance certifying that all provisions of this chapter have been complied with in respect to the location and use of the building, structure or premises in question.

§ 235-59. Application for zoning permit.

- A. Application. Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be affected, the size and location of all buildings or structures to be constructed, altered or extended as well as unaffected structures that shall remain, the intended use of each building or structure, the exact location of all utility and other easements and rights-of-way, and any other information with regard to the lot affected and neighboring lots as may be necessary for compliance with requirements of this chapter. The applicant is solely responsible for the accuracy of all information, data and site plans submitted pursuant to this chapter. Four copies of the application, together with the layout sketch, shall be submitted. The Building Inspector shall carefully consider the application, layout sketch and any supporting documents for compliance with this chapter and either issue or deny the zoning permit in a timely manner.
- B. Issuance of zoning permit. The Building Inspector shall issue a zoning permit only after the site plan, if required, has been approved by the Planning Board and any required variances and/or special use permits have been obtained. **[Amended 2-19-2003]**
- C. Installation of foundation. The Building Inspector shall be notified when the site is prepared for installation of the foundation for any building or structure and shall inspect the site to check the proposed location thereof.
- D. Completion of construction. A zoning permit shall expire if construction is not substantially completed within a period of one year from the date of said permit. The Building Inspector may issue a six-month extension for good cause shown. Only two such extensions shall be permitted.
- E. Location of permit. The zoning permit shall be located in a place readily visible to the public during the construction process.

§ 235-60. Fees.

Fees may be charged for the processing of applications for the various permits, amendments, and variances required and/or permitted by the provisions of this chapter, together with site plan review and planned unit developments. The fees shall be set by separate resolution of the Town Board and may be changed from time to time in the same manner.

§ 235-61. Certificate of compliance.

No land shall be used, occupied or changed in use and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of compliance has been issued by the Building Inspector in accordance with the provisions of this chapter.

§ 235-62. Zoning Board of Appeals.

- A. Organization. The Town Board shall appoint five regular members to the Zoning Board of Appeals in accordance with the provisions of § 267 of the Town Law, and two alternate member(s) as provided for by Local Law No. 1 of 2001, and shall designate the Chairperson thereof. In the absence of a Chairperson the Board of Appeals may designate a member to serve as Acting Chairperson. The term of office for regular members shall be governed by the applicable provisions of New York Town Law, and the term of office for the alternate member(s) shall be two years. The Chairperson of the Board of Appeals may designate an alternate member to substitute for a regular member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of a regular member. Such designation shall be entered into the minutes of the initial Board of Appeals meeting at which such substitution is made. All provisions of state law relating to Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any town requirements related to training, compensation and attendance, shall also apply to alternate members. **[Amended 4-18-2001]**
- B. Meetings, minutes and records. Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals 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. Filing requirements. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five business days and shall be a public record.
- D. Hearing appeals. The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the Building Inspector. The concurring vote of a majority of the entire Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector or to grant a use or area variance. In those instances where, due to the location of the affected property, a variance request is subject to review under General Municipal Law § 239-m, a majority plus one vote of the entire Zoning Board of Appeals is necessary to override a County Planning Board

recommendation of disapproval or approval with modification. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the town.

E. Time of appeal.

- (1) Such appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the Building Inspector by filing with said official and with the Town Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Building Inspector or Town Clerk. The cost of sending or publishing any notice relating to such appeal shall be borne by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.
- (2) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Building Inspector from whom the appeal is taken certifies to the Board of Appeals, after notice of appeal shall have been filed with the Building Inspector, that by reason of the facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Building Inspector from whom the appeal is taken and on due cause shown.

F. Hearing on appeal.

- (1) A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal. Such public hearing shall be advertised by publication in a paper of general circulation within the town of a notice of such hearing at least five days prior to the date thereof. When required by the provisions of § 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.
- (2) At least 30 days before the date of the public hearing, unless such time limit is waived by the Planning Board, the Secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing and all pertinent information for those appeals involving a use variance. The Planning Board shall inform the Zoning Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify no recommendation on the application.
- (3) At least 10 days before the date of the hearing, the Zoning Board of Appeals shall send, by regular mail, a copy of the notice of hearing to all Town of Batavia property owners whose property(ies) is located within 250 feet of the property which is the subject of the

application when the property involved is located in an R District, or within 500 feet when the involved property is located in any other district.

- G. Time of decision. The Zoning Board of Appeals shall decide upon an appeal within 62 days after the conduct of the public hearing. Prior to rendering its decision the Board shall first complete the SEQOR process. Said time of decision may be extended by mutual consent of the applicant and Zoning Board of Appeals.
- H. Filing of decision and notice. The decision of the Zoning Board of Appeals on an appeal shall be filed in the office of the Town Clerk within five business days after the day such decision is rendered and a copy thereof mailed to the applicant by regular mail.
- I. Permitted action by the Zoning Board of Appeals.
 - (1) Interpretations, requirements, decisions and determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made.
 - (2) Use variances.
 - (a) The Zoning Board of Appeals, on appeal from the decision or determination of the Building Inspector, shall have the power to grant use variances authorizing a use of land which otherwise would not be allowed or would be prohibited by this chapter.
 - (b) No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every use allowed under the zoning regulations for the particular district where the property is located:
 - [1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - [2] The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
 - [3] The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - [4] The alleged hardship has not been self-created.

- (c) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (3) Area variances.
- (a) The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the zoning enforcement officer, to grant area variances from the area or dimensional requirements of this chapter.
 - (b) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:
 - [1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - [2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - [3] Whether the requested area variance is substantial;
 - [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.
 - (c) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (4) Imposition of conditions. The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and

intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

- J. Solar access. Pursuant to Chapter 742 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this chapter.³⁰ Upon appeal pursuant to this section of this chapter the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor when hearing a request for an area variance.
- K. Rehearing. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reviewed may be made by any member of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

§ 235-63. Planning Board.

- A. Organization. The Town Board shall appoint seven members to the Planning Board in accordance with the provisions of § 271 of the Town Law and two alternate member(s) as provided for by Local Law No. 1 of 2001, and shall designate the Chairperson thereof. In the absence of a Chairperson the Planning Board may designate a member to serve as Acting Chairperson. The term of office for regular members shall be governed by the applicable provisions of New York Town Law, and the term of office for the alternate member(s) shall be two years. The Chairperson of the Planning Board may designate an alternate member to substitute for a regular member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of a regular member. Such designation shall be entered into the minutes of the initial Planning Board meeting at which such substitution is made. All provisions of state law relating to the Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any town requirements related to training, compensation and attendance, shall also apply to alternate members. **[Amended 4-18-2001]**
- B. Powers and duties:

30. Editor's Note: See § 263 of the Town Law.

- (1) Site plan review. Review of site plans in accordance with New York State Town Law § 274-a, as set forth in Subsection C of this section, for any application for a zoning permit other than those for single-family dwellings and their accessory uses and/or buildings unless otherwise required by this chapter (i.e., special use permit).
 - (2) Special use permits. Granting of special use permits in accordance with New York State Town Law § 274-b as set forth in this chapter based upon the criteria set forth in Subsection D of this section.
 - (3) Review use variances. Review use variance applications referred to the Planning Board in accordance with §§ 235-62F and at its discretion make a recommendation to the Zoning Board of Appeals.
 - (4) Temporary uses and structures. Grant permits for temporary uses and structures only as follows, provided a public hearing has been held which meets the same notice requirements as set forth in Subsection D(3) of this section:
 - (a) Except as otherwise provided in § 235-43A(1)(c), the Planning Board may direct the Building Inspector to issue a temporary use permit for a period of time not exceeding 12 months for incidental nonconforming uses and structures as follows:
 - [1] Temporary uses incidental to a construction project.
 - [2] Temporary real estate sales office incidental to a subdivision.
 - [3] Other similar temporary incidental uses which:
 - [a] Do not have a detrimental effect upon the lawful use of land and activities normally permitted in the district in question; and
 - [b] Contribute materially to the welfare and well-being of the town.
 - (b) Temporary use permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.
 - (c) Temporary use permits may be reissued only once for an additional consecutive period not exceeding six months.
- C. Site plan review. The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove a site plan in connection with any application for a zoning permit other than those for single-family dwellings and their accessory uses and/or buildings.
- (1) Notice and public hearing. **[Amended 2-19-2003]**

- (a) The Planning Board shall notify all property owners within the Town of Batavia who own land that is either contiguous or directly across from the involved property. Such notice shall be sent by regular mail, at least 10 days before the meeting. In those instances when the Planning Board holds an optional public hearing (See following subsection.) on a site plan review, this notice to contiguous property owners is not required.
 - (b) The Planning Board may, in its sole discretion, hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within 62 days from the date of the application for site plan review is received by it and public notice thereof shall be published in a newspaper of general circulation in the Town at least five days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least 10 days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property located within 250 feet of the property which is the subject of the application when the property involved is located in an R District, or 500 feet when the involved property is located in any other district, at least 10 days before the date of the hearing. When necessary under § 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.
- (2) Submission of site plan and data. The applicant shall submit to the Town Clerk 10 copies of a site plan and supporting data in a form satisfactory to the Planning Board, including but not limited to the following information presented in graphic form and accompanied by a written text:
- (a) Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, rights-of-way, zoning and ownership of surrounding property.
 - (b) Layout sketch showing proposed lots, blocks, building locations and land use area.
 - (c) Traffic circulation, parking and loading spaces, and pedestrian walks.
 - (d) Landscaping plans, including site grading, landscape design, open space and buffer zone.
 - (e) Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.

- (f) Preliminary engineering plans, street improvements, storm drainage, water supply and sanitary sewer facilities and fire protection.
 - (g) Engineering feasibility study of any anticipated problem which may arise from the proposed development, as required by the Planning Board.
 - (h) Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
 - (i) Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
 - (j) Description of proposed measures to control runoff and drainage from the site and, when required by the New York State Department of Environmental Conservation and/or the SEQR process, a stormwater management and erosion control plan.
 - (k) A description of the proposed generation, storage and/or disposal of hazardous materials and/or hazardous wastes on site, including estimates of amounts involved and provisions for transport, storage and environmental protection.
 - (l) Any other permits or applications made to other governmental agencies and any additional information requested by the Planning Board.
- (3) Site plan review criteria. The Town Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:
- (a) Harmonious relationship between proposed uses and existing adjacent uses.
 - (b) Maximum safety of vehicular circulation between the site and street, including emergency vehicle access.
 - (c) Adequacy of interior circulation, parking and loading facilities, with particular attention to pedestrian safety and emergency vehicle access.
 - (d) Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.
 - (e) Adequacy of municipal facilities to serve the proposal, including streets, water supply and wastewater treatment systems, stormwater control systems, and fire protection.

- (f) Protection of the aquifer and aquifer recharge areas that provide drinking water for both private and municipal wells. In evaluating the protection of the aquifer, aquifer recharge areas and the water supplies, the Planning Board shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to water quality that would result if the control measures failed.
- (4) Area variances. Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, applications may be made to the Zoning Board of Appeals for an area variance pursuant to New York State Town Law § 274-a, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.
- (5) Modifications and conditions.
 - (a) The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to ensure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning Board, final approval of the site plan shall be conditional upon satisfactory compliance by the applicant in making the changes or additions.
 - (b) The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.
- (6) Waiver of requirements. The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this chapter, may be exercised in the event any such requirements are found to be not requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.
- (7) Reservation of parkland on site plans containing residential units.
 - (a) Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Planning Board or this chapter, a park or parks suitably located for playground or other recreational purposes.
 - (b) Land for park, playground or other recreational purposes may not be required until the authorized Board has made a finding that a proper case exists for requiring that a park or parks be

suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth to which the particular site plan will contribute.

- (c) In the event the Planning Board makes a finding pursuant to Subsection C(7)(b) of this section that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the Board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors, including whether there is a need for additional facilities in the immediate neighborhood. Any moneys required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.
- (d) Notwithstanding the foregoing provisions of this Subsection C(7), if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to New York State Town Law § 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.
- (8) Performance bond or letter of credit as a condition of site plan approval. The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or letter of credit in such amount as the Planning Board determines to be in the public interest, to ensure that the proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.
- (9) Performance standards. In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may, in its discretion, reject any uses if it determines that insufficient evidence has been submitted to show compliance with these

environmental standards. However, final responsibility for compliance with all environmental laws and regulations lies with the applicant.

- (10) Decisions. The Planning Board shall decide any matter referred to it under this Subsection C within 62 days after the first regular monthly meeting of the Planning Board at least 10 days prior to which the site plan and all supporting data required by this article are submitted to the Town Clerk. Such time may be extended by mutual consent of the Planning Board and the developer. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where, due to the location of the affected property, a variance request is subject to review under General Municipal Law § 239-m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five business days after such decision is rendered and a copy mailed to the applicant by regular mail.
- (11) Changes and revisions. Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.
- (12) Revocation of permit. After a permit has been issued following site plan review based upon either approval or approval with modifications, a permit may be revoked by the authorizing Board which granted the approval for said permit in the event that the permit grantee deviates from or does not comply with the site plan exactly as approved or with any modifications or conditions established by the authorizing Board or in the event that, after full compliance has been achieved, the permit grantee thereafter deviates from or ceases to comply with the site plan exactly as approved or with any modifications or conditions established by the authorizing Board. The procedure for revocation of a permit shall be as follows: **[Added 9-19-2007 by L.L. No. 4-2007]**
 - (a) After notification in writing by the Zoning Enforcement Officer of alleged violations, the authorizing Board shall hold a public hearing to consider whether or not the permit grantee is fully compliant with the approved site plan or has violated any terms or conditions of said permit. The public hearing shall be held only after the permit grantee has been notified by the Zoning Enforcement Officer of said violations and has failed to correct said violations within the time period established by the Zoning Enforcement Officer, to be not less than 15 calendar days.
 - (b) At least 10 calendar days before said public hearing, a legal notice of said hearing shall be published in a newspaper of

general circulation in the Town of Batavia. Written notice of said hearing shall also be mailed to the permit grantee by certified mail, return receipt requested, and by regular first-class mail directed to the last known address of the permit grantee.

- D. Special use permit. The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those which are compatible with the general spirit of this chapter if certain standards and conditions are met. Each such use is listed in this chapter as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this chapter shall be followed, and the Planning Board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the public welfare. Also, the Building Inspector shall at least annually inspect the use of the property in question to ensure compliance with conditions which have been imposed by the Planning Board in issuing such special use permit and other applicable provisions of this chapter.
- (1) Application. Applications for special use permits shall be made in writing on the appropriate form obtained from the Building Inspector. Four copies of each application, including site plan, shall be submitted to the Building Inspector, who shall review the application for completeness prior to forwarding it to the Town Clerk and the Planning Board. One copy shall be retained by the Building Inspector. Such site plan shall show the location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this chapter.
 - (2) Area variance. Where a proposed special use permit contains one or more features which do not comply with this chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to § 274-b of Town Law without the necessity of a decision or determination of the Building Inspector.
 - (3) Notice and public hearing. The Planning Board shall hold a public hearing as part of the special use permit process. The public hearing shall be held at a time fixed within 62 days from the date the application for a special use permit is received by the Board, and public notice thereof shall be published in a newspaper of general circulation in the town at least five days prior to the date of the hearing. At least 10 days before such hearing, the Planning Board shall mail a notice of the hearing to the applicant and also send, by regular mail, a copy of the notice of hearing to all Town of Batavia property owners whose property(ies) is located within 250 feet of the property which is the subject of the application when the property involved is located in an R District, or within 500 feet when the involved property is located in any other district. When

necessary under § 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

- (4) Conditions. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed special use permit plan. Upon its approval of said special use permit, any such conditions must be met in connection with the issuance of the special use permit by the Building Inspector.
- (5) Waiver of requirements. The Planning Board is empowered, when reasonable, to waive any requirements, other than procedural processes required by law, for the approval, approval with modifications or disapproval of special use permits submitted for approval, except that any modifications to dimensional requirements (setbacks, lot size, etc.) shall require a variance from the Zoning Board of Appeals. Any such waiver, which shall be subject to appropriate conditions set forth in this chapter, may be exercised in the event any such requirements are found to be not requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit. **[Amended 2-20-2008 by L.L. No. 2-2008]**
- (6) Decisions. The Planning Board shall decide any matter referred to it under this Subsection D within 62 days after the public hearing. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where, due to the location of the affected property, a special use permit request is subject to review under General Municipal Law § 239-m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five business days after such decision is rendered and a copy mailed to the applicant by regular mail.
- (7) Abandonment of special use permit. A special use permit shall expire when there occurs a cessation of such use or activity, for which said special use was originally issued, for a period of one year. Upon evidence that a special use permit has been abandoned, the Building Inspector shall issue a notice of abandonment to the owner of record for the property by registered mail. If after 60 days the owner has not provided satisfactory proof that the special use did not cease, the Planning Board shall revoke the special use permit.
- (8) Standards applicable for all special use permits.

- (a) The Planning Board may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this chapter:
- [1] The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous and shall be in harmony with the orderly development of the district.
 - [2] The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings nor impair their value.
 - [3] The operation of any such use shall not be more objectionable to nearby properties than would be the operation of any permitted use.
 - [4] The proposed use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact on adjacent properties.
 - [5] When a commercial or industrial special use abuts a residential property, the Planning Board may find it necessary to require screening of sufficient height and density (i.e., fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.
 - [6] Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.
 - [7] The proposed use shall meet the off-street parking and loading requirements of similar uses.
 - [8] Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.
 - [9] Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards. The Planning Board shall review and approve all such proposals.
 - [10] Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a minimum.

- (b) A special use permit shall not be issued for a use on a lot where there is an existing violation of this chapter unrelated to the use which is the subject of the requested special use permit, as determined by the Planning Board.
 - (c) As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.
 - (d) In addition to the general standards for special permits as set forth herein, the Planning Board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements it deems necessary or appropriate to promote the public health, safety and welfare and to otherwise implement the intent of this chapter.
 - (e) The above standards are not intended to apply to uses whose regulation has been preempted by the state or federal government, i.e., mining.
- (9) (Reserved)
- (10) (Reserved)
- (11) (Reserved)
- (12) Revocation of special use permit. After a special use permit has been issued following site plan review based upon either approval or approval with modifications, a special use permit may be revoked by the authorizing Board which granted the approval for said special use permit in the event that the special use permit grantee deviates from or does not comply with the site plan exactly as approved or with any modifications or conditions established by the authorizing Board or in the event that, after full compliance has been achieved, the special use permit grantee thereafter deviates from or ceases to comply with the site plan exactly as approved or with any modifications or conditions established by the authorizing Board. The procedure for revocation of a special use permit shall be as follows: **[Added 9-19-2007 by L.L. No. 4-2007]**
- (a) After notification in writing by the Zoning Enforcement Officer of alleged violations, the authorizing Board shall hold a public hearing to consider whether or not the special use permit grantee is fully compliant with the approved site plan or has violated any terms or conditions of said special use permit. The public hearing shall be held only after the special use permit grantee has been notified by the Zoning Enforcement Officer of said violations, and has failed to correct said violations within the time period established by the Zoning Enforcement Officer, to be not less than 15 calendar days.

- (b) At least 10 calendar days before said public hearing, a legal notice of said hearing shall be published in a newspaper of general circulation in the Town of Batavia. Written notice of said hearing shall also be mailed to the special use permit grantee by certified mail, return receipt requested, and by regular first-class mail directed to the last known address of the special use permit grantee.

§ 235-64. (Reserved)³¹

§ 235-65. Penalties for offenses.

- A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy, or change the use of, any building, structure, or land or part thereof in a manner not permitted by this chapter or without the issuance of a valid zoning permit or certificate of compliance as required by this chapter.
- B. It shall be further unlawful for any person to fail to comply with a written order of the Building Inspector within the time fixed for compliance therewith.
- C. Appearance ticket. The Building Inspector may issue an appearance ticket to any person who fails to respond to a notice of violation and written order to correct the violation.
- D. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, alteration, repair or use of any building, structure or land, to violate any of the applicable provisions of this chapter or any lawful order, notice, directive, permit or certificates issued or made hereunder.
- E. Any violation of this section and/or this chapter shall be deemed an offense punishable by a fine and/or imprisonment as set forth in § 268 of New York State Town Law. Each and every week such violation continues shall be deemed a separate and distinct violation.
- F. The Building Inspector may engage the Town Attorney or any other attorney approved by the Town Board to initiate legal action to enforce the provisions of this chapter.
- G. In addition to the foregoing remedies, the Town of Batavia and/or its appropriate officials and authorities may maintain an action for injunction to restrain, correct or abate any violation of this chapter and/or maintain an action at law for damages sustained as a result of any violation of this chapter and/or seek any other remedy permitted by law, including Town Law § 268. Damages may include, but not be limited to,

31. Editor's Note: Former § 235-64, Artichitectural Review Board, was repealed 2-19-2003.

the legal fees and court costs expended or incurred by the town as a result of any legal proceedings brought hereunder.

§ 235-66. Complaint of violation.

Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, signed, and shall be filed with the Building Inspector, who shall properly record such complaint, investigate it and take appropriate action in a timely manner.

§ 235-67. Environmental quality review.

- A. The State Environmental Quality Review Act (SEQR) requires that local governments examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR 617) set forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above-mentioned activities.
- B. As set forth in 8 NYCRR 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Town is designated lead agency for a particular zoning action, the following Boards (agencies) may typically be the lead agency for the actions identified as follows:
 - (1) Zoning text amendment: Town Board
 - (2) Zoning district amendment: Town Board.
 - (3) Special use permits: Planning Board.
 - (4) Site plan review: Planning Board.
 - (5) Variances: Zoning Board of Appeals.
- C. The SEQR process may extend the various procedural time limits set forth throughout this chapter. For those actions taken under this chapter subject to SEQR, all time frames and deadlines otherwise set forth in this chapter may be delayed until a determination of significance has been made and, if required, a draft environmental impact statement has been filed.

ARTICLE VIII
Amendments

§ 235-68. Initiating amendments.

- A. Initiating amendments. The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this chapter.
- B. Petitions. Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner, and filed in triplicate with the Town Clerk and shall be accompanied by the required fee.

§ 235-69. Referral of proposed amendments to Town Planning Board and County Planning Board.

- A. Referral to Town Planning Board. All proposed amendments, other than those requested by the Planning Board, shall be referred to the Planning Board for its optional recommendation thereon. The Planning Board may submit its report prior to the public hearing.
- B. Referral to County Planning Board. Where required by § 239 of the General Municipal Law or other applicable statute, a proposed amendment shall be referred to the Genesee County Planning Board, which Board shall report its recommendations to the Town Board within 30 days from the date of such referral. Failure of the Genesee County Planning Board to report within said period shall be deemed an approval of the proposed amendment by said Board. In the event that the Genesee County Planning Board disapproves the amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such contrary action.

§ 235-70. Hearing on proposed amendment.

- A. Before adopting any amendments to this chapter, the Town Board shall give notice of a public hearing thereon to such persons and in such manner as required by § 264 of Town Law or other applicable law and shall hold a hearing thereon pursuant to such notice.
- B. When a proposed amendment involves a rezoning, the Town Board shall mail a notice of the hearing to the applicant(s) at least 10 days before such hearing. At least 10 days before the date of the hearing, the Town Board shall also send, by regular mail, a copy of the notice of hearing to all Town of Batavia property owners whose property(ies) is located in the area to be rezoned or within 500 feet of the boundary of the rezone.

Prior to taking final action on any amendment the Town Board shall complete the SEQR process (see § 235-67).

§ 235-71. Petition protesting amendment.

In case of a protest against such change signed by the owners of 20% or more either of the land included in such proposed change or of the land immediately adjacent thereto and extending 100 feet therefrom or of the land directly opposite thereto and extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least 3/4 of the members of the Town Board.

§ 235-72. Periodic review by Planning Board.

From time to time, at intervals of not more than three years, the Planning Board shall re-examine the provisions of this chapter and the location of district boundary lines and shall submit a report to the Town Board recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

ARTICLE IX
Legal Status Provisions

§ 235-73. Effect on prior ordinances.

This repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of the ordinance titled "Zoning Ordinance of the Town of Batavia," and all amendments thereto hereby repealed, prior to the effective date of this chapter.

§ 235-74. Severability.

It is hereby declared to be the legislative intent that, if any provision or provisions of this chapter or the application thereof to any building or other structure or tract of land is declared by a court of competent jurisdiction to be invalid or ineffective in whole or in part, or to be inapplicable to any person or situation, the effect of such decision shall be limited to the provision or provisions which are expressly stated in the decision to be invalid or ineffective or the zoning lot, building or other structure or tract of land immediately involved in the controversy. All other provisions of this chapter shall continue to be separately and fully effective, and the application of any such provision to other persons or situations shall not be affected.

§ 235-75. Conflicts with other laws.

Whenever any provisions of this chapter or any other law, ordinance, or resolution of any kind impose overlapping or contradictory regulations over the use of the same land or over the use, location or size of certain buildings or other structures or contain other restrictions covering the same subject matter, the provisions which are more restrictive or impose higher standards or requirements shall govern.

§ 235-76. Existing zoning permits.

In all cases where a zoning permit has previously been lawfully issued for the proposed construction of a new building or other structure, or for an enlargement or alteration of an existing building or other structure which requires the construction or extension of a foundation, and the adoption of this chapter or any amendment thereto would make such new, extended or altered building or structure nonconforming, such construction may nevertheless continue in accordance with said zoning permit, and a certificate of compliance may be issued for such nonconforming building or structure.

§ 235-77. Existing private agreements.

This chapter is not intended to abrogate or annul any easement, covenant, or any other private agreement.

§ 235-78. Applicability of Uniform Code.

No provision of this chapter shall be construed to repeal, modify or constitute an alternative to the New York State Uniform Fire Prevention and Building Code (hereafter referred to as the Uniform Code). Town residents and other individuals using these zoning regulations should make sure they refer to the Uniform Code and contact the Town of Batavia Code Enforcement Officer in order to determine its applicability to their specific project.

Article I. ENACTMENT AND INTENT

Section 1.01 Title

- (a) This Local Law shall be known and may be cited as the "Zoning Law of the Town of Byron."

Section 1.02 Purpose

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

Section 1.03 Interpretation

- (a) In their interpretation and application, the provisions of this Local Law shall be held to be the minimum standards and requirements for the protection of the public health, safety and general welfare.

Section 1.04 Conflict with Other Local Laws

- (a) Whenever the requirements of this Local Law are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances or laws, the most restrictive or those imposing the higher standards shall govern.

Section 1.05 Separability

- (a) If any section, subsection, paragraph, sentence, clause, or phrase of this Local Law is declared by any court of competent jurisdiction to be invalid or unconstitutional, it is hereby declared that no other provision of this Local Law shall be affected thereby.

Section 1.06 Amendments

- (a) Procedure
 - (i) The Town Board may, from time to time on its own motion, on petition, or on

recommendation of the Planning Board and in accordance with the laws of the State of New York, amend, supplement or repeal the regulations, provisions or district boundaries of this Local Law.

(b) Filing of Petition

- (i) A petition to amend, change or supplement the text of this Local Law or any zoning district as designated on the Zoning Map, established herein, shall be filed with the Town Clerk and shall be transmitted by the Clerk to the Town Board. A petition for a change to the Zoning Map shall contain a map which clearly describes the affected property and its boundaries and shall indicate the existing zoning district and the requested zoning change.

(c) Referral to Planning Board

- (i) Each proposed amendment, except those initiated by the Planning Board, may be referred to the Planning Board for an advisory report. In reporting, the Planning Board shall fully state its reasons for recommending or opposing the adoption of such proposed amendment. The Planning Board may condition its approval, as may be appropriate, and shall state whether such amendment is in harmony with the Town's plan for land use. The Planning Board shall state its position relative to proposed zoning amendments in writing within sixty-two (62) days of its referral from the Town Board. Absence of a reply from the Planning Board within the sixty-two (62) day period shall indicate that the Board is in favor of the amendment.

(d) Referral to County Planning Board

- (i) Where required by Article 12-B, Section 239 l, m and n of the General Municipal Law, the Town Board shall refer proposed amendments to the County Planning Board for review and recommendation. Pursuant to Section 239 m, the County Planning Board shall have thirty (30) days from the receipt of the referral to provide the Town Board with a recommendation on the proposed amendment.

(e) Public Hearings; Notice; Recording of Actions

- (i) Unless otherwise provided, the provisions of the Town Law of the State of New York pertaining to public hearings, official notices and proper recording of zoning actions taken by the Town Board, shall apply to all amendments to this Local Law.

(f) Provisional Amendments

- (i) In case of a proposed amendment which involves the reclassification or transfer of any area to a less restrictive district, the Town Board may require the petitioner to submit a site plan (as defined in Section 201 of this Local Law) showing the extent, location and character of proposed structures and uses drawn to scale and specifying the level of detail required by the provisions of Section 304A. The Town Board may require that such plan be modified to meet the objections raised at any public hearing thereon, or subsequent thereto, and may qualify its approval of any such amendment by imposing specific restrictions or conditions to govern such approval. Unless an application for a building permit is made within six (6) months after the Town Board's approval of said amendment and unless development of the area included is commenced within a period of one (1) year after the Town Board's approval, said approval shall be void and the zoning classification shall be as it was when the petition for amendment was filed. All improvements in such district shall be made in accordance with the plan as approved by

the Town Board.

(g) Disposition Final Rehearing on Petition

- (i) The disposition of a petition for amendment by the Town Board shall be final and disapproval or denial of the proposed amendment shall void the petition. No new petition for an amendment, which has been previously denied by the Town Board, shall be considered by it, except for a vote to table or to receive and file. No public hearing shall be held on such amendment within a period of one (1) year from the date of such previous denial unless the Planning Board shall submit a recommendation, with reasons stated therefore certifying that there have been substantial changes in the situation which would merit a rehearing by the Town Board. Such rehearing may be granted only upon a favorable vote of a majority plus one (1) of the Town Board.

Section 1.07 Repealer

- (a) The text of the Zoning Ordinance and the Zoning Map of the Town of Byron, Genesee County, New York, enacted by the Town Board of the Town of Byron, in April, 1997, and as the same from time to time have been amended, are hereby repealed and amended in their entirety as set forth below, superceding previous enactments and amendments thereto shall be repealed.

Section 1.08 Effective Date

- (a) This Local Law shall take effect immediately upon adoption and filing Law with the Secretary of the State pursuant to Section 27 of the Municipal Home Rule Law.

Article II. DEFINITIONS AND WORD USAGE

Section 2.01 Word Usage; Administrative Agencies Defined

- (a) For the purpose of this Local Law, certain words and terms used herein shall be defined as follows:
- (i) Word Usage
- 1) All words used in the present tense include the future tense.
 - 2) All words in the plural include the singular and all words in the singular include the plural, except as to the number of permitted structures, unless the natural construction of the wording indicates otherwise.
 - 3) The word "person" includes an association, partnership or corporation, company or any other entity.
 - 4) Unless otherwise specified, all distances shall be measured horizontally.
 - 5) The word "building" includes the word "structure".
 - 6) "Lot" includes the words "plot", "parcel" or "tract".
 - 7) The word "premises" includes a lot and all buildings or structures thereon.
 - 8) To "erect," "to construct" and "to build" a building or structure each have the same meaning and also include "to excavate" for a building and "to relocate" a building by moving it from one location to another.
 - 9) "Used" shall be deemed also to include "designated, intended or arranged to be

used or occupied."

- 10) "Shall" is mandatory and not discretionary; "may" is permissive.
- (ii) Administrative Agencies Defined
 - 1) BOARD OF APPEALS—The Zoning Board of Appeals of the Town of Byron.
 - 2) CODE ENFORCEMENT OFFICER—The public official, agency or organization appointed by the Town Board of the Town of Byron to enforce the New York State Uniform Fire Prevention and Building Code in the Town of Byron (Article 18, Sections 370-383, Executive Law).
 - 3) COUNTY PLANNING BOARD—The Planning Board of the County of Genesee.
 - 4) DEPARTMENT OF HEALTH—The Genesee County Department of Health and any other health board or department established pursuant to the laws of the State of New York and having authority for the regulation of matters pertaining to the public health of the Town.
 - 5) PLANNING BOARD—The Planning Board of the Town of Byron.
 - 6) SOIL AND WATER CONSERVATION DISTRICT—The Genesee County Soil and Water Conservation District
 - 7) TOWN BOARD—The Town Board of the Town of Byron.
 - 8) ZONING ENFORCEMENT OFFICER—The official designated by the Town Board of the Town of Byron to enforce the provisions of this Local Law.

Section 2.02 Definitions

- (a) As used in this Law, the following terms shall have the meanings indicated:

ACCESSORY—The term applied to a building or use which:

- 1) is customarily incidental and subordinate to a principle building or principle use;
- 2) is subordinate in area, extent or purpose to the principle building or principle use served;
- 3) is located on the same zoning lot as the principle building or principle use.
- 4) A zoning permit shall be required for all accessory buildings. A building permit shall be required for all accessory buildings in excess of one-hundred forty-four (144) square feet.

ADULT USE—Any activity or business which provides entertainment or materials to customers with an emphasis on matters depicting or related to sexual activities or specific anatomical areas or which must exclude minors by operation of law.

ADULT CARE—The provision of temporary or long term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29, and 31 of the Mental Hygiene Law, are, by reason of physical or mental disabilities or other factors, unable or substantially unable to live independently.

ADULT CARE FACILITY—A facility, other than a Family Type Home, which provides Adult Care. For the purposes of this Local Law, an Adult Care Facility shall include the following: adult home, enriched housing program/assisted living, residence for adults,

shelter for adults, public home, and private proprietary adult-care facility as defined by NYS Department of Social Services Chapter II, Subchapter D, Part 485.

AGRICULTURAL-BASED BUSINESS—A business which primarily serves agricultural uses (i.e. farm operations) including a business which manufactures, distributes, sells services or repairs machinery and equipment used in farm operations or which processes, stores, sells, or distributes herbicides, pesticides, fertilizer, or farm products or commodities.

AGRICULTURAL USE— As defined in Agriculture and Markets Law Section 301(4) -- (i.e. Seven (7) acres—\$10,000 sales and used in agricultural production.)

AGRICULTURAL ACCESSORY USE—Any activity connected with the raising of crops, livestock or production of livestock products, including but not limited to field crops, fruits, vegetables, horticultural specialties, livestock and livestock products, furs, maple sap, Christmas trees, aquaculture products and woody bio-mass. This shall encompass any activity or use now permitted by law, engaged in by or on behalf of a farmer in connection with farming including, but not limited to; housing for farm workers; stables and other tourist activities; the collection, transportation, distribution and storage of animal and poultry waste, transportation and use of equipment for tillage, planting, harvesting and marketing; transportation, storage and use of fertilizers and lime, and legally permitted insecticides, herbicides and fungicides; construction of farm structures and facilities, including farm wineries and other on-farm food processing; construction and maintenance of fences and other enclosures ;and the use and/or maintenance of related pastures, idle or fallow land, woodland, wetland, farm ponds, farm roads and certain farm buildings and other structures related to the agriculture practices. Agricultural accessory uses shall also include the processing and wholesale and retail marketing, including U-pick sales, of the agricultural output of the farm and related products that contribute to farm income, including the sale at the owner's farm stand of agricultural products so long as a substantial portion of the annual gross sales of the farm stand have been grown on said farm.

AGRICULTURAL WASTE STORAGE FACILITY—Any building, structure, pond, lagoon, or yard for the bulk storage of agricultural waste for eventual removal and /or dispersion.

AIRSTRIP—Any area of land, designed for private non-commercial use of aircraft including hangers, taxi-ways, and landing areas.

ALTERATIONS—The change or rearrangement of the structured members of a building such as bearing walls, columns, beams, or girders or in the exit facilities; an enlargement of a building, whether by extending on a side or by increasing in height; the moving from one location or position to another;(any change whereby a structure is adapted to another or different use).

ANIMAL SHELTER—Building or land used for the temporary harboring of stray or homeless dogs, cats and other similar domestic pets, together with facilities for the adoption of the harbored animals.

ANTENNA—A system of conductors used in transmitting and/or receiving electromagnetic waves including radio, television, cellular, telephone, paging and personal communication services (PCS).

AWNING—An overhead structure attached to a building wall and that consists of fabric or other material covering a frame extending at least 12 inches from the face of a building.

APARTMENT BUILDING—A building arranged, intended or designed to be occupied by three (3) or more families living independently of each other, but having common hallways and entrances.

APARTMENT GROUP—Two (2) or more apartment buildings located on a lot.

ARCHAEOLOGICAL DIG SITE— Land which is or is to be excavated to extract buried historic artifacts and remains of human and animal activity including but not limited to fossilized remains of such humans and animals.

BED AND BREAKFAST—An owner-occupied, one-family dwelling in which a room or rooms are rented on a nightly basis for periods of less than two (2) weeks. Meals may or may not be provided. (See NYS Uniform Code ten (10) lodges—five (5) rooms; basement excluded)

BILLBOARD—Any freestanding sign that advertises business conducted, services provided or products sold on properties other than the property on which the sign is erected. Billboards are prohibited.

BOARDING HOUSE (ROOMING HOUSE)—Owner-occupied dwelling wherein more than two (2) people are sheltered for profit for periods of more than two (2) weeks in any consecutive six (6) month period.

BOARDING STABLES- Any premises where animals are boarded excluding dogs.

BUFFER ZONES—A continuous strip of land area consisting of embankments, berms and/or fences and covered with vegetation which is not less than ten (10) feet in width and not less than six (6) feet in height, densely planted and designed to provide a physical screen preventing visual access from one use to another and to reduce the escape and/or intrusion of litter, fumes, dust, smoke, noise, or other noxious or objectionable elements.

BUILDING—Any structure which has a roof supported by columns or by walls or posts

which is used or designed for use to shelter or enclose people, animals or personal property, and the shelter, housing or enclosure of persons, animals, property or business activity.

BUILDING AREA—The sum of the number of square feet of all enclosed and roofed spaces of all buildings located on the same lot. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

BUILDING HEIGHT—The vertical dimension measured from the average elevation of the finished grade level at the front of the building to the highest point of the structure. District building height regulations shall not apply to radio or television antennas and commercial communications towers.

BUILDING/STRUCTURE LINE—A line formed by the intersection of a horizontal plane at average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or a projected roof or porch, the vertical plane will coincide with the most projected surface, excluding steps and overhanging eaves less than two (2) feet in width. All yard and setback requirements are measured to the building/structure lines.

BUILDING PERMIT—A permit issued by the Code Enforcement Office, stating that plans for the proposed construction of a building is in conformance with the Uniform Fire Prevention and Building Code of New York State (Article 18, Sections 370-383, Executive Law).

CAMPING GROUND—A parcel of land and adjacent waterways, ponds, lakes and streams used or intended to be used, let or rented for transient, vacation and recreational occupancy by travel trailers, campers, tents, recreational vehicles, motor homes, the motor vehicles propelling or carrying the same and which require a Motor Vehicle License when travelling on any highway or road and excluding manufactured homes designed for year-round occupancy.

CERTIFICATE OF COMPLIANCE—A document issued by the Zoning Officer upon completion of the change in use of an existing building or of a parcel of land with no buildings after the Zoning Officer's inspection thereof certifying compliance with all requirements of this Local Law.

CERTIFICATE OF OCCUPANCY—A document issued by the Code Enforcement Officer upon completion of construction or alteration of a building and after his inspection thereof said certifying compliance with all of the requirements of the New York State Uniform Fire Prevention and Building Code.

CHILD DAY CARE—Shall mean care for a child on a regular basis provided away from

the child's residence for less than twenty-four (24) hours per day by someone other than the parent, stepparent, guardian, or relative within the third degree of lineal descent of such child, as defined by NYS Department of Social Services Chapter II, Subchapter C, Part 413.

- 5) Child day care does not refer to care provided in:
- a) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;
 - b) A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons, or recreation;
 - c) A facility providing day service under an operating certificate issued by the Department of State;
 - d) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or
 - e) A kindergarten, pre-kindergarten, or nursery school for children three (3) years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school, or program is located on the premises or campus where the elementary or secondary education is provided.

CHILD DAY CARE CENTER—Shall mean a program or facility in which child day care is provided on a regular basis to more than six (6) children for more than three (3) hours per day per child for compensation or otherwise, as defined by NYS Department of Social Services Chapter II, Subchapter C, Part 413, except those programs operating as a group family day care home, a family day care home, or school-age child care program, as defined in this Section.

CLUB—An organization established pursuant to the New York State Not-For-Profit Law for a social, educational or recreational purpose, catering exclusively to members and their guests, whose activities are not conducted primarily for profit and are not conducted in conjunction with a public tavern, café or other place of business.

CLUSTER DEVELOPMENT—A development of residential lots, each containing less area than the minimum lot area required for the zoning district within which such development occurs, while maintaining the density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

COMMERCIAL COMMUNICATION TOWER— A structure upon which there is installed or mounted devices for the receiving and/or transmitting of electronic, telephonic, radio, television transmissions or signals

COMMUNITY CENTER—Meeting hall, place of assembly, museum, art gallery, library,

not operated primarily for profit.

COMMUNITY RESIDENCE—A supervised community home operated in compliance with New York State Mental Hygiene Law which houses not more than fourteen (14) individuals and provides client supervision on a twenty-four (24) hour basis. For the purposes of this Local Law, an approved community residence as defined herein, is considered a one-family dwelling.

CONTRACTORS YARD—Any space, whether inside or outside a building, used for the storage or keeping of construction materials, equipment, machinery, vehicles or parts thereof, including office space, which is used by a person or entity engaged in the business of construction contractor.

DAY CARE CENTER (FACILITY)—Shall mean a place, person, association, corporation, institution or agency which provides day care as defined by the NYS Department of Social Services Chapter II, Subchapter C, Part 413 in which parents, guardians or other responsible for care place children, excluding family day care homes and group family day care homes as defined herein. The name, description or form of the entity which operates a day care center shall not affect its status as a day care center.

DAYS—shall mean calendar days unless otherwise specified.

DISTRIBUTION CENTER—An enclosed establishment engaged in the receipt, storage, and distribution of goods, products, cargo, and materials, including transshipment by boat, rail, air or motor vehicle.

DRIVE-IN FACILITY— Building or use where a product is sold to, or a service performed for customers while they are in or near their motor vehicle.

DRIVEWAY—An area on a lot providing a means of access from a street or road to a residence or other building or off-street parking area.

DWELLING—A room or connected rooms designed or used exclusively as living quarters for one or more families; the term shall not be deemed to include an automobile court, recreational vehicle, motel/hotel boarding or rooming house, tourist home, or tent. For the purposes set forth in this Local Law a mobile home shall be considered a dwelling or dwelling unit only if it is located in the town of Byron in those situations permitted under Section 1116 of this Local Law.

DWELLING, ACCESSORY APARTMENT—A dwelling modified to accommodate family members in need of temporary housing.

DWELLING, ONE- FAMILY—A dwelling containing one dwelling unit only.

DWELLING, TWO-FAMILY- A dwelling containing two dwelling units only.

DWELLING, MULTI_FAMILY—A dwelling containing three or more dwelling units.

DWELLING UNIT —A room or connected room designed and maintained as unified living quarters with contiguous facilities for sanitation, living, cooking, sleeping and eating.

DWELLING UNIT, EFFICIENCY—A dwelling unit consisting of not more than one (1) habitable room (as defined in NYS Uniform Code) together with kitchen or kitchenette and sanitary facilities.

EXCAVATION—The process of the removal of sand, gravel, soil (including topsoil), or other natural deposits by stripping, digging or commercial operation to build a building.

EXCAVATION SITE—A parcel of land used for the purpose of extracting stone, sand, gravel, or topsoil for sale as an industrial or a commercial operation. See Section 1102.

FAMILY—One (1) or more persons, who live together in one dwelling unit and maintain a common household, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

FAMILY DAY CARE HOME—As defined by NYS Department of Social Services Chapter II, Subchapter C, Part 413, an owner occupied residence in which child day care is provided on a regular basis for up to six (6) children for compensation or otherwise. For the purpose of this Zoning Law a family day care home shall be considered an accessory use to a single family dwelling unit.

FAMILY-TYPE HOME FOR ADULTS—Adult care established and operated for the purpose of providing long-term residential care, room, board, personal care, and/or supervision to four (4) or fewer adult persons unrelated to the operator. For the purposes of this Zoning Law, a family-type home shall be considered an accessory use to a single family dwelling unit.

FARM—An agricultural business as defined in Agriculture and Market Law 301(4) (i.e.;7 acres + \$10,000 annual gross/ yr. sales).

FARM WOODLAND—Land used for the production for sale of woodland products, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land for the processing or retail merchandising of woodland products.

FARM WORKER HOUSING—On -farm housing provided by the farm operator (with regards to whether the operator owns or rents the farm for the production of agricultural

products) for seasonal and/or full-time employees and their families. The employee must be engaged in the production functions of the farm operation and is not a partner, stockholder or owner of the farm. The primary residence of the owner or partner of the farm operation shall not be considered farm worker housing.

FENCE—A structure of wood, masonry, wire mesh, or other material which prohibits or inhibits unrestricted travel or view between properties or portions of properties or between the street or public right-of-way and a property.

FINISHED GRADE LEVEL—The point at which the soil meets the foundation wall of the building after the completion of the construction of the building and landscaping of the lot.

FLOODWAY— The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation of the base flood.

FLOOR AREA—The sum of the horizontal areas of the several floors of a building or buildings, and its accessory buildings on the same lot, excluding basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces, measured from the inside faces of exterior walls or from the center line of walls separating two uses. For the purpose of applying the requirements for off-street parking and loading in the case of offices, merchandising or service types of uses, floor area shall not include areas used principally for non-public purposes such as storage, restrooms, fitting or alteration rooms or general maintenance, or enclosed pedestrian malls or corridors.

FOREVER GREEN—Land reserved or restricted for use for recreation, resource protection and/or buffer or buffers.

FRONTAGE—The length of a lot adjoining the road or highway boundary.

GARAGE, PRIVATE—An accessory building which is used for the storage of motor vehicles or items of personal property owned by the owner or tenant of the principal building.

GASOLINE STATION—A building or land used for sale of motor fuel, oil and motor vehicle accessories, and which may include facilities for lubrication, washing or servicing vehicles, but not including painting or body repairs.

GASOLINE STATION-MARKET- A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market, or food market or such a commercial use which provides for gasoline sales. For the purposes of this definition, sales from vending machines are not considered commercial service.

GROUP FAMILY DAY CARE— An owner occupied residence in which child day care is provided on a regular basis for more than three hours per day per child for seven(7) to 12 children for compensation or otherwise, as defined by NYS Department of Social Services Chapter II, Subchapter C, Part 413.

HOME OCCUPATION—An occupation or profession which: (A) is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, and (B) is carried on by a member or members of the immediate family residing in the dwelling unit, and (C) is clearly incidental and secondary to the use of the dwelling unit for residential purposes and (D) which conforms to the following additional conditions:

- 6) The occupation or profession is carried on wholly within the principle building or within a building or other structure accessory thereto.
- 7) No more than two (2) persons outside the said immediate family are employed in the home occupation.
- 8) There is no exterior display, no exterior sign, larger than 2 square feet, no exterior storage of materials and no exterior indication of the home occupation or variations of the residential character of the principle buildings.
- 9) No offensive noise, vibration, smoke, dust, odors, heat or glare is produced, nor does the home occupation result in:
 - a) Dissemination of noise, vibration, odor, dust, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted;
 - b) Hazard or fire explosion or other physical hazard to any person, building or vegetation;
 - c) Radiation or interference with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.
- 10) In particular, a home occupation may include, but is not limited to, the following: art studio, dress making, barber shops and beauty parlors (when limited to two work stations), catering, visiting nurse, draftsman, dress making, electrical/radio/television repair, furniture refinisher, laundering, musician, photographer, professional office of a physician, dentist, lawyer, engineer, architect or accountant within a dwelling occupied by the same, upholsterer, teaching or tutoring, real estate offices, or occupations in which the only contact with customers is via telephone.
- 11) However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and kennels or restaurants.
- 12) No more than twenty five (25) percent of the gross floor area of such residence shall be used for the conduct of a home occupation or profession. No more than forty (40) percent of the floor area of an accessory structure shall be used for a home occupation or profession.

HOSPITAL—A place for the diagnosis and treatment of human ailments, except a

doctor's office.

HOTEL/MOTEL—Building(s) containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room may be provided within the building or in an accessory building.

INDUSTRIAL PARK— A parcel of land or contiguous parcels of land which provides for coordinated industrial development of the property. Industrial parks imply a campus-like setting with open landscaped areas between and around buildings.

INDUSTRIAL WIND TURBINE— A wind energy system that is operated primarily (51% or more) to put energy into the electric grid, and/or has a nameplate capacity of more than fifty (50) kilowatts (kW), and/or a total height of more than one-hundred and fifty (150) feet, and/or a blade of more than thirty (30) feet.

JUNK—Shall mean abandoned, discarded or scrap metal, timber, rope, rags, paper, wood, rubber, trash, debris, waste, scrapped, dismantled, wrecked materials, including but not limited to motor vehicles, appliances, furniture and other personal property.

JUNK YARD—Any lot or parcel of land or part thereof upon which is located, stored, deposited, or kept any Junk, and specifically including but not limited to, one(1) or more unregistered motor vehicles or farm equipment which was never or can no longer be used or intended for use in agriculture or which is not in operating condition.

KENNEL—Any lot, where as a business domestic animals, other than farm animals, are kept, housed, bred, trained or offered for sale.

LOADING SPACE, OFF-STREET—Space logically and conveniently located for public pickups and deliveries, scaled to delivery vehicles expected to be used and accessible to such vehicles. Required off-street loading space is not to be included as off-street parking space in the computation of required off-street parking areas.

LODGING ROOM—A room rented as sleeping and living quarters, but without cooking facilities and with or without an individual bathroom.

LOT— A piece or parcel of land contained within described boundaries or dimensions.

LOT AREA—The square footage or acreage contained within the boundaries of a lot. Any portion of a lot included in a public road, street, or highway right-of-way shall not be included in calculating lot area.

LOT CORNER—A lot of land at the junction of, and fronting on, two or more intersecting streets.

LOT COVERAGE—The percentage of the lot area which is devoted to building area.

LOT FRONTAGE—The front of a lot shall be construed to be the portion nearest the street. For the purposes of determining yard requirements on corner lots, all sides of a lot adjacent to streets shall be considered front yards.(See also Frontage)

LOT, LEGAL—A lot having at least the minimum dimensions and area required by this law for a lot in the district in which it is located.

LOT LINES—The property lines bounding the lot:

- 13) Lot Line, Front: The line separating the lot from a street right-of-way.
- 14) Lot Line, Rear: The lot line opposite and most distant from the
- 15) front lot line, except for corner lots wherein it shall be the lot line behind the principle structure.
- 16) Lot Line, Side: Any lot line other than a front or rear lot line.

LOT WIDTH—The horizontal distance between the side lot lines, measured at right angles to the lot depth.

MANUFACTURED HOUSING—As defined by NYS Uniform Fire Prevention and Building Code, a manufactured dwelling unit built on or after June 15, 1976, and conforming to the requirements of the Department of Housing and Urban development (HUD), Manufactured Home Construction and safety Standards, 24 CFR Part 3208, 4/1/93. Transportable in one or more sections, which in the traveling mode, is eight (8) feet or more in width or forty (40) feet or more in length, or when erected in site, is three-hundred and twenty (320) square feet minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. The term manufactured home shall also include any structure that meets all the requirements of this definition except size requirements and with respect to which the manufacture voluntarily under the national Manufactured Housing Construction and Safety Act of 1974, as amended. The term manufactured home shall not include any self propelled recreational vehicle.

MANUFACTURED HOME PARK—A parcel of land or contiguous parcels of land under one ownership or management used or designed to be used for the location of more than one manufactured home.

MOBILE HOME—A factory-manufactured dwelling unit built prior to June 15, 1976, with or without a label certifying compliance with the National Fire Protection Association (NFPA), American National Standards Institute (ANSI) or a specific State standard, transportable in one or more sections, which in the traveling mode, is eight (8) feet or more in width or forty (40) feet or more in length, or, when erected on site, is

three- hundred and twenty (320) square feet minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities, and includes the plumbing heating, air conditioning, and electrical systems contained therein. The term mobile home shall not include travel trailers or any self-propelled recreational vehicle.

MOTEL/HOTEL—See Hotel/Motel.

MOTOR VEHICLE REPAIR/COLLISION SHOP— A building used for commercial repairing, servicing or painting of motor vehicles or other motorized equipment.

MOTOR VEHICLE SALES FACILITY—A facility or property where motor vehicles are sold, which may or may not include a service station and repair facilities for those vehicles.

MOTOR VEHICLE SERVICE STATION—Any building, structure, or land used to dispense, sell or offer automobile fuels, oils or accessories, including lubrication, washing, polishing, or cleaning and the repair or servicing of motor vehicles.

NON-CONFORMING BUILDING—Any building which, at the time it was constructed, did not violate any law but which because of the enactment of this Law does not meet the requirements or regulations for the District in which it is now located pursuant to this Law.

NON-CONFORMING LOT—A lot existing, of record on the date of the enactment of this Law which does not violate any law but which because of the enactment of this Law does not meet the requirements or regulations for the District in which it is now located pursuant to this Law.

NON-CONFORMING USE—Any use of land, buildings or structures lawfully existing on the date of enactment of this Law which does not conform to the use regulations of the district in which it is now situated.

OUTDOOR WOOD BOILERS—A fuel burning accessory structure that (a) is designed to burn wood or other fuels; (b) is specified by the manufacturer for outdoor installation or installation in structures not normally occupied by humans; and (c) is used to heat building space and/or water via the distribution, typically through pipes, of a gas or liquid (e.g., water or water/antifreeze mixture) heated in the device.

OWNER—Any entity holding legal title to the real or personal property in question including but not limited to trustees, trust beneficiaries, contract vendors, and option holders.

PARCEL—A lot or tract of land.(See Section 200 A)

PARKING SPACE—An off-street space available for the parking of one (1) motor vehicle on a transient basis and having a width of at least ten (10) feet and an area of not less than two-hundred (200) square feet, exclusive of passageways and driveways, and having access to a street. Handicapped parking spaces may be larger and therefore require more space, however, regardless of their size; such space shall constitute a single parking space.

PERSONAL SERVICE ESTABLISHMENT—Businesses primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. Such services include laundry, dry cleaning, beauty shops, barbershops, shoe repair, funeral services, health clubs, masseuse, educational, social and domestic services.

PONDS—A natural or man-made body of water, not including swimming pools.

PRINCIPLE BUILDING—A building in which the main or principle use of the lot is conducted.

PRINCIPLE USE—The main or primary purpose for which a building, structure or lot is to be used.

PROFESSIONAL OFFICE—The office of a member of a recognized profession maintained for the conduct of that profession.

PUBLIC BUILDING—Any building used for municipal, civic, religious, recreational or other purposes which is open to the general public and not used in any commercial enterprise.

RECREATIONAL VEHICLE—A vehicle primarily designed as temporary living quarters for emergency, recreational, camping or travel use, which either has its own motor power or is mounted on or drawn by another vehicle.

RECYCABLES HANDLING AND RECOVERY FACILITY— A lot on which is conducted a solid waste management operation at which materials capable of being recycled are separated from other waste and which is regulated by 6NYCRR Part 360.

RESTAURANT—Any establishment, however designed, at which food is sold for consumption on the premises to patrons seated within an enclosed building and where the taking of food and drink from said building is incidental. However, a snack bar or refreshment stand at a public, semi-public, or community swimming pool, playground, playfield, or park operated by the agency or groups or an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

RETAIL TRADE/SERVICE STORE— A building in which goods, articles, or services are sold to the ultimate consumer thereof, this term shall not be interpreted to mean drive-up service, gasoline station, motor vehicle repair service, new or used car sales or service, trailer or mobile home sales or service.

RIDING ACADEMIES- A facility used for the business of riding and or training horses or other animals and riders.

ROADSIDE STAND—Structure of a non-permanent nature (movable or temporary) on the owner's property utilized during the harvest season for the sale of agricultural products grown primarily by the owner.

SCHOOL—A place of instruction recognized and governed by the Education Law of the State of New York, including nursery, parochial, private, public, colleges, and universities, but not including beauty, culture, dancing, karate, other self- defense teaching business, and driving. Business and music schools are also excluded unless licensed by the said education Department.

SELF STORAGE AREA- A building or group of buildings divided into small separate units or compartments rented to the general public for the storage or keeping of goods which buildings are accessible by the tenants without supervision. Such a Storage Facility shall not include warehouses operated as a separate business or one operated in conjunction with another commercial or industrial business.

SEQRA- State Environmental Quality Review Act as enacted by Article 8 of the Environmental Conservation Law.

SERVICE/REPAIR BAY- A service or repair bay is defined as space within an enclosed structure designed and equipped for the servicing of repair of a motor vehicle.

SETBACK—The horizontal distance between the public highway right-of-way (ROW), rear or side lines of the lot and the front, rear or side lines of the building/structure. All measurements shall be made at right angles from the lot lines to the building/structure lines.

SHOPPING CENTER— A group of businesses occupying adjoining structures, having adequate space for loading, unloading and adequate off-street parking.

SIGN—Any material, structure or device, or part thereof, composed of lettered or pictorial matter which is located out- of- doors, or on the exterior of any building, or indoors as a window sign, displaying an advertisement, announcement, notice or name and shall include any declaration, demonstration, display, representation, illustration or insignia used to advertise or promote the interests of any persons or business or cause when such is placed in view of the general public.

A-FRAME—A portable sign with two or more steeply angled sides. Also known as a “sandwich board” sign.

AWNING or CANOPY SIGN—Any visual message incorporated into an awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoor service area.

COPY-CHANGE SIGN—A sign on which the visual message may be periodically changed.

DIGITAL MESSAGE—A sign which only displays a message or various messages in a digital format.

DIRECTIONAL SIGN—A sign limited to providing information on the location of an activity, business or event.

FREESTANDING SIGN—Any sign not attached or part of a building, but separate and permanently affixed by any other means, in or upon the ground. Included are pole signs, pylon signs and masonry wall-types signs

ILLUMINATED SIGN—Any sign illuminated by electricity, gas or other artificial light, either from the interior or exterior of the sign, and which includes reflective and phosphorescent light

OFF-PREMISE SIGN—A sign unrelated to a business or a profession conducted, or to a commodity or service sold or offered, upon the premises where such sign is located.

PORTABLE SIGN- A sign, whether on its own trailer, wheels, or otherwise, designed to be movable and not structurally attached to the ground, a building, a structure or other sign.

PROJECTING SIGN—A sign which is attached to the building wall or structure and which extends horizontally more than 15 inches from the plane of such wall or a sign which is perpendicular to the face of such wall or structure.

REPRESENTATIVE SIGN—A three- dimensional sign built so as to physically represent the object advertised.

TEMPORARY SIGN—A sign related to a single activity or event having a limited time frame as specified in Section 302c of this Chapter.

WALL SIGN- A sign which is painted on or attached to the outside of a building with the face of the sign in the plane parallel to such wall and not extending more than fifteen (15) inches from the face of such wall.

WINDOW SIGN—A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material, or located within four feet of the window, but not including graphics in connection with customary window displays of products.

SITE PLAN—A development plan, to scale, showing uses and structures, existing and proposed, for a parcel of land, including lot lines, streets, existing and proposed buildings and structures, topography, buffer zones, right-of-ways, parking areas, open space as set forth by the Local Law, or any other information deemed necessary by the Planning Board.

SOLAR ENERGY SYSTEM—A complete design or assembly consisting of a solar energy collector, an energy storage facility (where used), and components for the distribution of transformed energy. Must meet the requirements of the New York State Building Code.

SOUND AGRICULTURAL PRACTICE—Practices necessary for the on-farm production, preparation and marketing of agricultural commodities. When located within a NYS Certified Agricultural District shall include, but are not limited to, operation of farm equipment; farm worker housing; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on-farm; agricultural tourism; production, management and harvesting of farm woodland, as defined in this section and construction and use of farm structures. In order for a practice to be considered sound it must be legal, not harmful, necessary, and supported by expert guidance or opinion.

SPECIAL USE —An activity on a lot in one or more Districts which is permitted only if and when the Planning Board grants a permit pursuant to the provisions of Article XI and Section 302 (E).

STABLE—A building or structure or other defined area for the purpose of housing and or feeding animals, whether commercial or private located other than on a farm.

STREET/ROAD RIGHT-OF-WAY LINE (ROW)—The boundary of the area of a street or road established by dedication or usage and which is maintained by the Town, County or State.

STREET/ROAD GRADE—The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the "street grade".

SWIMMING POOL—Any body of water or receptacle for water which has a capability of a depth of more than two (2) feet at any point. This includes in-ground, above-ground and on-ground pools; hot tubs; spas and fixed-in-place wading pools.

TEMPORARY USES—An activity conducted for a specific limited period of time which may not otherwise be permitted by the provisions of this Local Law. Examples of such uses are structures incidental to new construction which shall be removed after the completion of the construction work.

TRANSFER STATION—A waste management facility where solid or liquid waste is received for the purposes of storing, processing, sorting, separating, or treating for subsequent disposal or transfer to another facility. This term shall not apply to manure or other putrescible waste material generated as a result of normal farming practices. A transfer station is considered, but not limited to, any of the following:

- 17) A recycling center.
- 18) Recyclables handling and recovery facility.
- 19) Used oil processing and/or storage facility.
- 20) Construction demolition and debris processing facility.

UNIFORM CODE—New York State Uniform Fire Prevention and Building Code.

VARIANCE, AREA—The authorization by the Zoning Board of Appeals for the use of a lot in a manner not permitted by the dimensional or physical requirements of this Law. The Board of Appeal's authorization is subject to Section 401 (B)(2) and 402 of this Law and Section 267-b(2) of the Town Law.

VARIANCE, USE—The authorization by the Zoning Board of Appeals to conduct an activity on a lot which is otherwise not allowed or prohibited by this Law. The Board of Appeal's authorization is subject to Sections 401(B)(1) and 402 of this Law and Section 267-(b)(3) of the Town Law.

WASTE MANAGEMENT PLAN—An agricultural waste management system plan in accordance with the guidelines and recommendations of the Genesee County Soil and Water Conservation District. A letter of approval from the Genesee County Soil and Water Conservation District must be submitted with the site plan.

WIND ENERGY CONVERSION SYSTEM—An wind energy system that is operated primarily (51% or more) for on-site (may be more than one parcel) consumption, and has a nameplate capacity of fifty (50) kilowatts (kW) or less, and a total height of one-hundred and fifty(150) kilowatts (kW) or less, and a total height of one –hundred and fifty(150) feet or less, and a blade length of thirty (30) feet or less. For the purpose of this section, a “Wind Energy Conversion System” is deemed to be an accessory use.

YARD—A required open space unoccupied and unobstructed by any structure or portion of a structure, except as may be provided by this Local Law and situated between the principle building or group of buildings and the nearest lot line.

YARD, FRONT—A yard extending between the side lot lines across the front of a lot adjoining a street; situated between the street line and the front building line.

YARD, REAR—A yard extending between the side lot lines situated between the rear line of the building and the rear lot line.

YARD, SIDE—A yard extending between the side building line and the nearest side lot line; situated between the front and rear yards.

ZONING PERMIT—A permit issued by the Zoning Officer, stating that the purpose for which a building or land area is to be used is in conformance with the uses permitted and all other requirements of this Local Law.

Article III. ADMINISTRATION AND ENFORCEMENT

Section 3.01 Zoning Enforcement Officer (“Officer”)

- (a) An Officer of the Town of Byron appointed by the Town Board who shall have all the powers, duties and responsibilities conferred upon and required by this Local Law and any other State or Federal law.
- (b) The compensation of such Officer shall be set by the Town Board by resolution and the Officer shall receive such instruction and training as is deemed necessary by said Board. The Officer shall be reimbursed for any travel or other expense in connection with such training or which are incurred in the performance of the Officer’s duties.

Section 3.02 Duties of the Zoning Enforcement Officer

- (a) It shall be the duty of the Officer or his or her duly authorized and appointed deputies or assistants to cause any plans, buildings, lots or premises to be inspected, examined or reviewed to determine whether or not they are in conformity with the provisions of this Local Law. The Officer or said deputies is and are hereby authorized to enter upon any premises or in any building, subject to the applicable state law, to conduct such inspections or examinations.
- (b) In the event that following said inspections or examinations or review, the Officer shall determine that the plans, buildings, lots or premises do not comply with the provision of this Law, the Officer shall so inform the owner.
 - (i) In the event that the non-compliance relates to plans submitted, the Officer shall inform the Owner of the specific provision of this Law which the plans violate and the Officer’s decision not to approve the plans. The Owner shall have the right to appeal any such disapproval to the Zoning Board of Appeals pursuant to Section 402(B) of this Law.
 - (ii) In the event that a building is being constructed or a lot is being used in a manner which the Officer determines is not in conformity with this Law, the Officer shall issue a STOP WORK order to the Owner and the building permit pursuant to which

- construction was being conducted shall thereupon be suspended until the nonconformity is corrected.
- (iii) In the event that the Officer, after an inspection or examination, determines that a building or lot has been constructed or is being used in violation of this Law, the Officer shall issue an appearance ticket to the Owner requiring an appearance before a court of competent jurisdiction.
 - (iv) The Officer shall without prior approval consult with the Town Attorney regarding the proper interpretation of this Law and for any other advice the Officer deems necessary.
 - (c) The Officer shall issue such permits as are directed to be issued by the Zoning Board of Appeals or the Planning Board.
 - (d) The Officer shall issue Zoning Permits and/or Building Permits to all applicants whose plan for construction, alteration, or demolition of any building or change of use of any lot conforms to the provisions of this law.
 - (e) Any person or entity which is or is denied a Zoning or Building Permit or issued a STOP WORK order shall have the right to appeal such denial to the Zoning Board of Appeals pursuant to said Section 403(B) of this Law. The Zoning Enforcement Officer shall have the duty to inform the person or entity and to provide the person or entity with the proper form by which to file an appeal.
 - (f) Whenever the Zoning Enforcement Officer denies a permit or certificate the Officer shall, in writing, inform the applicant of the specific reasons for denial and instruct the applicant on the proper methods to apply for relief.
 - (g) The Zoning Enforcement Officer shall maintain a current list showing the Variances and Special Use Permits issued by the Board of Appeals and Planning Board, respectively, so they may determine compliance with any imposed terms and conditions.
 - (h) Upon approval from the Planning Board and/or the Zoning Board of Appeals, the Zoning Enforcement Officer shall be empowered to issue the necessary permits with the specific conditions to be imposed.
 - (i) The Zoning Enforcement Officer shall be authorized and empowered to issue appearance tickets pursuant to Section 150.20 of the New York State Criminal Procedure Law.

Section 3.03 Issuance of Permits and Certificates

- (a) General Provisions.
 - (i) No Building Permit application shall be processed unless and until any and all Zoning and/or Special Use Permits have been duly authorized and issued.
 - (ii) All Building Permits shall expire twelve (12) months from the date of issue except permits for swimming pools which shall expire ninety (90) days from the date of issue.
 - (iii) The Zoning Enforcement Officer may grant two (2) extensions of six (6) months each, upon a showing of the exercise of due diligence in completing the project by the applicant.
 - (iv) Upon the expiration of the original permit or any extension thereof, all work on the project must stop unless and until a new permit is issued.
- (b) Zoning and Building Permits

- (i) No building, structure or sign shall be erected, moved, expanded, structurally altered nor shall the use of any such building or structure be changed without a Zoning and/or Building Permit. Such Officers shall only issue such permits when the project conforms in all respects to this Law or when authorized to do so by a written order or directive from the Planning Board or Zoning Board of Appeals.
- (ii) Site Plans
 - 1) All applications for Zoning and/or Building Permits shall be accompanied by a Site Plan.
 - 2) Such Plan shall consist of a sketch drawn to a scale of not less than .5 inch=1 foot, unless the Zoning Enforcement Officer grants permission to use a smaller scale.
 - 3) The Plan shall accurately depict the dimensions of the lot, all existing buildings and any topographical features which would impact the location of future building's storm water runoff or any other result of the proposed project.
 - 4) The Plan shall also state the proposed use and any changes to the existing buildings, any proposed construction and any changes to the topography and any other information required by the Zoning Enforcement Officer in order to determine compliance with this Law.
- (iii) No permit shall be issued unless and until the site plan has been approved by the Planning Board, unless the project does not require a site plan.
- (iv) The Zoning Enforcement Officer shall be notified that the site is prepared for installation of the foundation of a structure, and shall inspect the site to check the location of the structure.
- (v) The zoning and/or building permit shall be located in a place readily visible to the public.
- (c) Temporary Use Permit
 - (i) The Planning Board subject to compliance with the procedural requirement for A Special Use Permit set forth in Section 303F of this Law, may issue a Temporary Use Permit for such period of time as it may determine.
 - 1) Temporary uses incidental to a construction project such as construction trailers, while active construction is underway.
 - 2) Temporary real estate sales office incidental to a subdivision.
 - 3) Temporary roadside stand for sale of agricultural products raised on the property.
 - 4) Other similar temporary incidental uses which:
 - a) In no way exert a detrimental effect upon the lawful use of land and activities normally permitted in the zoning district in question.
 - b) Contribute materially to the welfare of the town.
 - (ii) Permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit. Permits may be reissued a maximum of one (1) time for an additional period of six (6) months.
- (d) Emergency Residence Permits
 - (i) Recreational vehicles may be permitted as a Temporary Residence in any district upon a determination by the Zoning Enforcement Officer that such housing is necessary because of an event which rendered the permanent residence on the premises damaged to the point that it became uninhabitable.

- (ii) The Emergency Residence Permit shall expire one hundred twenty (120) days from the date of issue and may be renewed by the Zoning Enforcement Officer no more than two (2) times for periods not to exceed four (4) months each, or for a total of twelve (12) months.
- (iii) The Recreational Vehicle must be removed from the lot on which it was permitted upon the expiration of the permit.
- (e) Certificates of Compliance
 - (i) No land shall be used or occupied and no building hereafter erected, altered, or extended shall be used or changed in use until a Certificate of Compliance has been issued by the Zoning Enforcement Officer in accordance with the provision of this Local Law.
 - (ii) Failure to obtain a Certificate of Compliance shall be a violation of this Law and punishable as provided by Article XII, Violations, Penalties and Complaints.
- (f) Special Use Permit
 - (i) A Special Use Permit may be issued for a use permitted in a district subject to more restrictive regulation than other permitted uses and only when authorized by the Planning Board after it has determined that the use will confirm to the following criteria:
 - 1) Such use is consistent with the public welfare and convenience.
 - 2) Such use shall be subject to conditions imposed by the Planning Board which will protect the neighborhood from any adverse effects of the use.
 - 3) Such use does not affect a substantial change in the characteristics of the neighborhood.
 - 4) Such use may be subject to an inspection by the Zoning Enforcement Officer to determine its compliance with the conditions of the permit.
 - 5) In the event the Zoning Enforcement Officer determines that there has been a violation of the said conditions, he shall report that violation to the Planning Board.
 - 6) Upon receipt of such report from the Zoning Enforcement Officer, the Planning Board shall hold hearing on not less than twenty (20) days notice to the person or entity to which the permit was issued.
 - 7) If following said hearing, the Planning Board shall determine that the permit has been violated; it shall revoke the permit and shall order the removal of any structure or material used in the conduction of the special use within a specified period of time.
 - 8) Failure of the holder of a revoked permit to obey the order of the Planning Board shall constitute a violation of this Law and each week of such failure shall constitute a separate violation.
 - (ii) Procedure for issuance of Special Use Permit
 - 1) Application for Special Use Permits shall be made in writing on forms approved by the Planning Board and available at the office of the Town Clerk. Four (4) copies of the completed form shall be filed with the Zoning Enforcement Officer together with a site plan. The Zoning Enforcement Officer shall review the form for completeness and if complete retain one copy, file one copy with the Town Clerk and deliver two (2) copies to the Planning Board.
 - 2) The Planning Board shall when required by section 239 of the General Municipal

Law file a copy of the application with the County Planning Board for its review and determination.

- 3) The Planning Board shall hold a public hearing upon the application not less than ten (10) days after it has published a notice of such hearing in the official Town newspaper and sent by first class mail such notices to all property owners within five hundred (500) feet of the boundaries of the property for which the Special Use Permit is sought and list generated letter sent by Planning Board Secretary.
- 4) No decisions shall be made until after public hearing and, where necessary, the determination of the County Planning Board.
- 5) All decisions by the Planning Board shall be made by formal resolution, which shall contain a full statement of the findings of fact which support the issuance of the permit or support its denial and which shall be fully set forth in the minutes of the board.
- 6) Such decisions shall be made no later than sixty two (62) days following the close of the public hearing and a copy of the resolution shall be sent to the applicant, the Zoning Enforcement Officer and the Town Clerk.
- 7) In the event that the Planning Board determines to grant the application, by resolution it shall direct the Zoning Enforcement Officer to issue a Special Use Permit, subject to such conditions as the Planning Board shall have imposed.
- 8) The Planning Board may issue a Special Use Permit ONLY after it has found that ALL the following standards and conditions have been met:
 - a) The locations and size of each use, the nature and intensity of the operations involved or conducted in connection therewith, the site layout and its relation to adjoining streets shall be in harmony with the orderly development of the district and shall not pose a hazard to adjoining properties, pedestrianism or vehicular traffic on said adjoining streets.
 - b) The location, design and height of building, walls, and fences will not discourage the orderly development of the district or impair the development or value of adjacent property.
 - c) The operations of the special use will not be more objectionable to the neighborhood than uses permitted in the district without a permit.
 - d) The use will not cause noise, vibration, dust, smoke, odor, glare or unsightly mess which would be detrimental to the neighborhood.
 - e) The applicant has planned for adequate and appropriate screening of the use from the view of the public and neighboring properties.
 - f) The use will not cause electric or magnetic disturbances to radio, television, computer or other electronic uses on neighboring properties.
 - g) The applicant has provided for adequate off street parking and loading facilities which will not interfere with neighboring properties.
 - h) The use will not cause surface water run-off in excess of the natural lot drainage or provision shall be made to contain or retain such run-off to the effect that adjoining properties will not be adversely affected.
 - i) Any landscaping will not adversely affect adjoining properties.
- 9) No Special Use Permit may be issued for any lot in which there is an existing

violation of this Law.

- 10) Each Special Use Permit shall contain a condition that the Zoning Enforcement Officer is authorized to enter the property and any building thereon upon reasonable notice and without a warrant to other authority to determine compliance with the conditions of the special use permit. Failure to grant the Zoning Enforcement Officer entry shall be a violation of the special permit.
 - 11) The Planning Board may impose a time limitation in any Special Use Permit.
 - 12) In addition to the above specified general standards, the Planning Board may as a condition to approval of any such use establish any other standards, conditions, requirements and limitations it determines to be necessary or appropriate to protect the neighborhood, the public health, and the value of other properties, and promote public safety and welfare.
- (iii) A Special Use Permit shall be deemed to authorize only the specific use and in the specific location set forth in the application and permit. All information supplied in the application shall be deemed part of the permit whether or not it is repeated in the resolution of the Planning Board or the actual permit.
 - (iv) A Special Use Permit shall expire in the event the permitted use discontinues for more than six (6) months or if all the required improvements are not made within one (1) year of the date the permit is issued. The Zoning Enforcement Officer shall issue a Notice of Abandonment in form of a letter to the owner of record by registered mail. If after sixty (60) days the owner has not provided satisfactory proof that the special use did not cease, the Planning Board shall revoke the Special Use Permit.
 - (v) Under no circumstances shall any applicant or any one on behalf of any applicant make any changes to the property subject to the application prior to the receipt by the applicant of the Special Use Permit issued by the Zoning Enforcement Officer. Any such changes shall be a violation of this Law and constitute grounds for denial of the application pursuant to Section 3(b) above.
 - (vi) The Planning Board may refer any application for a Special Use Permit to the Zoning Board of Appeals for an interpretation of this Law.
 - (vii) Upon completion of the improvements or changes authorized by the Special Use Permit, the applicant shall notify the Zoning Enforcement Officer and he shall inspect the property for compliance with the Special Use Permit. If he determines that the property conforms to the permit he shall issue a Certificate of Occupancy.
 - (viii) The applicant may not engage in the activity which is permitted by the Special Use Permit unless and until the Certificate of Occupancy has been issued.

Section 3.04 Application for Zoning Permits

(a) Zoning Permits

- (i) No building or structure shall begin, nor shall any building or structure be extended or structurally altered, nor shall any use of building or land be changed, except pursuant to a Zoning Permit issued by the Zoning Enforcement Officer. The Zoning Enforcement Officer shall be authorized to issue a Zoning Permit only when he has determined that there is no violation of this Local Law or when directed to do so by the

Zoning Board of Appeals or a court of competent jurisdiction.

- (ii) All applications for Zoning Permits shall be made in quadruplicate to the Zoning Enforcement Officer on forms supplied by the Zoning Enforcement Officer together with a Site Plan which conforms to the requirements of Section 304 of this Law
 - (iii) One copy of the application shall be returned to the applicant by the Zoning Enforcement Officer, after the Zoning Enforcement Officer shall have marked such copy either as approved or disapproved and signed it. The original and all remaining copies of the application, similarly marked, shall be retained by the Zoning Enforcement Officer.
 - (iv) Where the proposed use is farm-related, single-family, or two-family residence in any residential district, or an accessory to a single-family or two-family residence in any district, or a building used for agricultural or agricultural accessory uses in an A-R District, the Zoning Enforcement Officer shall review the application for compliance with this Local Law. The Zoning Enforcement Officer may then either issue or deny the permit applied for.
 - (v) The Zoning Enforcement Officer shall refer all other applications for zoning permits to the Planning Board for site plan review, and he may also refer applications listed in subdivision 3 above when and if he determines that site plan review by the Planning Board would be beneficial.
 - (vi) All Zoning Permit applications referred to the Planning Board shall be reviewed to determine: that the proposed site plan conforms to the requirements of this Law; that adjacent properties are protected from potential negative impacts; and that potential adverse environmental impacts are mitigated.
- (b) Certificate of Compliance/Occupancy
- (i) After the completion of the project permitted by the zoning permit, the applicant shall so notify the Zoning Enforcement Officer, who shall then make an inspection of the property to determine whether or not the property meets the terms and conditions of the permit.
 - (ii) If the Zoning Enforcement Officer determines that the property meets all the terms and conditions of the permit, he shall issue the appropriate Certificate.
 - (iii) If the Zoning Enforcement Officer determines that the property does not meet all the terms and conditions of the permit, he shall so notify the applicant and specify in writing each item which does not comply, and shall not issue any certificate until the terms and conditions are met.

Section 3.05 Site Plan Review and Approval

- (a) The Planning Board, at a regular public meeting, shall review and approve, or approve with modifications, or disapprove, all uses requiring site plan approval, before a zoning permit is issued.
- (b) Submission of Site Plan and Supporting Data
 - (i) The applicant shall submit nine (9) copies of a site plan and supporting data in form satisfactory to the Planning Board, and should include, but not be limited to, the following information presented in graphic form and accompanied by a written text. The

Planning Board may require additional information which the owner shall submit. The site plan must comply with applicable regulations listed in Article X, Supplementary Regulations, Sections 10.01-10.06

- 1) Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, right-of-way, zoning and ownership of surrounding property.
 - 2) Layout sketch showing proposed lots, blocks, building locations and land use areas.
 - 3) Traffic circulation, parking and loading spaces, and pedestrian walks.
 - 4) Landscaping plans including site grading, landscaping design, open areas and buffer zone.
 - 5) Preliminary architectural drawings for buildings to be constructed; floor plans, exterior elevations and sections.
 - 6) Preliminary engineering plans; street improvements, storm drainage, water supply and sanitary sewer facilities.
 - 7) Engineering feasibility study of any anticipated problem which might arise due to proposed development, as required by Planning Board.
 - 8) Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
 - 9) Description of proposed uses; hours of operation, and expected number of employees, volume of business and volume of traffic generated.
- (c) Site Plan Review
- (i) The Planning Board shall, at a regular or special public meeting, examine the Site Plan and supporting data and determine whether or not it meets at least the following requirements:
 - 1) The Plan must meet all requirements of this Law.
 - 2) The Plan must provide for emergency vehicle access to the site and safe circulation of vehicular and pedestrian traffic within the site and from the site to the street.
 - 3) Proper loading and unloading facilities and parking for employees and customers.
 - 4) Adequate landscaping and setbacks to promote compatibility with, and protection of, any adjacent residential uses.
 - 5) Sufficient design of surface discharge and waste water systems to protect any private wells and adjoining property from damage from release of pollutants or discharge of excessive volume of surface water. The Planning Board shall require sufficient topographical data to determine the proper storm water control facilities.
 - 6) The existence, location and sufficiency of all municipal facilities including but not limited to water, fire protection, waste water treatment, storm water control and roads.
 - 7) The Planning Board may require such additional information as it deems necessary to determine that the proposed use will be compatible with the requirements of this Law.
 - 8) The Board shall refer all such Site Plans to the Genesee County Planning Board when and if it determines that such referral is required by Section 239 of the General Municipal Law or if it determines that the advice of the County Planning Board would

be helpful in making a determination of compliance.

- 9) The Planning Board shall retain, hire and employ such experts as it deems necessary to assist it in evaluating any Site Plan and any and all costs associated with the employment of such experts shall be paid by the applicant.
- 10) Whenever the Planning Board deems it necessary or appropriate it shall require that the Site Plan be subjected to the requirements of SEQRA and notify the DEC of such requirement.
- 11) The Planning Board may require any changes in any part of the Site Plan it deems necessary to bring the Plan into compliance with this section or any other provision of this Law.
- 12) In the event that an applicant after having received Site Plan approval changes or modifies the Plan or deviates from the approved Plan, the applicant shall be required to revise the Plan and resubmit it to the Planning Board for approval.
- 13) The applicant shall be responsible to construct and use facility subject to the Site Plan in all respects in full compliance with all Federal, State, County and Local Laws, Ordinances, Rules, Regulations, Codes, Orders and Directives regardless whether or not specific reference to them was made during Site Plan Review.
 - (ii) The Board may require changes or additions in relation to yards, driveways, landscaping buffer zones, etc. to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Board, final approval of site plan shall be conditional upon satisfactory compliance by owner to the changes or additions.
 - (iii) Any owner wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.
 - (iv) The Planning Board may, in its sole discretion require that the applicant post a Performance Bond payable to the Town of Byron to insure compliance by the applicant with the Terms and Conditions imposed by the Planning Board.
- (d) Environmental Standards
 - (i) The Planning Board may but shall not be required to review the proposed use for compliance with environmental laws, rules and regulations and shall have the authority to disapprove any proposed use which it finds would violate such laws, rules or regulations.

Section 3.06 Fees

- (a) All applications for any permit provided for by this Law shall be accompanied by the payment of the fee established from time to time by resolutions of the Town Board.
- (b) In addition to any fee payable pursuant to subdivision (a) above, the applicant shall reimburse the Town of Byron for any and all fees, costs or other expenditures for any legal, engineering, professional, or expert services incurred by the Town to evaluate or analyze any application.

Article IV. BOARD OF APPEALS

Section 4.01 Organization

- (a) Appointment Pursuant to Section 267(2) of the Town Law the Town Board shall appoint five (5) persons to constitute the Members of the Zoning Board of Appeals and one (1) of such persons as the Chairperson of the Board of Appeals. Such appointment shall be for terms of five (5) years and shall be staggered as required by Section 267(4).
- (b) Removal In the event any member of the Zoning Board of Appeals shall not attend three (3) duly called meetings in any twelve (12) month period he or she may be removed pursuant to Section 267(9).
- (c) Alternate Members Pursuant to Local Law No. 1-2004 of the Town of Byron the Town Board has established the terms and conditions for the appointment of and the procedure for the Chairperson to designate alternate members to be seated as a member of the Board of Appeals in conformity with Section 267(11).
- (d) Review of Decisions Following the conduct of a hearing on any application the Zoning Board of Appeals shall not allow any other application for the same or similar use unless it shall unanimously determine that there was evidence which was not available to the applicant at the time of the original hearing or that circumstances have substantially changed since that original hearing.

Section 4.02 Powers and Duties of the Zoning Board of Appeals

- (a) The Board of Appeals shall have all the powers and duties prescribed by Section 267, of the Town Law of the State of New York and by this Law which are more particularly specified as follows:
 - (i) Powers and Duties
 - 1) The Board of Appeals shall hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer or body in the enforcement of this Local Law.
 - 2) The Board of Appeals shall render decisions interpreting this Law when so requested by the ZEO, the Planning Board, the Town Board, or by a person directly affected by any such interpretation.
 - 3) The Board of Appeals shall also determine the exact district boundaries upon application from any land owners affected by such determination or the Zoning Enforcement Officer.
 - (ii) Variances
 - 1) Use Variances- The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this Zoning Law. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that:
 - a) Under applicable zoning regulations, the applicant cannot realize a reasonable return from the property in question provided that lack of return is substantial as established by competent financial evidence;

- b) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - c) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - d) That the alleged hardship has not been self created.
 - e) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- 2) Area Variances- The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of the Zoning Law. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted ,as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:
- a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - c) Whether the requested area variance is substantial;
 - d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
 - e) Whether the alleged difficulty was self created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- 3) Imposition of Conditions- The Zoning Board of Appeals shall, in the granting of either use variance or area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

Section 4.03 Variance and Appeals Procedure

- (a) Variance Procedure
 - (i) Board of Appeals Procedure. The Board of Appeals shall be governed by Town Law Section 267 in all its proceedings.
 - (ii) All applications for Variances shall be made on appropriate forms as determined by the Zoning Board of Appeals, provided by the Zoning Enforcement Officer, and shall be accompanied by site plans which adequately describes the proposed project or use.

- (iii) Any and all applications for Use Variances shall be accompanied by an Agricultural Data Statement when the proposed use is in or within 500 feet of the boundary of a certified Agricultural District.
 - (iv) The Zoning Enforcement Officer, after determining that an application is in proper form, shall transmit copies of the application and all supporting documents to the secretary of the Board for distribution to the Board of Appeals for action thereon at least 5 days prior to any public hearing on such variance.
 - (v) All Variance applications shall be referred to the Town Planning Board at least 10 days prior to its meeting for their recommendations prior to being submitted to the Zoning Board of Appeals.
 - (vi) A copy of the complete Variance Application and supporting documents shall also be transmitted by the Secretary of the Planning Board to the County Planning Board for review when required under Section 239-m of the General Municipal Law.
 - (vii) The Board shall fix a reasonable time for the hearing of appeals and shall give due notice of the time set for the hearing to the applicant. Public notice shall be by the publication of a notice in the Official Newspaper of the Town and shall briefly describe the nature of the appeal and the time and place of the hearing. The Board shall, at least five (5) days and no more than ten (10) days prior to the date of the hearing, give notice in writing by first class mail to all property owners within five hundred (500) feet of the property.
 - (viii) In its review, the Board of Appeals may consult with any other Town, County, and State Officials or Boards or such experts or advisors as it deems necessary and any expenses incurred shall be paid by the applicant. The Board may require such payment or payments to be made in advance or may condition the effective date of any approval upon the payment of such expense.
 - (ix) The Board shall approve, with or without conditions, or disapprove the application within sixty-two (62) days of the public hearing and shall communicate its action, in writing, to the applicant, the Town Clerk, the Zoning Enforcement Officer, and other boards within five (5) days of its decision. When applicable, compliance shall be required in accordance with the provisions of Section 239-m of the General Municipal Law.
 - (x) The Recording Secretary of the Zoning Board of Appeals shall provide the Town Board with a copy of the minutes of the Board of Appeals.
 - (xi) The Zoning Enforcement Officer may, upon receipt of the notice of approval and upon application by the applicant, issue a zoning and/or building permit as applied for and approved by the Zoning Board of Appeals.
- (b) Appeal Procedure
- (i) An appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal, specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer. The cost of sending or publishing any notices relating to such appeal shall be born by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.

- (ii) The Zoning Enforcement Officer from whom the appeal is taken shall, within seven (7) days of the filing of the appeal, transmit all papers constituting the record upon which the appeal is taken to the Board of Appeals.
 - (iii) The Board shall fix a reasonable time for the hearing of appeals and shall give due notice of the time set for the hearing to the applicant. Public notice shall be by the publication of a notice in the Official Newspaper of the Town and shall briefly describe the nature of the appeal and the time and place of the hearing. The Board or designee shall, at least five (5) days and no more than ten (10) days prior to the date of the hearing, give notice in writing by first class mail to all property owners within five hundred (500) feet of the property.
 - (iv) Any action by the Board of Appeals shall be stated in writing and communicated to the person bringing the appeal and the Town Clerk within five (5) days after the decision has been made.
- (c) Rehearing
- (i) A unanimous vote of the members of the Board of Appeals then present must occur to be able to rehear a previous decision.
 - (ii) A unanimous vote of the members of the Board of Appeals then present shall be necessary to reverse any order, requirement, decision, or determination.

Section 4.04 Board of Appeals Records

- (a) Every rule, regulation, amendment, or repeal thereof and every order, requirement, decision, or determination of the Board shall immediately be filed in the Town Clerk's office as required by Section 267 of the Town Law of the State of New York. The Board of Appeals shall keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep records of its examinations and other official action.

Section 4.05 Lapse of Authorization

- (a) Any variance granted by the Board of Appeals shall be automatically revoked if a building and use permit, is not obtained within six (6) months of the date of approval by the Board of Appeals and construction commenced within one (1) year of such date of approval.

Section 4.06 Violation of Conditions or Restrictions

- (a) Failure to comply with any condition or restriction prescribed by the Board of Appeals in approving any appeal for a variance, or a modification of regulations shall constitute a violation and shall be grounds for revocation of the variance

Article V. PLANNING BOARD

Section 5.01 Creation, Appointment, and Organization of Planning Board

- (a) The Planning Board shall consist of five (5) members including a Chairperson and a Vice-Chairperson and two (2) alternate members all of whom shall be appointed by the Town Board as provided for in Section 271 of the Town Law. The Town Board shall

designate members of said Planning Board to act as Chairperson and Vice-Chairperson thereof, and upon its failure to do so; the Planning Board shall elect a Chairperson and a Vice-Chairperson from its own members. The term of office for regular members shall be governed by the applicable provisions of New York Town Law and the term of office for the alternate member shall be two (2) years. The Chairperson or Vice-Chairperson, in his or her absence, may designate an alternate member to substitute for a regular member in the event such member is unable to participate for any reason pursuant to Local Law No. 1-2004. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial meeting at which the substitution is made. All provisions of State Law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any Town requirements related to training, compensation and attendance, shall also apply to alternate members.

- (b) The Planning Board shall establish such rules and regulations as are required by law and the provisions herein for the transaction of their business, and may amend, modify, and repeal the same from time to time.
- (c) The Town Board shall also appoint a Secretary who shall not be a member of the Board.

Section 5.02 Powers and Duties of the Planning Board

- (a) The Planning Board shall have the following powers and duties:
 - (i) To prepare and from time to time change the Comprehensive Plan for the development of the Town. This provision shall not be construed to prevent the Town Board from appointing a Special Board pursuant to Section 272-a of the Town Law.
 - (ii) To review proposals to approve or disapprove the laying out, closing off, abandonment, or changes in lines of streets, highways, and public areas and to make recommendations to the Town Board.
 - (iii) To make investigations and reports relating to the planning and development of the Town, including changes in boundaries of districts, recommended changes in the provisions of this Town Law, and to act on any matter lawfully referred to it by the Town Board.
 - (iv) To review, act on or provide advisory reports as specified by this Town Law.
 - (v) All such powers as are conferred upon Town Planning Boards by the provisions of the New York State Town Law as now or hereafter in effect. These powers include, but are not limited to:
 - 1) Site Plan Review
 - 2) Special Use Permits
 - 3) Review Variances
 - 4) Emergency Housing Permits

Article VI. GENERAL PROVISIONS APPLICABLE TO ALL DISTRICTS

Section 6.01 Applicability of Regulations

- (a) The provisions of this Law shall be subject to such exceptions, additions, or modifications as herein provided by the following general supplementary regulations. The

dimensions and restrictions as set forth in Table 1 of the Zoning Law of the Town of Byron are incorporated herein and made a part of this Local Law.

Section 6.02 Uses Not Permitted

- (a) Uses not permitted by the Zoning Law of the Town of Byron are prohibited.

Section 6.03 Flood Plain Overlay Zone

- (a) The Flood Plain Overlay Zone is used in the Town of Byron for information purposes only to identify potential areas of special flood hazard, to insure coordinated review of the zoning and flood damage prevention regulations, and to minimize the threat of flood damages. Exact boundaries of the special food hazard areas are set forth on the Federal Emergency Management Agency's (FEMA), most current Flood Insurance Rate Map (FIRM) or equivalent map for the Town of Byron. (Community Number 361139A)
- (b) In addition to the Zoning Law, areas within special flood hazard areas are regulated by the Town of Byron's Flood Damage Prevention Local Law, which is administered by the Zoning Enforcement Officer or other designee of the Town Board. These requirements are in addition to those contained in the underlying zoning district.

Section 6.04 Preservation of Natural Features

- (a) No structure shall be built within fifty (50) feet of the centerline of the bed of a stream carrying water on an average of six (6) months of the year, except for:
 - (i) Public bridges, water works, and other municipal or utility facilities.
 - (ii) Such private bridges, fords, drainage conduits, embankments, and similar structures as are necessary to permit access to a lot or portion thereof or as are incidental to a lawful use of a lot, provided that structure will not have a material adverse effect on the stream, nor alter the flow of water therein, nor substantially increase the likelihood of flood or overflow in the area.
- (b) No person shall strip, excavate, or otherwise remove topsoil for sale or other use other than on the premises from which it was excavated or pursuant to a permit issued in accord with Section 1102 of this Local Law.
- (c) Natural features shall be preserved whenever possible.

Section 6.05 Regulations Applicable to All Districts

- (a) One Principle Building and Use per Lot- There shall not be more than one (1) principal use on any lot in the Agricultural (A), Agricultural-Residential (A-R), and Residential (R-1) districts except as provided for in the following:
 - (i) An approved multifamily dwelling project,
 - (ii) A single-family dwelling accompanying a non-residential use permitted on a lot in A-R and R-1 Districts,
 - (iii) A single-family dwelling accompanying a non-residential use requiring a Special Use Permit in A-R and R-1 Districts, if approved by the Planning Board as part of the Special Use Permit application process, provided there is only one use of a commercial

nature on the lot.

- (b) Yard and Open Space for Every Building- No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building; no yard or any other open space on one lot shall be considered as a yard or open space for a building on any other lot.
- (c) Location of Accessory Buildings and Structures
 - (i) Accessory buildings and structures shall not be located within the front yard in Residential (R-1) Districts.
 - (ii) Accessory buildings are permitted as follows: (refer to Table 1)
 - 1) The side yard and rear yard requirements for accessing any building shall be 5 (five) feet in all districts.
 - (iii) Swimming pools shall not be located in the front yard area and shall comply with the rear and side yard setbacks of a minimum of ten (10) feet.
- (d) Every principle lot shall have direct access to a public street improved to meet Town requirements.
- (e) Visibility at Intersections—On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three feet in height, shall be erected, placed or maintained within the triangular area formed by the intersection street lines and a straight line joining said street at points which are fifty (50) feet (except in R-1 and commercial district, thirty (30) feet) distance from the point of intersection, measured along said street lines. The height of three feet shall be measured above the road surface at the nearest edge of road traveled-way. This paragraph shall not apply to existing trees, provided no branches are closer than six (6) feet to the ground.
- (f) No business establishment shall place or display goods for purposes of sale or permit any coin-operated vending machine within required set back, side yard or rear yard of the lot of any type to be placed in any location which would infringe upon the required yard areas specified in this Local Law. However, a temporary incidental road-side stand is not prohibited and is exempted from the yard and setback requirements for the Use District in which it is located.
- (g) No manure, odor or dust-producing substances shall be permitted to be stored within one hundred (100) feet of any lot line of a NYS Certified Agricultural District.
- (h) For the purpose of regulating the locations of any building on corner lots, and on lots extending through between two parallel streets, all portions of a corner lot or a through lot which fronts on a public street shall be subject to the front yard requirements of the zoning district in which said corner lot or through lot is located.
- (i) Except for vehicular parking on driveways, open storage of boats, vehicles, travel trailers, or any other equipment shall not be within any setback, side yard or rear yard requirements in any district. In any event, such vehicles or equipment may not be stored closer than ten (10) feet from lot lines.
- (j) When a new lot is formed so as to include within its boundaries any part of a former lot on which there is an existing building or use, the subdivisions must be carried out in such a manner as will not violate upon any of the provisions of this Local Law either with respect to any existing structures or use and any proposed structures or use and setbacks.

- (k) Public buildings/use and grounds shall be subject to the area and yard requirements of this Local Law and to site plan review.
- (l) Fences erected in the Town shall adhere to the following standards:
 - (i) No fence in a Residential District (R-1) shall be erected, altered, or reconstructed to a height exceeding three (3) feet above ground level when located within twenty-five (25) feet of the street right-of-way line. Beyond twenty-five (25) feet, fences may be up to six (6) feet in height.
 - (ii) Fencing used to enclose a tennis court may be permitted up to ten (10) feet in height provided that such fencing is not less than fifteen (15) feet from either the side or rear property line.
 - (iii) These restrictions shall not be applied so as to restrict the erection of a wall for the purpose of retaining earth.
 - (iv) No fence in a Commercial (C-1 or C-2) or Industrial District (I-1) shall exceed three (3) feet in height in front yards, or eight (8) feet in height in rear and side yards.
 - (v) No fence shall be erected to encroach on any property line or upon a public right-of-way.
- (m) All buildings which contain devices which produce waste water and which are located outside a sewer district are required to obtain and maintain a permit from Genesee County Department of Health. Such a permit must be filed with the ZEO as a condition to the issuance of any Certificate of Compliance.
- (n) Except for farm operations in a NYS Certified Agricultural District, no lot shall be used for the commercial storage or disposal of solid or liquid waste without the prior approval of the Town Board by Special Use Permit issued by the Planning Board. Duly approved individual sewage disposal systems shall be exempt from this provision. Town Board approval shall be given only upon a finding that the proposed use shall not have a detrimental effect upon surrounding properties and evidence of any required permits necessary from the Department of Health and/or the New York State Department of Environmental Conservation have issued and are in full force and effect. The Town Board may require the submission of any documents necessary to make the foregoing finding. Consistent with the provisions of paragraph G above, this provision shall not prohibit the storage of animal waste upon any farm in a NYS Certified Agricultural District.
- (o) Any application for a building or zoning permit which proposes a change in the natural contours of the lot shall include a storm water drainage plan and shall comply with all Federal, State and Local laws, rules and regulations regarding storm water flows and retainage.
- (p) Any structure damaged as the result of an emergency situation shall require a new Building Permit before any reconstruction is started.
- (q) Junk Yards are not allowed in the Town of Byron.

Section 6.06 PERMITTED MODIFICATIONS

- (a) Height Regulations (refer to Table I)
- (b) Front Yard Exception (As set forth in Table I regarding setbacks)

Article VII. NON-CONFORMING USES

Section 7.01 Continuance

- (a) Except as otherwise provided in this Article, the lawful use of land or buildings existing at the date of the adoption of this Local Law may be continued although such use or building does not conform to the regulations specified by this Local Law for the zoning district in which such land or building is located. The following provisions shall, however, apply to all non-conforming uses:
 - (i) A non-conforming lot shall not be further reduced in size.
 - (ii) A non-conforming building shall not be enlarged, extended, or increased unless such enlargement would tend to reduce the degree of non-conformance.
 - (iii) A non-conforming use (building or land) shall not be expanded except as may be authorized by Section 702.
 - (iv) A non-conforming use may be changed into a conforming use. When a non-conforming use is changed to conform to the requirements of this Local Law, the use of the building or tract of land shall not be changed again except in accordance with these regulations.

Section 7.02 Certification of Non-Conformance

- (a) The Zoning Enforcement Officer may with or without cause inspect any building or lot which is or may by the enactment thereof become non-conforming and he shall so inspect a lot or building at the request of the owner thereof.

Section 7.03 Expansion of Non-Conforming Uses

- (a) A non-conforming use shall not be expanded without authorization by the Board of Appeals and shall be considered on an individual case. The Board of Appeals shall issue or deny such requests as set forth in Sections 402-405, taking into consideration the following standards applicable to granting a permit authorizing the expansion of a non-conforming use:
 - (i) The location, size, nature, and intensity of the non-conforming use shall be in harmony with the orderly development of the district in which it is located.
 - (ii) The Board of Appeals may prescribe any condition that it deems to be necessary or desirable to aid it in making a determination on the application.

Section 7.04 Abandonment

- (a) In any district, whenever a non-conforming use of land, premises, building or structure, or any part or portion thereof, has been discontinued for a period of one (1) year, such non-conforming use shall not thereafter be re-established, and all future uses shall be in conformity with the provisions of this Local Law.

Section 7.05 Maintenance and Restoration

- (a) Any building damaged by fire or other unintentional causes shall be razed, repaired or

rebuilt within one year of the damage. In the case of a permitted restoration of a non-conforming use, such restoration shall not increase the degree of non-conformance. The non-conforming use to be required to conform if damage is more than 50% of assessed value.

Section 7.06 Construction Approval Prior to this Local Law

- (a) A permit that has been duly granted before the date of adoption of this Local Law or any applicable amendment shall not require any change in plans, construction or designated use of a building complying with the Zoning Law in effect at the time the permit was issued.

Article VIII. ESTABLISHMENT AND DESIGNATION OF ZONING DISTRICTS

Section 8.01 Establishment of Districts & Overlay Zones

- (a) The Town of Byron is hereby divided into Zoning Districts and Overlay Zones:
 - (i) A Agricultural District
 - (ii) A-R Agricultural Residential District
 - (iii) R-1 Residential District
 - (iv) C-1 Neighborhood Commercial District
 - (v) C-2 General Commercial District
 - (vi) I-1 Industrial District
 - (vii) F-P Flood Plain Overlay Zone
 - (viii) L-C Land Conservation District

Section 8.02 Zoning Map

- (a) The Official Zoning Map shall be kept in the Office of the Town Clerk and it shall bear the seal of the Town of Byron, certifying that it is the Official Zoning Map of the Town of Byron and its date of adoption and/or amendments. Said Zoning Map shall show the boundaries of the Zoning Districts herein established and is hereby adopted by reference and declared to be a part of this Local Law.

Section 8.03 Interpretation of District Boundaries

- (a) Where uncertainty exists with respect to the boundaries of any of the Zoning Districts as shown on the Official Zoning Map, the following rules shall apply:
 - (i) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.
 - (ii) Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.
 - (iii) Boundaries indicated as approximately following the municipal limits of the Town shall be construed to follow such municipal limits.
 - (iv) Boundaries indicated as following the center lines of streams or other water bodies shall be construed to follow such center lines.
 - (v) Distances not specifically indicated on the Official Zoning Map shall be

determined by the scale of the map. Any disputes to these distances will be heard before the Board of Appeals.

- (vi) Where physical or natural features on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by Subsections A through E above, the Board of Appeals shall interpret the District Boundaries.
- (vii) Land in right-of-way (ROW) of a dedicated road, street or highway for zoning should not be counted as measurable acres.

Article IX. DISTRICT REGULATIONS

Section 9.01 General District Regulations

- (a) The regulations set by this Local Law shall be the minimum regulations within each district and shall apply uniformly to each class or kind of structure or use of land, as set forth in the following district regulations.
 - (i) No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all the regulations herein specified for the district in which it is located.
 - (ii) All applications require a site plan review to be approved by the Planning Board, including conversions of existing dwellings.

Section 9.02 Agricultural District

- (a) Intent
 - (i) The Agricultural (A) District is designed primarily to preserve productive farmland and secondarily to maintain the rural environment of the district. Agricultural and residential uses have a number of inherent conflicts between them. The purpose of this district is to minimize these conflicts by separating such uses by providing an area where agricultural uses are the primary uses permitted in the district. Active agricultural operations and agricultural-based business are the predominant uses established in the district. Such uses shall continue to be permitted in this district. Before a zoning or building permit can be issued for any building project, the Planning Board shall be required to do a site plan review, with preserving agricultural land as the main criteria.
- (b) Permitted uses in the Agricultural District (A)
 - (i) Agricultural, agricultural accessory uses
 - (ii) Ponds with Soil & Water Conservation District approval
- (c) Permitted in the Agricultural District (A) subject to the issuance of a Special Use Permit
 - (i) Communication towers
 - (ii) Wind Energy Conversion System

Section 9.03 A-R Agricultural Residential District

- (a) Intent
 - (i) The Agricultural-Residential (A-R) District is designed to accommodate primarily agricultural uses in order to preserve the town's agricultural base and maintain its rural nature, but residential uses are permitted therein. It is recognized, however, that

agricultural and residential uses have a number of inherent conflicts between them. Individuals who plan to develop residential uses within the A-R District should be aware of such inherent conflicts and that residences are a secondary use. The primary intent would be to use marginal agricultural land for residential use in an effort to preserve more viable land for agriculture. See table (1) one.

(b) Permitted Principle Uses in an A-R District

- (i) Agricultural, agricultural accessory uses and agricultural-based business
- (ii) Single family dwelling and its accessory uses
- (iii) Stable or Riding Applicable only to those uses not governed by Ag & Market
- (iv) Veterinary Clinic
- (v) Outdoor recreation facility (i.e. golf course, gun clubs, etc.)

(c) Permitted uses in an A-R District upon issuance of a Special Use Permit:

- (i) Two family dwellings and its accessory uses
- (ii) Multi-Family dwellings and its accessory uses
- (iii) Public utility facility
- (iv) Home occupations
- (v) Professional office
- (vi) Excavation operation
- (vii) Private air strip
- (viii) Campgrounds (See Section 1104)
- (ix) Not for profit public and semi-public uses and buildings
- (x) Religious institutions or schools
- (xi) Kennel
- (xii) Stable or Riding Academies only to those uses not governed by Ag & Market(see section 1109)
- (xiii) Bed and Breakfast
- (xiv) Commercial recreation uses
- (xv) Wind Energy Conversion Systems
- (xvi) Industrial Wind Turbine
- (xvii) Commercial greenhouses
- (xviii) Commercial communication towers
- (xix) Cemetery
- (xx) Self service storage facility
- (xxi) Contractor's yard
- (xxii) Club
- (xxiii) Lumber and wood products
- (xxiv) Boarding Houses
- (xxv) Accessory Apartment

(d) In addition to the conditions set forth in Section 303 (F) for a Special Use Permit, the following conditions shall apply to keeping of livestock in an Agricultural Residential District:

- (i) Occupants of a single family residence in an Agricultural Residential (A-R) Districts shall be permitted to keep horses or livestock for their own personal use as an accessory use, provided there is compliance with the following standards and

conditions:

- 1) No such use shall be permitted on lots having less than three (3) acres of land.
- 2) The number of horses and livestock permitted on each lot shall not exceed the following: one horse or livestock (in any aggregate combination) for the first three acres of lot area plus one additional horse or livestock for each additional acre of lot area.
- 3) A waste management plan must be submitted. No manure shall be stored or permitted to accumulate within one hundred (100) feet from any boundary line or within twenty-five (25) feet from a dwelling on the same lot, or within one hundred twenty-five (125) feet from a dwelling on any adjacent or other lot (see Article II).
- 4) If any of the requirements of this Local Law are not complied with by the resident occupants, the accessory use here permitted shall, upon order of the Zoning Enforcement Officer, be discontinued until such time as the conditions which do not comply are remedied to the satisfaction of the Zoning Enforcement Officer.

Section 9.04 R-1 Residential Districts

- (a) Intent.
 - (i) The purpose of the Rural (R-1) District is to promote orderly development of the Town and to encourage well designed living environments which protect and stabilize the residential character of the town.
- (b) Permitted Principle Uses in an R-1 District
 - (i) Single family dwellings and its accessory uses
 - (ii) Two-family dwellings and its accessory uses
 - (iii) Agricultural uses provided sound agricultural practices are used, excluding the storage of manure and stabling of farm animals outside of a NYS Certified Agricultural District
- (c) Restriction on Accessory Uses in an R-1 District
 - (i) No more than two (2) accessory buildings primarily used for storage shall be permitted on any residential property.
- (d) The following uses are permitted in an R-1 District upon issuance of a Special Use Permit.
 - (i) Home occupations
 - (ii) Professional office
 - (iii) Not for profit public and semi-public uses and buildings.
 - (iv) Bed and Breakfast.
 - (v) Cluster residential developments.
 - (vi) Child daycare center
 - (vii) Adult care facilities
 - (viii) Multi-family dwellings
 - (ix) Dwelling accessory apartment

Section 9.05 C-1 Neighborhood Commercial District

- (a) Intent.

- (i) The purpose in creating the Neighborhood Commercial-1 (C-1) District is to provide locations where establishments may be appropriately located to serve frequent commercial and personal service needs of residents within convenient traveling distance. Other business uses which, in the opinion of the Planning Board, are similar in nature and scale to those permitted below.
- (b) Permitted Principle Uses in a C-1 District
 - (i) Retail business establishments which are clearly of a community service characteristic that would not exceed six patrons or four vehicles including, but not limited to, the following:
 - 1) Professional offices
 - 2) Bed & Breakfast
 - 3) Antique shops
 - 4) Hobby shop
 - 5) Retail Trade and/or Service
 - 6) Banks
 - 7) Barber or Beauty shop
 - 8) Bakery
 - 9) Public utility facility
 - 10) Other businesses that are similar in nature and scale
 - (c) The following uses are permitted in a C-1 District upon the issuance of a Special Use Permit:
 - (i) Automobile car wash
 - (ii) Medical Clinic
 - (iii) Printing and publishing establishment
 - (iv) Signs and advertising specialties
 - (d) Other Provisions and Requirements for the C-1 District
 - (i) No commercial structure shall be permitted within fifty (50) feet of the nearest lot line of any Residential (R-1) District.

Section 9.06 C-2 General Commercial District

- (a) Intent.
 - (i) The purpose in creating the General Commercial(C-2) District is to provide locations where larger establishments may be appropriately located to serve frequent commercial personal service needs.
- (b) Permitted Principle Uses in a C-2 District
 - (i) Retail business establishments in the opinion of the Planning Board, are similar in nature and scale to those permitted, but not limited to, the following:
 - 1) General Retail Establishments
- (c) The following uses are permitted in a C-2 District upon issuance of a Special Use Permit
 - (i) Veterinary Clinic
 - (ii) Theatre, bowling alley and other forms of indoor recreation
 - (iii) Community Center

- (iv) Recreational Vehicle Sales and Service
- (v) Light manufacturing (within the building)
- (vi) Gas stations/convenient store
- (vii) Hotels and Motels
- (viii) Funeral Homes
- (ix) Car dealers
- (x) Contractor yards
- (xi) Motor vehicle service stations
- (xii) Motor vehicle repair/collision shops
- (xiii) Agri-based businesses

Section 9.07 I-1 Industrial Use District

- (a) Intent.
 - (i) The purpose of the Industrial (I-1) District is to provide for the establishment of industrial uses essential to the development of a balanced economic base, to create local job opportunities in an industrial environment and to regulate such development so that it will not be detrimental or hazardous to the surrounding community and to the general health, safety, and well-being of the Town of Byron.
- (b) Any use of light industrial or agri industrial nature is permitted which involves only the processing assembly, compounding, or packaging of previously prepared or refined materials, provided that at no time will such use result in or cause:
 - (i) Dissemination of dust, smoke, smog, observable gas, fumes or odor, or other atmospheric pollution, noise, glare, or vibration beyond the property line.
 - (ii) A condition determined by the ZEO to be hazardous to any adjacent property.
 - (iii) Violation of any Federal, State or Local environmental law, rule regulation or order. The determination of violation by any enforcement agency or department shall constitute a violation of this Local Law and the revocation of any permit or certificate issued pursuant hereto. No new permit or certificate shall be issued unless and until all conditions found by such enforcement agency to be violation are corrected as determined by said agency.
- (c) Permitted Principle Uses in I-1 District
 - (i) Light Industrial/Agri-Industrial Uses
 - (ii) Light industry and manufacturing
 - (iii) Manufactured/modular home sales and service
 - (iv) Equipment/Machinery sales and service
 - (v) Chemicals and allied products
 - (vi) Tool and die/fabrication
 - (vii) Manufactured/molded foam products
 - (viii) Truck and Transportation terminal
 - (ix) Construction/Contractor yard
 - (x) Warehouse/Wholesale Trade
 - (xi) Commercial storage buildings for rent.
- (d) The following uses are permitted in an I-1 Industrial District upon issuance of a Special

Use Permit. Site Plan Review by the Planning Board is required by all businesses in an I-1 Industrial District.

- (i) Industrial Wind Turbines
- (ii) Wind Energy Conversion Systems
- (iii) Adult Uses
- (e) Other Provisions and Requirements
 - (i) Residential uses shall be prohibited in this District, except for a caretakers' residence or site.
 - (ii) All industrial processes shall take place within an enclosed building. Incidental storage out of doors may be permitted provided that such materials are shielded from view from public streets and adjacent off-street parking areas by fencing, landscaping, or other appropriate measures.
 - (iii) All uses permitted in this District shall set aside not less than twenty (20) percent of the lot to be devoted to seeding, planting, retention of tree cover, or other landscaping, and storm water retention. This area shall be used for no other purpose.
 - (iv) To permit the transfer of goods in such a manner as will not adversely affect traffic on adjoining streets render any parking area or part hereof unusable or take place in front of the building.
 - (v) Industrial structures shall be located so as to be a minimum of one hundred (100) feet from any Non-Industrial District. This one hundred (100) foot buffer strip shall be perpetually maintained so as to provide visual screening and separation between industrial and non-industrial uses.
 - (vi) Parking areas may be located in any of the required yard areas provided they are not less than fifty (50) feet from a right-of-way line or twenty (20) feet from a property line.
 - (vii) All proposals for rezoning to industrial use shall comply with the following requirements:
 - 1) The proposed rezoning shall be consistent with the goals and objectives of the Town Comprehensive Plan.
 - 2) The Town Board shall determine that the street system serving the proposed industrial use is adequate to carry the anticipated traffic flows and that the use will not create a burden or nuisance for adjoining property owners.
 - 3) The Town Board shall determine that the physical character of the site proposed for rezoning to industrial use is adequate to accommodate the proposed use.
 - 4) The proposed rezoning shall conform to the procedures set forth in Article I, Section 105, A-F.
 - 5) The review and approval of site plans, the application of development standards and the regulations pertaining to water supply, sewage disposal, and storm drainage shall conform with the appropriate requirements and procedures set forth in this Law.

Section 9.08 Planned Unit Development (PUD) District

- (a) The purpose of the Planned Unit Development District is to permit greater flexibility,

more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities, to provide harmonious land uses which offer a high level of amenities, to permit a mixture of residential and/or non-residential uses, and to preserve natural and scenic qualities of the site during the development process.

- (i) Procedure for Creation of a PUD District
 - 1) The owner of any tract of land in the Town of Byron consisting of a minimum of five (5) contiguous acres, may petition the Town Board through the Planning Board to designate the property described in the petition as a PUD District.
 - 2) The petition shall contain the exact name and address of the petitioner and reference records in the office of the Genesee County Clerk at which the deed conveying the property in question to the petitioner is recorded.
 - 3) A PUD District may be created by the Town Board in accordance with the procedures detailed in Subsection B of this Section.
- (ii) Procedure for Approval
 - 1) Pre-Application Conference
 - a) Before submission of a preliminary application for approval as a Planned Unit Development, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of their application before entering into any binding commitments or incurring substantial expenses of site plan preparation.
 - 2) Preliminary Plan (Rezoning)
 - a) Planning Board Review and Approval—A preliminary plan application shall be submitted to the Planning Board at least 15 days prior to a regularly scheduled meeting. Within sixty (60) days following the first meeting after submission of the plan, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board. Failure by the Planning Board to act within the required time period shall constitute approval and the application shall be forwarded to the Town Board.
 - b) Submission Requirements—The applicant shall submit to the Zoning Enforcement Officer, six (6) sets of such plans, drawings, elevations, and shall be at least the same as the requirements for a subdivision plot approval.
 - 3) The preliminary plans must be accompanied by a written description of the proposal and such other maps, charts, data to enable the Planning Board to make a judgment as to the suitability of and impact of it upon the town. Such material may include the following:
 - a) A map showing:
 - i) The size and location of the parcel to be converted to a PUD.
 - ii) The size and location of all public areas and services(i.e. highway right of ways, public utilities, areas devoted to industrial uses, open spaces, parks, etc.)
 - iii) The number and types of residential structures or dwelling units with the residential area, together with the proposed lots.
 - iv) The number and types of commercial structures or units within the commercial area, together with the proposed lots.
 - v) The proposed plan for any parks and open spaces.

- b) A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall town development plan and the effect on this Local Law..
 - c) Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of nonresidential floor area including the approximate selling and/or rental price, the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.
 - d) Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the town. Such material shall include, but not be limited to: the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the applicant intends to provide needed facilities, a fiscal impact statement including a summary of new costs and revenues to the town due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.
- 4) Review Considerations—In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by the Comprehensive Plan and Zoning Law, and the protection of the established and permitted uses in the area. It shall consider the location of main and accessory buildings and their relation to one another; the traffic circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental effects of the proposed development on adjacent property and the surrounding neighborhood; the manner conformance with the official development policies of the Town; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.
- 5) Within the sixty- two (62) days required by subparagraph B (2) above, the Planning Board shall submit its report to the Town Board. At the meeting following receipt of the Report, the Town Board shall submit the Plan and Report to the County Planning Board for its recommendation. At the meeting following the receipt of the recommendation of the County Planning Board, The Town Board shall call a public hearing not less than fifteen (15) days nor more than thirty (30) days thereafter to consider the Report. Within thirty (30) days following the public hearing on the Report, The Town Board may amend the Zoning Law to create the Planned Unit Development Zone and define its boundaries or vote not to so amend the Zoning Law. Failure of the Town Board to act within said thirty (30) day period shall constitute a rejection Report. Approval of the Plan and amendment of the Zoning Map shall not constitute permission to construct any improvement on or in the Planned Unit Development.

- (iii) Final Plan
 - 1) Ownership—Before final approval of the PUD, the applicant must show evidence of the full legal ownership in the land.
 - 2) Planning Board Review and Approval—Upon approval of the zone change, the applicant has one year in which to submit a final plan to the Planning Board for review and recommendation to the Town Board. This submittal must be presented at least fifteen (15) days prior to the next regularly scheduled meeting of the Planning Board. Within sixty two (62) days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with conditions or disapproval of the application to the Town Board.
 - 3) Submission Requirements—The applicant shall submit detailed site plans comparable to the requirements for final approval of a Subdivision/land separation plot.
 - 4) Town Board Review and Approval—The Town Board shall make final approval in accordance with official town development policies and may impose reasonable conditions relating to that plan.
- (iv) Design Standards
 - 1) Area Requirements
 - a) Area, yard, coverage, height, density and supplementary regulation requirements shall be comparable to minimum requirements in appropriate zoning districts for each specific use, except where the Planning Board finds that it is in the public interest to modify these requirements.
 - 2) Traffic and Circulation
 - a) All proposed public roads should meet municipal design and construction specifications. Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system. A proposed Deed dedication shall be submitted in the event that roads and streets are to be dedicated to the Town.
 - 3) Common Open Space
 - a) All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:
 - i) Public dedication.
 - ii) Establishment of a Home Owners Association.
 - iii) Retention of responsibilities, control and maintenance by the developer.
 - 4) Performance and Maintenance Bonds
 - a) Performance and maintenance bonds may be required in the discretion of the Town Board.

Section 9.09 F-P Flood Plain Overlay Zone—FPO

- (a) The Flood Plain Overlay (FPO) Zone is shown on the Zoning Map of the Town of Byron to identify potential areas of special flood hazard, to insure coordinated review of zoning and flood damage prevention regulations, and to minimize the threat of flood damages.

Exact boundaries of the special flood hazard areas can be found on the Federal Emergency Management Agency's (FEMA) most current Flood Insurance Rate Map (FIRM), or equivalent map for the Town of Byron. The intent is to not have any new development in the Flood Plain Overlay Zone.

- (b) The following uses are permitted by Special Use Permit:
 - (i) Golf courses
 - (ii) Outdoor recreation
 - (iii) Parks/playgrounds
 - (iv) Agricultural and agricultural accessory uses outside a NYS Certified Agricultural District

Section 9.10 Land Conservation (L-C) District

- (a) Intent
 - (i) The purpose of the Land Conservation (L-C) District is to prohibit building in the areas within said Districts.
- (b) Permitted uses in a Land Conservation District might include, but not limited to:
 - (i) Park and recreational uses including hiking and biking trails, picnic areas, cross country ski trails, snowmobile trails, and horse-riding trails.
 - (ii) Agricultural and agricultural accessory uses

Article X. SUPPLEMENTARY REGULATIONS

Section 10.01 Off-Street Parking Regulations

- (a) All buildings erected, altered or for which the use is changed in all Districts shall be subject to the following Regulations. Any existing buildings shall not be subject to the Regulations unless and until the building, parking areas or use is changed.
 - (i) Design Requirements
 - 1) Off-street parking space shall be provided to all buildings as set forth in Section 1001 below and shall be located on the same lot as the building to which they are associated and/or within two hundred (200) feet thereof.
 - 2) All parking spaces shall be at least ten (10) feet in width and at least twenty (20) feet in depth exclusive of the area of the accessway or maneuvering space.
 - 3) No parking space or the accessway or maneuvering space shall be located in any street or highway right-of-way or be so designed or designated that ingress or egress from the parking space is not in, on or over any sidewalk.
 - (ii) Access to all parking spaces shall be from designated driveways or accessways.
 - (iii) All parking areas containing more than twenty (20) parking spaces shall have designated lanes and/or no parking areas as set forth on the approved Site Plan.
 - (iv) All parking areas shall be adequately drained and surfaced with a dustless, durable, all weather surface as set forth in the approved Site Plan.
 - (v) No lot in an R-A or R District used for residential purposes shall be permitted more than two (2) driveways, which driveway or driveways shall be not less than twenty(20) feet in width at ROW.
 - (vi) Lots in commercial and industrial districts shall have the number and width of

- driveways designated by the approved Site Plan.
- (vii) All driveway cuts are subject to the approval of the authority having jurisdiction over the highway.
- 1) Planning Board can modify the parking space requirements per the Site Plan Review process.

Section 10.02 Required Off Street Parking

- (a) Each type of use shall have the required off street parking space set forth in the chart below:

TYPE OF USE	REQUIRED OFF-STREET PARKING SPACE
<u>Residential</u>	
Single and Two Family Dwelling	Two (2) parking spaces per dwelling unit
Multiple family dwelling	Minimum of 2 parking spaces per dwelling unit, additional parking spaces may be required by the Planning Board
Home Occupations	Two (2) spaces for client uses, in addition to the off-street parking spaces required for the dwelling. Additional spaces may be required by the Planning Board.
<u>Commercial</u>	
Motels and Hotels	One (1) parking space per unit plus four (4) additional for personnel and employees.
Business, Professional and Medical/Dental Offices, Retail and Service Shops	One (1) parking space for every two hundred (200) square feet plus one (1) additional for each employee.
Banking Offices	One (1) parking space for every one hundred (100) square feet of gross floor area or major fraction thereof. Drive-in windows shall have sufficient space to adequately handle five (5) cars, separate and apart from any required parking spaces. Additional spaces may be required by the Planning Board.
Business and Commercial uses	One (1) parking space per 200 square feet of gross floor area. Additional parking may required by the Planning Board.
Supermarkets, Restaurants, Laundromats and Self-Serve Food Marts, Funeral Homes, Mortuaries	One (1) parking space for every one hundred (100) square feet of gross floor area and one (1) parking space for each employee.
Motor Vehicle Service Stations and Public Garages	See Section 1101
<u>Industrial</u>	
Industry	One (1) parking space for each employee, plus additional parking as required by the Planning Board to account for any shift overlap or the nature of the business.
<u>Unspecified Uses</u>	As required by the Planning Board, based upon intensity, turnover, customers and unloading.

<u>Off-site Parking</u>	Required off-site parking areas for the above permitted uses may, under unusual circumstances and hardship, be located off-site provided that the parking area is not more than four hundred (400) feet from the premises of the principle building or use to be served by such areas, and provided that the owner or owners of said off-site parking areas relinquish all development rights over this property until such time that parking space is provided elsewhere.
<u>Places of Public Assembly</u>	One (1) parking space for every three (3) seats or one (1) parking space for every one hundred (100) square feet of gross floor area, whichever is greater.
<u>Joint Use</u>	The off-street parking requirements of two or more uses, structures, or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap in point in time. If the uses, structures, or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract, or other appropriate written document to establish the joint use.

(b) If any proposed use does not come within the uses specified herein, the Planning Board shall determine the number of parking spaces to be required for such proposed use

(c) Buffer Area

(i) Where in any district, a non-residential use abuts a residential use, a buffer zone shall be provided by the applicant if such height, depth and length and such plantings as are set forth on the approved Site Plan.

(ii) Any parking area of six (6) or more vehicles shall have a buffer zone of such height, depth and length and such plantings as are set forth on the approved Site Plan.

(d) Lighting

(i) All off-street parking areas, sidewalks and driveways (excluding areas serving one and two family dwellings) shall be illuminated adequately during the hours between sunset and sunrise when the use is in operation.

(ii) Any lights used to illuminate an off-street parking area shall be so arranged as to reflect the light away from all adjoining property.

Section 10.03 Loading Regulations

(a) Every building located in a commercial or industrial zone is required to install and maintain adequate space for off-street loading and unloading of delivery vehicles. Such space shall be in such location of such size and shape as is set forth on the approved Site Plan.

Section 10.04 Sign and Billboard Regulations

(a) General Provisions

- (i) No sign may be located because of its design, location, state of repair, or condition impair public safety.
- (ii) No sign shall be located that it impairs the sight line from any street or road to any other street or road or to or from any sidewalk to any street or road.
- (iii) No sign may be located, lighted or designated in any manner which could cause it to be confused as a traffic light or traffic control device.
- (iv) No sign shall impede the operation of any door, window, fire escape or any other ingress or egress to any building.
- (v) Illuminated signs may not shine or reflect light onto or into adjacent property.
- (vi) Except for emergency vehicles or facilities, flashing, oscillating, or revolving lights are not permitted.
- (vii) No permit issued pursuant to this Local Law shall authorize the installation of any sign in any State Highway right-of-way.
- (viii) Off-premises business and/or advertising signs shall not be permitted in any district.

(b) Signs Permitted in all Districts

- (i) Signs designating a Home Occupation shall be permitted on the lot which the Home Occupation is conducted but shall neither exceed nine (9) square feet nor be located closer than ten feet (10) from the highway right-of-way or any property line.
- (ii) Signs giving directions to public facilities (i.e. fire stations, medical treatment facilities, post offices, ambulance stations, public parking areas, etc.)
- (iii) Temporary signs not exceeding nine (9) square feet in the A, AR,R-1 and C-1 Districts nor sixteen (16) square feet in the 1-1 or C-2 District provided:
 - 1) No such sign shall be installed or displayed more than sixty (60) days prior to the first day of the event, and
 - 2) All such signs shall be removed with ten (10) days of the last day of the event.

(c) Non-Conforming Signs

- (i) No such non-conforming signs shall be enlarged, extended, relocated, or altered in any manner and shall be removed in the event the use advertised on the sign is discontinued or changed. Normal maintenance such as painting and replacement of parts shall not be interpreted as violation of this provision.

(d) Signs Permitted in Agricultural, Agricultural-Residential, and Residential Districts

- (i) One (1) on-premise sign identifying a church, public building or other permitted non-commercial use located no closer than ten (10) feet from a property line with a maximum size of eight (8) feet wide x six (6) feet length in area per side. Two (2) off-premises (non-commercial) directional signs located no closer than ten (10) feet from the property line with a maximum size of nine (9) square feet per side.
- (ii) One (1) on premises sign for uses which have a valid Special Use Permit to operate. Such sign may either be wall mounted with a maximum size of nine (9) square feet, or freestanding with a maximum size of nine (9) square feet per side. Freestanding signs shall be limited in height to 15 feet and not be located within five (5) feet of a

property line. The final location/placement of all signs for uses allowed by Special Use Permits in the R-1 and A-R Districts shall be determined by the Town Planning Board on said Special Use Permit.

(e) Signs Permitted in General Commercial and Industrial Districts

(i) Freestanding business signs shall be permitted. Such signs shall conform to the following provisions relating to their size and number:

1) Each business or industrial use may have one (1) free-standing sign. Such free-standing sign shall have an area of neither more than 25 feet nor be more than twenty-five (25)feet in height and be located not less than ten (10) feet from the property lines. Sign location subject to site plan approval by the Town Planning Board.

2) In a shopping center or industrial park there may be one directory sign at any location thereof which shall not exceed five (5) square feet for each business in the shopping center or industrial park provided that no such sign shall exceed thirty (30) square feet in area. No individual free-standing sign shall be allowed in a shopping center.

(ii) Off-premise direction signs shall be of such area and in such location as may be determined in the discretion of the Planning Board.

(f) Signs Prohibited

(i) The following types of signs are prohibited and shall not be permitted, erected, or maintained in any zoning district and the owner thereof shall upon written notice of the Zoning Enforcement Officer forthwith, in the case of immediate danger and in any case within not more than ten (10) days, make sure such sign conform with the provisions of this section or shall remove it. If within ten (10) days the order is not complied with, the Zoning Enforcement Officer may cause said sign to be removed at the expense of the owner.

1) Any sign which by reason of its size, location, content, coloring or manner of illumination, constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstruction or detraction from the visibility of any traffic control device on public streets and roads.

2) Any sign which obstructs free ingress to or egress from a required door, window, fire escape or other required exit way.

3) Signs which make use of words such as "STOP", "LOOK", "DANGER" and other words, phrases, symbols or characters, in such a manner as to interfere with, mislead or confuse traffic.

4) Any sign which has any visible moving part, for example visible revolving parts or visible mechanical movement of any description (except time and temperature revolving signs as allowed) or other apparent visible movement achieved by electrical, electronic or kinetic means, including intermittent electrical pulsations, or by action of normal wind currents.

5) It shall be unlawful to have any sign insecure, unsafe or unlawfully installed, erected or maintained

Section 10.05 Entrance and Exits Designations

- (a) Signs designating the entrance or exit from any commercial or industrial use shall be located no closer than 15 feet to any highway or street intersection.
- (b) Permits for all such signs to be located on any New York State highway shall be subject to any permit issued by the New York Department of Transportation.

Section 10.06 Access Control

- (a) In order to limit the number of driveways entering or exiting any street or highway, the Planning Board is hereby empowered to approve, modify or disapprove all Site Plans for non-residential uses based on the number of such driveways proposed on the Site Plan in relationship to those existing in the vicinity of the lot which is the subject of the Site Plan review. In order to make such a determination, the Planning Board may require a drawing made to scale of the street or highway within 500 feet of the lot which is subject to the Site Plan review.

Section 10.07 Private Swimming Pools

- (a) All swimming pools shall be subject to the issuance of Building/Zoning Permit.
- (b) No swimming pool shall be located in the front yard of any lot and no closer than ten (10) feet from any side or rear lot line.

Article XI. REGULATIONS GOVERNING SPECIAL PERMIT

Section 11.01 Motor Vehicle Service Stations and Public Garages

- (a) Motor vehicle service stations and public garages may be permitted as special permit uses in the C-2 District upon the approval of a Special Use Permit by the Planning Board.
- (b) In addition to the information required in the special permit application and enumerated in Article III herein, the site plan submitted shall also show the location and number of fuel tanks to be installed, the dimensions and capacity of each storage tank, the depth the tanks will be placed below the ground, and the number and location of fuel pumps to be installed.
- (c) The Site Plan must comply with all local, State or Federal Laws.
- (d) The Site Plan for all motor vehicle service stations and motor vehicles repair/collision shops shall provide a buffered area taking into consideration traffic patterns on the lot and potential headlight glare, all in accord with Section 905 of this Law
- (e) The entire area of the site traveled by motor vehicles shall be concrete or blacktop.
- (f) Operations to be enclosed or screened. All service, repair, painting or assembly activities, other than emergency repairs or such minor servicing as the sale of gasoline or oil, or replacement of batteries, bulbs or headlights, wiper blades and the like shall be conducted in a fully enclosed structure or completely screened from view from any adjacent public right-of-way or adjoining residential property. This requirement shall be construed to mean that no lifts or pits or other equipment for the service, assembly or repair of vehicles, shall be located or maintained anywhere on the premises except in a fully enclosed structure or fully screened from view as provided above. No service, repair, painting or assembly activities shall take place within any required buffer area or in any required front yard area.

- (g) Canned or bottled lubricants, anti-freeze additives and similar products may be displayed on the pump island and in front of the station provided that they are placed in suitable racks or stands.
- (h) In addition to the signs permitted by Article X hereof, motor vehicle service stations may also exhibit one (1) temporary sign for a period of up to forty-five (45) days setting forth special seasonal servicing of automobiles. Such temporary sign shall not exceed nine (9) square feet in area, be located not less than ten (10) feet inside the property line and shall be removed when no longer current.
- (i) No motor vehicle service station or public garage may park or locate more than three (3) unregistered vehicles outside of an enclosed building at any one time.
- (j) No driveway shall be located closer than fifty (50) feet from any street intersection and no lot containing a motor vehicle service station or repair or collision shop shall have more than two (2) driveways (one for entering traffic and one for exiting traffic) on any street adjoining the lot. Driveways shall not have a combined width of more than one-third (1/3) of the total frontage on any street.
- (k) No parking shall be permitted in the Right-of-way (ROW) and sidewalks around or near the service station/garage or within any required buffered area.
 - (i) No vehicle shall be parked in required ROW or buffer area established.
- (l) Waste, rubbish and refuse resulting from any operation performed on premise shall be in a screened, enclosed area. Storage of any parts or supplies associated with the business shall also be in a screened, enclosed area.
 - (i) Screening requirements:
 - 1) Solid fence or wall such as a stockade or chain-link fence with inserts for blocking the view.
 - 2) A buffer zone of vegetation/shrubs shall be permitted.
 - 3) Such screening and buffer areas shall be subject to approval by the Planning Board through a Special Use review and/or the Site Plan review process.
 - 4) The Planning Board may modify and adjust any such screening or buffer zone and/or impose additional requirements in light of industrial circumstances.
- (m) All vehicles shall be parked in an orderly fashion so as to permit the free circulation of vehicles and so, as to at all times, preserve access to the premise by emergency vehicles.
- (n) Lighting: all exterior illumination shall be placed and maintained so as to direct the light away from adjoining properties or public right-of-ways. (See Article X, Section 1001A)
- (o) Compliance: Any Motor Vehicle Service Station use existing at the time of the enactment of this section shall be a pre-existing, non-conforming use and exempt from the requirements of this section.

Section 11.02 Excavation Operations

- (a) Excavation operations are not permitted in an Agricultural-Residential (A-R) District
- (b) The removal of soil, sand, or gravel for sale, except when incidental to, or connected with the construction of a building on the same premises shall be permitted only upon the approval by the Planning Board of a Special Use Permit and Site Plan Review.

- (i) In its consideration of an application for a Special Use Permit, the Planning Board must determine that such excavation will not:
 - 1) endanger the stability of adjacent land or structures, or
 - 2) constitute a detriment to public health, safety, convenience or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition.
- (ii) In granting a permit the Planning Board shall specify any reasonable requirements for those commercial excavations not directly regulated by the NYS department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law.
- (iii) Commercial excavations regulated directly by NYSDEC shall comply with the requirements set forth by DEC together with any Town requirements which may be

- (iv) applied to similar industrial types of uses.
- (v) Planning Board specifications for commercial excavations not directly regulated by DEC shall include such conditions as may be necessary to protect the public health safety, convenience and welfare, including the following:
 - 1) State Permits—The applicant shall furnish a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law when applicable.
 - 2) Slope—Slopes in excess of 1:1 shall be adequately fenced.
 - 3) Minimum lot area shall be ten (10) acres.
 - 4) Minimum one- hundred (100) setback from any street or property line for all buildings or excavation.
 - 5) Dust—All storage areas, yards, service roads, or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust and other windblown air pollutants.
 - 6) Existing hills, trees and ground cover fronting along public roads or adjacent property shall be preserved, maintained and supplemented by selective cutting, transplanting, and addition of new trees, shrubs and other ground cover for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back overburden around the perimeter of the excavation site to create a “berm” for the purpose of screening and noise reduction. No berm shall be constructed within fifty (50) feet of any front right-of-way or twenty five (25) feet of any side or rear property line.
 - 7) Fencing may be required to adequately protect the excavation site.
 - 8) All operations shall be conducted between the hours of seven o’clock in the morning (7:00 a.m.) and six o’clock in the evening (6:00 p.m.) with no Sunday or holiday operations, or except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.
 - 9) Reclamation Plan—The applicant shall submit a reclamation plan for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation. Where feasible, reclamation shall be a continuing operation. Grading, topsoil replacement and replanting of the area designated for restoration shall continue during the permit period. All reclamation work shall be complete within one (1) year after the termination of operations, at the expense of the operator.
 - 10) A performance bond, letter of credit or some other financial guarantee may be required to assure that the conditions stipulated in the approval of the Special Use Permit are carried out.
 - 11) Drainage and erosion control—As part of the application process, the applicant’s plan shall be submitted to the DEC/Genesee County Soil and Water Conservation District for its review and comments. All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc. from flowing on to public roads, adjacent property or into any stream. Excavation areas shall be

planned and graded to avoid collections of stagnant water.

- 12) Duration—The Special Use Permit shall continue as long as its New York State Department of Environmental Conservation permit remains in effect, it complies with the terms thereof, and it meets the reclamation standards established by the New York State Department of Environmental Conservation.
- 13) If operations are not carried out continuously for one (1) year the site shall be considered abandoned, pending the notification process described in Section 302F(4) and prior to any further excavation, a new Special Use Permit and Site Plan shall be required. Any loss of performance bond will also require a new Special Use Permit and Site Plan.
- 14) Prior to taking action on any proposal for a permit under this section, the Planning Board may request and receive a written report from the Town Engineer on the adequacy and/or appropriateness of the proposed excavation. Any fees associated with the review by the Town's Engineer shall be borne by the applicant prior to Special Use Permit and Site Plan.

Section 11.03 Airstrips

- (a) All permits for airstrips shall be Special Use Permits and subject to the requirement for the issuance thereof.
- (b) An application for the establishment, construction, enlargement, or alteration of an airstrip shall include, in addition to requirements for Special Use Permits outlined in Article III, the following statements and information:
 - (i) Name and address of the applicant
 - (ii) Classification of the proposed airport (commercial, non-commercial or restricted)
 - (iii) Type of aviation activities proposed (aircraft sales and service, flight instruction, crop dusting, air taxi, etc.)
 - (iv) Number of aircraft expected to be based at the airport initially and within five (5) years
 - (v) Type of aircraft expected to be based at the airstrip (single engine, multi-engine, turboprop, jet, etc.)
 - (vi) Whether an instrument approach procedure will be offered
 - (vii) Statement as to the anticipated number of daily operations
 - (viii) Copy of the airspace clearance granted by the Federal Aviation Administration for this airport, including USGS Topographic Map
 - (ix) A copy of the New York State Commissioner of Transportation's determination concerning this airport in accordance with the provisions of Section 249 of the New York State General Business Law.
 - (x) A site development plan of the airstrip, as approved by the Planning Board, may include the following: scale, structures (existing and proposed), alignment of existing and/or proposed runways, existing and proposed contours in five (5) feet intervals, location of aircraft parking/tie-down areas, access and off-street parking, sanitary waste disposal, water supply, and fuel storage.
 - 1) An area map at a scale of not less than one inch equals five- hundred feet (1" =

500') showing:

- a) Distances from buildings, roads, natural features, power lines, or other possible obstructions within two thousand (2,000) feet of the ends of runways shall be accurately plotted.
- b) Properties within one thousand (1,000) feet of the airstrip boundary shall be plotted, owners identified, and the location and height of each building demarcated.
- (xi) Any alteration, expansion of any airstrip shall require a Site Plan Review and/or a Special Use Permit.

Section 11.04 Recreational Vehicles

- (a) Recreational vehicles may be parked in both Residential (R-1) and Agricultural-Residential (A-R) Districts behind the setback of the face of the house and may not be closer than ten(10) feet from lot lines.

Section 11.05 Campgrounds

- (a) Location
 - (i) A campground shall be located and maintained only in an Agricultural-Residential (A-R) District upon issuance of a Special Use Permit and in accordance with the standards set forth in this Zoning Law.
- (b) Existing campgrounds
 - (i) All existing campgrounds must comply with this section whenever any addition, expansion or alteration (changes affecting lot size or layout, streets, and utilities) of the use or operation proposed.
 - (ii) Any sale or transfer of ownership of the campgrounds shall require a Site Plan Review by the Planning Board.
- (c) Standards and Requirements for the Construction of Campgrounds
 - (i) The Planning Board shall determine that the proposed use is designed and arranged in accordance with the following standards:
 - 1) Site—The campground shall be located on a well-drained site to ensure proper drainage with a minimum size of fifteen (15) acres.
 - 2) Lots—Each campground shall be divided into lots. The total number of lots shall not exceed twelve (12) per gross acre. Each lot shall have a total area of not less than two thousand five hundred (2500) square feet with a minimum width of forty (40) feet. Only one recreational vehicle or tent shall be permitted to occupy any one lot. Each lot shall have a parking base for the recreational vehicle of sufficient size and durability to provide for the placement and removal of a recreational vehicle.
 - 3) Buffer zone—A buffer zone of twenty five (25) feet shall be required between any side and rear property lines and one hundred (100) feet from the front right-of-way subject to the Planning Board approval.
 - 4) Accessibility—Each campground shall be easily accessible from an existing public road with entrances and exits designed and located for safe and convenient movement in and out of the campground to minimize conflicts with the movement of traffic on a public road. All entrances and exits shall be at right angles to existing

public roads and of sufficient width to facilitate the turning movements of recreational vehicles.

- 5) **Street System**—Each campground shall have improved streets to provide convenient access to all lots and other important facilities within the campground. The street system shall be so designed to permit safe and convenient vehicular circulation within the campground. All streets shall have a minimum width of twelve (12) feet for one-way traffic or twenty four (24) feet for two-way traffic. Entrance into the campground shall be not less than thirty (30) feet wide for a lineal distance of two hundred (200) feet. No parking shall be allowed on such streets except in the case of an emergency.
- 6) **Utilities**—All campground utilities shall be underground and shall comply with the regulations of the Genesee County Department of Health, New York State Uniform Fire Prevention and Building Code and the New York State Department of Environmental Conservation.
- 7) **Recreational Space**—Campgrounds shall provide a common open area suitable for recreation and play purposes. The open area shall be not less than ten (10) percent of the gross land area, not to include buffer zone and lot sites.
- 8) **Improvements**—Lighting, landscaping and buffer areas may be required by the Planning Board and shall be in keeping with surrounding development, the unique features of the site and the health and safety of occupants of the campground.
- 9) **Management**—Every campground shall be managed from an office located on the premises. The management shall maintain the campground in a clean and attractive manner, and take reasonable steps to protect the health, safety and comfort of all persons accommodated therein. It shall be the responsibility of the management to maintain relative quiet during the hours of 10:00 p.m. and 7:00 a.m. Garbage and rubbish shall be collected and disposed of as often may be necessary to ensure sanitary conditions.
- 10) **Fence**—The Planning Board is authorized to require that all or some of the campground be fenced if circumstances warrant. No camp structure, except fences, gates and permitted signs shall be located within fifty (50) feet of any street or property line.
- 11) **Accessory uses**—Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundries, off street parking, loading areas, and other uses and structures customarily incidental to the operation of camping grounds are permitted as accessory uses to the campground subject to a Site Plan Review by the Planning Board. Parking and loading on public streets is prohibited.

Section 11.06 Kennels

- (a) Kennels may be permitted by Special Use Permit in the Agricultural Residential (A-R) District.
- (b) The minimum lot area for such uses shall be five (5) acres.
- (c) Shelters for animals within kennels shall not be closer than one hundred (100) feet to any lot line and two hundred (200) feet from any dwelling on adjacent property.

- (d) No outdoor area enclosed by fences for the use of animals shall be permitted within the front yard. Fenced areas shall be setback not less than fifty (50) feet from any side or rear property line.
- (e) All animals must be confined to an enclosed structure after 9:00 p.m. to 7:00 a.m.
- (f) The Planning Board may require a sanitation and/or sewage disposal plan to be submitted. The Board may also require such a plan to be designed by a licensed professional engineer.

Section 11.07 Boarding Houses

- (a) Boarding houses may be permitted as special uses in the Agricultural-Residential (A-R) District upon the issuance of a Special Use Permit.
- (b) Off-street parking shall be provided as follows: At least two (2) spaces for the family residing on the premises plus not less than one (1) additional space for each roomer.

Section 11.08 Wind Energy Facilities

- (a) An Industrial Wind Turbine may be permitted in an Agricultural-Residential (A-R) and Industrial (I-I) District only upon the approval of a Special Use Permit and Site Plan review by the Planning Board.
- (b) A Wind Energy Conversion System may be permitted only on the approval of a Special Use Permit and site plan review by the Planning Board.
- (c) In addition to the requirements for Special Use Permits outlined in Article III of this Zoning Law, the site plan shall also show:
 - (i) Location of tower on-site and tower height, including blades.
 - (ii) Aboveground utility lines within a radius equal to the proposed tower height, including blades.
 - (iii) A New York State licensed engineer's drawings are required showing dimensions and structural components of the tower construction including the base and footings, and any accessory buildings.
 - (iv) Design data indicating the basis of design, including manufacturer's certification that the tower design is sufficient to withstand wind load requirements for structures.
 - (v) The location of property lines and permanent easements.
 - (vi) The location of proposed wind energy facility, together with guy wires and guy anchors, if applicable, and elevation.
 - (vii) A side elevation sketch of the wind turbine tower showing the rotor blades.
 - (viii) The location of all structures on the property, trees exceeding four (4") inches in diameter measured at a height of four (4) feet off the ground, and other significant and/or unusual features on the property and any adjacent landowners within 500 feet of the property.
 - (ix) The names of adjacent landowners.
 - (x) The location, nature and extent of any proposed fencing, landscaping and/or screening.
 - (xi) The location and size of structures above thirty-five (35) feet located within a five-hundred (500) foot radius of the proposed wind turbine. For the purpose of this

requirement, electrical transmission lines, antennas and open towers (other than turbine) are not considered structures.

- (xii) To demonstrate compliance with the setback requirements, circles shall be drawn around each turbine equal to one and one-half (1 ½) times the tower height with blades, the five-hundred(500) foot perimeter, and if an Industrial Wind Turbine, the one-thousand (1000) foot perimeter if within the property lines.
- (xiii) The site plan shall also include or there shall be a separately submitted confirmation in writing by the installer or utility supplier of the proposed wind turbine that all transmission lines from the meter of the home, business or farm structure, including approved easements, if required, are acceptable. Underground transmission lines must be shown on the site plan, and a Wind Energy Conversion System, be at least four (4) feet below ground level unless otherwise requested by the Planning Board.
- (xiv) In the case of an industrial turbine or complex, the site plan shall include a completed visual environmental assessment form (visual EAF) and a landscaping plan addressing other standards listed with this section with particular attention to visibility from key viewpoints within and outside of the municipality as identified in the visual EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the visual EAF.
- (xv) In addition to other plan requirements, an application for a wind energy facility shall include all information prepared by the manufacturer of the tower for the application for which a Special Use Permit is being sought, including but not limited to the following:
 - 1) The make and model of the tower erected.
 - 2) The manufacturer's design data for installation instructions and construction plans.
 - 3) The applicant's proposed tower maintenance and inspection procedures.
 - 4) The applicant's maintenance and inspection records system.
 - 5) Anti-climb devices for the tower and guy wires.
 - 6) The distribution to the structure or residence, power specifications and grounding.
- (xvi) Except as provided for below, no more than one Wind Energy Conversion System shall be allowed and only on a legally approved lot within the town. No existing lot may be subdivided solely for the purpose of circumventing this provision.
- (xvii) Agricultural uses outside of a NYS Certified Agricultural District that are seven (7) acres and generate at least \$10,000 in gross sales may apply for two Wind Energy Conversion Systems, provided the farm operator submits statistical evidence supporting the need for additional power generation to the satisfaction of the Planning Board. All other regulations of this section must be observed. Agricultural use in a NYS Certified Agricultural District may apply for multiple Wind Energy Conversion Systems so long as 51% or more of the annual power generated by the system is consumed by on-site agricultural or agricultural accessory uses
- (xviii) The maximum height for Wind energy facilities permitted under this section shall be as follows:
 - 1) A Wind Energy Conversion System shall not exceed a total of one- hundred and

fifty (150) feet as measured from ground level to the tip of the blade in the up (vertical) position and otherwise complies with all other regulations in this section. Roof mounted Wind Energy Conversion Systems extending to a height of less than or equal to thirteen (13) feet above the roof line are permissible.

- 2) The height of an Industrial Wind Turbine as measured with a blade tip up shall be a maximum of two-hundred and twenty-five (225) feet as measured from ground level to the tip of a blade in the up (vertical) position and otherwise complies with all other regulations in this section.

(xix) Setbacks and locations excluding roof mounted Wind Energy Conversion Systems:

- 1) A Wind Energy Conversion System shall be located in rear yards of residences and to the rear of business or farm structures.
 - 2) The setback from the front property line and the minimum distance between any wind turbine tower and structure shall be calculated at one and one-half ($1\frac{1}{2}$) times the height of the tower including the rotor blades. The side and rear property line setback shall be calculated at one and one-tenth ($1\frac{1}{10}$) times the height of the tower including the rotor blades. This requirement may be waived by the Planning Board if it deems appropriate to minimize impacts to normal farming operations by locating structures along field edges.
 - 3) For a complex, the distance between turbines must be at least five-hundred (500) feet.
 - 4) To minimize segmenting of land plots and fields, all turbines in rows or randomly placed shall be placed at one and one-half ($1\frac{1}{2}$) times the total tower height (vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point) from all lot lines, providing all setback restrictions in the Zoning Law are adhered to on all sides of the lot lines.
- (d) If the Wind Energy Conversion System is to be interconnected to an electric utility distribution system, the applicant shall provide evidence of approval of the proposed interconnect by the local utility company.
- (e) A Wind Energy Conversion System and Industrial Wind Turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the lighting must comply with the FAA and Town Planning Board minimum requirements and whenever possible, be at the lowest intensity allowed, and avoid the use of strobe or other intermittent white lights. If more than one lighting alternative is available, the alternative that causes the least visual disturbance must be used.
- (f) The owner of a Wind Energy Conversion System will be required by the Planning Board to provide a performance bond, a completion bond, or other financial assurance that guarantees the performance of the restoration of the land developed for the Wind Energy Conversion System.

Section 11.09 Stables or Riding Academies-Applicable only to those uses not governed by

Ag & Market

- (a) Stables for the commercial boarding of horses or riding academies may be permitted in the Agricultural Residential (A-R) District upon the approval of a Special Use Permit by the Planning Board.
- (b) The land devoted to this use shall not be less than ten (10) contiguous acres.
- (c) One principle single family dwelling may be located on the land devoted to this use provided that it complies with the requirements for this Local Law. The land area on which the principle single family dwelling is located shall not be considered as part of the land "devoted to this use" as set forth in Paragraph B above.
- (d) The number of horses that may be boarded and/or trained at such property shall not exceed eight (8) horses for the first ten (10) acres of land devoted to this use, plus one horse for each additional acre.
- (e) A waste management plan must be submitted. No manure shall be stored or permitted to accumulate within one hundred (100) feet from any boundary line or within twenty five (25) feet from a dwelling on a same lot, or within one hundred twenty five (125) feet from a dwelling on any adjacent property.
- (f) Exercise tracks and riding rings shall be at least one hundred (100) feet from any property line and/or right-of-way (ROW).
- (g) Suitable and adequate off-street parking shall be provided in accordance with the requirements established by the Planning Board. No parking shall be permitted within fifty (50) feet of any property lines.
- (h) Exterior lighting shall be permitted only to the extent necessary to prevent injury to the public and shall be so installed and arranged as to reflect light away from the adjoining street and prevent any nuisance to adjoining property.
- (i) If exterior loudspeakers are installed or used on the premises, they shall minimize potential nuisances to adjacent properties. Operations of lighting and loud speakers are not allowed after 9:00 p.m. and before 7:00 a.m.

Section 11.10 Multiple Family Developments

- (a) Multiple Family Developments shall be permitted in A-R and R-1 Districts subject to the issuance of a Special Permit.
- (b) In addition to the general requirements for a Special Use Permit, Multiple Family Developments shall have:
 - (i) Minimum lot size of three (3) acres
 - (ii) An area six (6) feet in width around each building shall be kept clear of all vegetation, except foundation plantings less than three (3) feet in height.
 - (iii) The driveway or driveways shall have direct access to a public street or road.
 - (iv) Each dwelling unit shall have a storage or areas deemed adequate by the Planning Board.
 - (v) At least ten percent (10%) of the lot area, exclusive of areas required for setback, buffer strips and parking areas, shall be devoted to common recreational space and shall be shrubbed and equipped as the Planning Board shall determine.
 - (vi) All utilities shall be underground and shall be inspected and approved by the

appropriate authorities.

Section 11.11 Planned Residential Development PRD District

(a) Purpose

- (i) It is the intent of this planned residential development section to provide flexible land use and design regulations through the use of performance criteria so that small- to large-scale residential neighborhoods or portions thereof that incorporate a variety of residential types and contain both individual building sites and common land areas, which are planned and developed as a unit, may be developed within the Town.
 - (ii) Such a planned development is to be designed and organized to be capable of satisfactory use and operation as a separate entity without needing the participation of other building sites or other common land areas in order to function as a neighborhood. This section specifically encourages innovations in residential development so that the growing demands for housing at all economic levels may be met by greater variety in type, design and siting of dwellings and by the conservation and more efficient use of land in such developments.
 - (iii) This section recognizes that while the standard zoning function (use and bulk) and the subdivision function (platting and design) are appropriate for the regulation of land use in areas or neighborhoods that are already substantially developed, these controls represent a type of preregulation, regulatory rigidity and uniformity which may be inimical to the techniques of land development contained in the planned residential development concept. Further, this section recognizes that a rigid set of space requirements along with bulk and use specifications would frustrate the application of this concept. Thus, where PRD techniques are deemed appropriate through the rezoning of land to a planned residential development district by the Town Board, the use and dimensional specifications established elsewhere in this chapter are herein replaced by an approval process in which an approved plan becomes the basis for continuing land use controls.
- (b) Objectives. In order to carry out the intent of this section, a PRD shall achieve the following objectives:
- (i) A maximum choice in the types of environment, occupancy tenure (e.g., cooperatives, individual ownership, condominium, leasing), types of housing, lot sizes and community facilities available to existing and potential Town residents at all economic levels.
 - (ii) More usable open space and recreation areas.
 - (iii) The construction of attractive new residential housing facilities for all income groups which will allow the existing business district to continue its role as the Town focal point.
 - (iv) The preservation of trees, outstanding natural topography and geologic features and the prevention of soil erosion.
 - (v) A creative use of land and related physical development which allows an orderly transition of land from rural to urban uses.
 - (vi) An efficient use of land resulting in smaller networks of utilities and streets and

thereby lower housing costs.

- (vii) A development pattern in harmony with the objectives of comprehensive planning.
- (viii) A more desirable environment than would be possible through the strict application of other sections of this chapter.
- (ix) Land development that is made to fit the existing land rather than the converse.
- (x) The incorporation of aesthetic qualities into the design process that will make the finished PRD project physically appealing to both the residents who will live there and the community in general.
- (xi) A lessening of congestion in the streets.
- (xii) The lessening of danger from fire, flood and other problems created by congestion.
- (xiii) The promotion of the health and general welfare of the Town.
- (xiv) Providing the adequate light and air and the prevention of the crowding of land resulting from undue concentration of population.
- (xv) The facilitating of adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
- (c) General requirements.
 - (i) Minimum area. Under normal circumstances, the minimum area required to qualify for a planned residential development district shall be twenty-five (25) contiguous acres of land. Where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this section, the Planning Board may consider projects with less acreage.
 - (ii) Ownership. The tract of land for a project may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner or jointly by owners of all property included in a project. In the case of multiple ownership, the approved plan shall be binding on all owners.
 - (iii) Location of PRD District. The PRD District may be applicable to any area of the Town where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this section. Such designation of any PRD District shall be by amendment to this chapter and shall be made in accordance with a comprehensive plan.
 - (iv) Permitted uses. All uses within an area designated as a PRD District are determined by the provisions of this Article and the approved plan of the project concerned.
 - 1) Residential uses. Residences may be of any variety of types. In developing a balanced community, the use of a variety of housing types shall be deemed most in keeping with this section. However, at least 35% of the total number of dwelling units within any PRD will be in single-family, detached structures. Approval of such single-family residential use requirement shall be optional with the Planning Board and the Town Board and may or may not be required in keeping with the best interests of the Town and the area under development.
 - 2) Accessory commercial, service and other nonresidential uses.
 - a) An application requesting commercial, service and other nonresidential uses will

generally be discouraged because of conflict with the objectives of this chapter. However, consideration will be given to very limited commercial, service and other nonresidential uses where they are scaled to a size and type for the sole use and benefit of the residents of the planned residential development and where their utilization by others is discouraged by appropriate placement within the planned residential development and by the size and type of services offered.

- b) If any accessory commercial, service or other nonresidential uses are requested by the developer, then permission for the development of such facilities within the PRD shall be pursuant to the provisions of Article VII of this chapter and shall be a special use pursuant to the provisions of those sections.
- 3) Customary accessory or associated uses, such as private garages, storage spaces, recreational and community activities, churches and schools, shall also be permitted (or required) as appropriate to the PRD.
- (v) Intensity of land uses. Because land is used more efficiently in a PRD, improved environmental quality can often be produced with a greater number of dwelling units per gross building acre than usually permitted in traditionally zoned districts. The Town Board shall determine in each case the appropriate land use intensity or dwelling unit density for individual projects. The determination of land use intensity ratings or dwelling unit densities shall be completely documented, including all facts, opinions and judgments justifying the selection of the rating or density.
- (vi) Common property in the PRD. "Common property in a PRD" is a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. When common property exists in private ownership, satisfactory arrangements must be made for the improvement, operation and maintenance of such common property and facilities, including private streets, drives, service and parking areas and recreational and open space areas.
- (vii) General guidelines for design. The following items are intended to be general guidelines for the developer to follow when planning his development layout and design. Although they represent a pattern of customary requirements and restrictions, they are meant to be applied to a specific proposal open-mindedly and objectively. Specific circumstances may warrant slight changes in application if the developer can suggest alternatives which, in the opinion of the Town Board, Town Planning Board and Town Engineer, are more in keeping with the objectives of this chapter as previously listed.
- 1) Acceptable uses.
 - a) Single-family homes.
 - b) Low-rise apartment houses, duplexes, fourplexes and townhouses.
 - c) Nursing homes, proprietary-care homes, day-care nurseries, med-dental clinics and offices.
 - d) Normal accessory uses designed as an integral part of the development and scaled for the exclusive use of the residents of the development.
 - e) Churches.
 - f) Parks and playgrounds.

- g) Schools.
- 2) Generally unacceptable uses.
 - a) Manufactured home parks.
 - b) High-rise structures (greater than three stories).
 - c) Commercial establishments not constructed for the exclusive use of the PRD residents, including retail outlets, service outlets and gas stations.
 - d) Industrial establishments, including any facility engaged in the manufacture of goods for wholesale or retail distribution.
- 3) Dimensional considerations.
 - a) Fifty (50) feet minimum shall generally be required between any building and the street line of any dedicated street peripheral to the site.
 - b) Twenty-five (25) feet minimum shall generally be required between any building and the street line of any interior project road. In the case of nondedicated streets and roads, this setback shall be measured from the limits of the paved area. However, the effect of this distance on the location of sidewalks and driveway parking space shall be considered.
 - c) Accessory buildings generally shall not be placed in front yard areas.
 - d) Buildings generally shall not cover more than thirty-five percent (35%) of the total project acreage.
 - e) Fifty (50) feet shall generally be required between any building and any exterior lot line.
 - f) Seventy-five (75) feet of open land, free from structures and paved areas (except for pedestrian walkways) and available for public use, shall generally be required adjacent to any creek or stream running either through or adjacent to the property under question. The developer is urged to enhance the aesthetic qualities of natural assets rather than ignore or destroy them.
- 4) Off-street parking. The following specific items shall generally apply to off-street parking facilities:
 - a) A parking space shall be nine (9) feet by twenty (20) feet in area plus necessary driveways and turning areas.
 - b) No parking areas shall be located within any required front setback from any peripheral dedicated street or road, nor shall it be located closer than ten (10) feet from any adjoining property line within side or rear yards.
 - c) All parking spaces shall be surfaced with asphalt and shall be so graded and drained as to dispose of all surface water accumulation within the area.
 - d) Parking shall be so distributed as to service the individual unit or units. Parking lots should be kept small and, in other ways, broken up into smaller units through provision of islands and plantings.
 - e) There shall be a minimum of one parking space for each one-bedroom or studio apartment.
 - f) There shall be a minimum of one and one-half (1 1/2) parking spaces for each two-bedroom dwelling unit.
 - g) There shall be a minimum of one and one-half (1 1/2) parking spaces for each three-bedroom dwelling unit.

- 5) Recreational areas. There shall generally be required a minimum of twenty-five percent (25%) of the total project area to be reserved as accessible open land for recreational purposes; included can be any formal recreational facilities, picnic areas and open yard areas.
- 6) Landscaping. When the project includes land which contains few trees and shrubs that can be made part of the finished landscape, the developer shall furnish additional plantings to enhance the physical appearance of his finished project.
- (d) Application procedure; zoning approval process. Whenever any planned residential development is proposed, before any permit for the erection of a permanent building in such planned residential development shall be granted and before any subdivision plat of any part thereof may be filed in the office of the Genesee County Clerk, the developer or his authorized agent shall apply for and secure approval of such planned residential development in accordance with the following procedures:
 - (i) Application for sketch plan approval.
 - 1) In order to allow the Planning Board and the developer to reach an understanding on basic design requirements prior to detailed design investment, the developer shall submit a sketch plan of his proposal to the Planning Board. The sketch plan shall be approximately to scale, though it need not be to the precision of a finished engineering drawing; and it shall clearly show the following information:
 - a) The location of the various uses and their areas in acres.
 - b) The general outlines of the interior roadway system and all existing rights-of-way and easements, whether public or private.
 - c) Delineation of the various residential groups, indicating, for each such grouping, its general extent, size and composition in terms of total number of dwelling units and approximate percentage allocation by dwelling unit type (i.e., single-family detached, duplex, townhouses, garden apartments, high-rise, luxury, middle-income, moderate-income, elderly units, family units, etc.), plus a calculation of the residential density in dwelling units per gross acre (total area, including interior roadways) for each such area.
 - d) The interior open space system.
 - e) The overall drainage system.
 - f) If grades exceed three percent (3%) or portions of the site have a moderate to high susceptibility to erosion or a moderate to high susceptibility to flooding and ponding, a topographic map showing contour intervals of not more than five (5) feet of elevation shall be provided along with an overlay outlining the above susceptible soil areas, if any.
 - g) Principal ties to the community at large with respect to transportation, water supply and sewage disposal.
 - h) General description of the provision of other community facilities, such as schools, fire-protection services and cultural facilities, if any, and some indication of how these needs are proposed to be accommodated.
 - i) A location map showing uses and ownership of abutting lands.
 - 2) In addition, the following documentation shall accompany the sketch plan:
 - a) Evidence of how the developer's particular mix of residential uses meets existing

community demands. Evidence as to demands may be in the form of specific studies or reports initiated by the developer or in the form of references to existing studies or reports relevant to the project in question.

- b) Evidence that the proposal is compatible with the goals of the Community Comprehensive Master Plan.
 - c) General statement as to how common open space is to be owned and maintained
 - d) If the development is to be staged, a general indication of how the staging is to proceed. Whether or not the development is to be staged, the sketch plan of this section shall show the intended total project.
 - e) Evidence of any sort in the applicant's own behalf to demonstrate his competence to carry out the plan and his awareness of the scope of such a project, both physical and financial.
- (ii) Informational public hearing. After the developer has submitted his sketch plan and proposal to the Planning Board and within fifteen(15) days thereafter, the Planning Board shall cause a notice of a public hearing to be published once in the official paper of the Town of Byron concerning an informational public hearing to be held at a specified time and place before the Planning Board of the Town of Byron for purposes of disseminating information concerning the proposal to the general public and for purposes of discussions of the proposal with the general public. Thereafter, the Planning Board shall make its recommendations to the Town Board as provided for in Subsection D(3)(b) below.
- (iii) Planning Board review process, report and recommendation. The Planning Board shall review the sketch plan and its related documents and shall render either a favorable or unfavorable report to the Town Board and the applicant. The Planning Board may call upon the County Planning Department and any other public or private consultants that they feel are necessary to provide a sound review of the proposal. Any expense incurred by the Planning Board for any such consultations shall be reimbursed by the applicant and payment thereof shall be a condition precedent to any final action by the Planning Board.
- 1) A favorable report shall include a recommendation to the Town Board that a public hearing be held for the purpose of considering PRD districting. It shall be based on the following findings, which shall be included as part of the report:
 - a) A rezoning of the subject site to PRD designation would be in accordance with the Community Comprehensive Master Plan.
 - b) The proposal meets the intent and objectives of planned residential development as expressed in Subsection B of this section.
 - c) The proposal meets all the general requirements of Subsection C of this section.
 - d) The proposal is conceptually sound in that it meets a community need and it conforms to accepted design principals in the proposed functional roadway system, land use configuration, open space system, drainage system and scale of the elements both absolutely and to one another.
 - e) There are adequate services and utilities available or proposed to be made available in the construction of the development.
 - 2) An unfavorable report shall state clearly the reasons therefore and, if appropriate,

point out to the applicant what might be necessary in order to receive a favorable report. The applicant may, within ten (10) days after receiving an unfavorable report, file an application for PRD districting with the Town Clerk. The Town Board may then determine on its own initiative whether or not it wishes to call a public hearing.

- 3) The Chairman of the Planning Board shall certify when all of the necessary application material has been presented; and the Planning Board shall submit its report within sixty(60)days of such certification.
- (iv) Application to Town Board for PRD districting.
 - 1) Upon receipt of a favorable report from the Planning Board or upon its own determination subsequent to an appeal from an unfavorable report, the Town Board shall set a date for and conduct a public hearing for the purpose of considering PRD districting for the applicant's plan in accordance with the procedures established under §§ 278 and 279 of the Town Law or other applicable law, said public hearing to be conducted within sixty-two (62) days of the receipt of the favorable report or the decision on appeal from an unfavorable report.
 - 2) The Town Board shall refer the application to the County Planning Department for its analysis and recommendations, and the Town Board may also refer the application to the Town Engineer and Town Attorney for their review. The Town Board shall also send notice of the public hearing on the application to County of Genesee.
 - a) The Town Board shall give the County Planning Department at least thirty (30) days to render its report; and within sixty-two (62) days after the public hearing, the Town Board shall render its decision on the application.
 - b) The Town Engineer shall submit a report to the Town Board within thirty (30) days of the referral, duly noting the feasibility and adequacy of those design elements relating to the engineering aspects of the project. This report need only concern itself with general conceptual acceptance or disapproval, as the case may be, and in no way implies any future acceptance or rejection of detailed design elements as will be required in the later site plan review stage. The Town Engineer may also state in their report any other conditions that must be adhere to before consideration of acceptance on their part.
 - (v) Grant of PRD districting; additional conditions and requirements. If the Town Board grants the PRD districting, the Zoning Map shall be so notated. The Town Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements for the applicant to meet. Such requirements may include, but are not confined to, visual and acoustical screening; land use mixes; order of construction and/or occupancy; circulation systems, both vehicular and pedestrian; availability of sites within the area for necessary public services, such as schools, firehouses and libraries; protection of natural and/or historic sites; and other such physical or social demands. The Town Board shall state at this time its findings with respect to the land use intensity or dwelling unit density as called for in Subsection C(5).
- (e) Site plan approval process.
 - (i) Application for preliminary site plan approval shall be to the Planning Board and

shall be accompanied by the following information prepared by a licensed engineer, architect and/or landscape architect:

- 1) An area map showing the applicant's entire holding, that portion of the applicant's property under consideration and all properties, subdivisions, streets and easements within five hundred (500) feet of the applicant's property.
 - 2) A topographic map showing contour intervals of not more than five(5) feet of elevation.
 - 3) A preliminary site plan, including the following information:
 - a) Title of the drawing, including the name and address of the applicant.
 - b) North point, scale and date.
 - c) Boundaries of the property plotted to scale.
 - d) Existing watercourses.
 - e) A site plan showing location, proposed use and height of all buildings; location of all parking and truck loading areas, with access and egress drives thereto; location and proposed development of all open spaces, including parks, playgrounds and open reservations; location of outdoor storage, if any; location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; description of method of sewage disposal (all methods of sewage disposal must conform to all State and County requirements) and location of such facilities; location and size of all signs; location and proposed development of buffer areas; location and design of lighting facilities; and the amount of building area proposed for nonresidential uses, if any.
 - 4) A tracing overlay showing all soil areas and their classifications and those areas, if any, with moderate to high susceptibility to flooding and moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation.
 - 5) Storm drainage calculations justifying sizing of proposed drainage system and capabilities of receiving stream or piping system.
- (ii) Factors for consideration.
- 1) The Planning Board's review of a preliminary site plan shall include but is not limited to the following considerations:
 - a) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.
 - b) Adequacy and arrangement of pedestrian traffic access and circulation, including separation of pedestrian from vehicular traffic, walkway structures, control of intersections with vehicular traffic and pedestrian convenience.
 - c) Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - d) Location, arrangement, size and design of buildings, lighting and signs.
 - e) Relationship of the various uses to one another and their scale.
 - f) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or a noise-deterring buffer between adjacent uses and adjoining lands.
 - g) In the case of apartment houses or multiple dwellings, the adequacy of usable

- open space for playgrounds and informal recreation.
- h) Adequacy of stormwater and sanitary waste disposal facilities.
 - i) Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion.
 - j) Protection of adjacent properties against noise, glare, unsightliness or other objectionable features.
 - k) The degree to which the developer proposes to leave untouched the natural beauty of the area.
 - l) The overall physical attractiveness of the design.
 - m) Conformance with other specific charges of the Town Board which may have been stated in this chapter.
- 2) In its review, the Planning Board may consult with the Town Engineer and other Town and County officials, as well as with representatives of federal and state agencies, including the Soil Conservation Service and the New York State Department of Environmental Conservation. The Planning Board may require that exterior design of all structures be made by or under the direction of a registered architect whose seal shall be affixed to the plans. The Planning Board may also require such additional provisions and conditions as may appear necessary for the public health, safety and general welfare.
- a) Action on preliminary site plan application.
 - i) Within ninety (90) days of the receipt of the application for preliminary site plan approval, the Planning Board shall act on it. If no decision is made within said ninety-day period, the preliminary site plan shall be considered approved. The Planning Board's action shall be in the form of a written statement to the applicant, stating whether or not the preliminary site plan is approved. A copy of the appropriate minutes of the Planning Board shall be a sufficient report.
 - ii) The Planning Board's statement may include recommendations as to desirable revisions to be incorporated in the final site plan, conformance with which shall be considered a condition of approval. Such recommendations shall be limited, however, to siting and dimensional details within general use areas and shall not significantly alter the sketch plan as it was approved in the zoning proceedings.
 - iii) If the preliminary site plan is disapproved, the Planning Board's statement shall contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission of the preliminary site plan to the Planning Board after it has been revised or redesigned.
 - iv) No modification of existing stream channels, filling of lands with a moderate to high susceptibility to flooding, grading or removal of vegetation in areas with moderate to high susceptibility to erosion or excavation for and construction of site improvements shall begin until the developer has received preliminary site plan approval. Failure to comply shall be construed as a violation of this chapter; and, where necessary, final site plan approval may require the modification or removal of unapproved site improvements.
 - b) Request for changes in sketch plan. If, in the site plan development, it becomes apparent that certain elements of the sketch plan, as it has been approved by the

Town Board, are unfeasible and in need of significant modification, the applicant shall then present his solution to the Planning Board as his preliminary site plan in accordance with the above procedures. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of this chapter. If a negative decision is reached, the Planning Board shall so notify the Town Board, stating all of the particulars of the matter and its reasons for feeling the project should be continued as modified. Preliminary site plan approval may then be given only with the consent of the Town Board.

- c) Application for final detailed site plan approval.
 - i) After receiving approval from the Planning Board on a preliminary site plan and approval for all necessary permits and curb cuts from State and County officials, the applicant may prepare his final detailed site plan and submit it to the Planning Board for final approval, except that if more than twelve (12) months has elapsed between the time of the Planning Board's report on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.
 - ii) The final detailed site plan shall conform substantially to the preliminary site plan that has received preliminary site plan approval. It should incorporate any revisions or other features that may have been recommended by the Planning Board and/or the Town Board at the preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.
 - iii) If no action has been made on an approved site plan within twelve (12) months the applicant must reapply.
- d) Action on the final detailed site plan application. Within sixty (60) days of the receipt of the application for final site plan approval, the Planning Board shall render a decision to the applicant and so notify the Town Board. If no decision is made within the sixty-day period, the final site plan shall be considered approved.
 - i) Upon approving an application, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward it to the Zoning Enforcement Officer, who shall then issue a building permit to the applicant if the project conforms to all other applicable requirements.
 - ii) Upon disapproving an application, the Planning Board shall so inform the Zoning Enforcement Officer. The Planning Board shall also notify the applicant and the Town Board in writing of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.
- e) Staging. If the applicant wishes to stage his development and he has so indicated as per Subsection D(2)[b][4], then he may submit only those stages he wishes to develop for site plan approval in accordance with his staging plan. Any plan which requires more than twenty-four (24) months to be completed shall be required to be staged; and a staging plan must be developed. At no point in the development of a PRD shall the dwelling unit ratios between the several different housing types for that portion of the PRD completed and/or under construction differ from that of the

- PRD as a whole by more than twenty percent (20%).
- 3) Other applicable regulations.
 - a) Regulation after initial construction and occupancy. For the purposes of regulating development and use of property after initial construction and occupancy, any changes other than use changes shall be processed as a Special Use Permit request to the Planning Board. Use changes shall also be in the form of a request for Special Use Permit, except that Town Board approval shall be required. It shall be noted, however, that properties lying in planned residential development districts are unique and shall be so considered by the Planning Board or Town Board when evaluating these requests, and maintenance of the intent and function of the planned unit shall be of primary importance
 - b) Site plan review. Site plan review under the provisions of this section shall suffice for Planning Board review pursuant to any site plan review required by any provision of this Law, subject to the following conditions:
 - i) The developer shall prepare sets of subdivision plats suitable for filing with the office of the Genesee County Clerk in addition to those drawings required above.
 - ii) The developer shall plat the entire development as a subdivision; however, PRD's being developed in stages may be platted and filed in the same stages.
 - iii) Final site plan approval under Subsection E shall constitute final plat approval under subdivision regulations; and provisions of the Town Law requiring that the plat be filed with the Genesee County Clerk within ninety (90) days of approval shall apply.
 - 4) Financial responsibilities. No building permits shall be issued for construction within a PRD District until improvements are installed or performance bond posted as provided for in § 277, Subdivision 9, of the Town Law relating to subdivisions. Other such requirements may also be established from time to time by the Town Board.
 - 5) Cost of review and public hearings. The applicant shall pay the Town a sum as determined by resolution of the Town Board for the two public hearings required in the steps outlined herein for presentation and any and all reviews of its proposal by the Town Board and Planning Board, and the sum shall be paid to the Town of Byron prior to the informational hearing held by the Planning Board. Any other public hearing requested or desired shall be held only after payment by the developer to the Town of Byron to cover the cost and expenses of the Town.

Section 11.12 Adult Uses

- (a) Restrictions Affecting Adult Uses
 - (i) Adult uses, including but not limited to, adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, adult entertainment cabaret, and clubs (private or charter) shall be permitted subject to the following restrictions:
 - 1) No such adult uses shall be permitted, operated, conducted, or located within:
 - a) Five-hundred (500) feet of another existing adult use
 - b) Five-hundred (500) feet of the boundaries of any Residential or Agricultural-Residential Zoning District

- c) Two thousand (2,000) feet of a school, place of worship or playground
- 2) No such adult use shall be permitted, operated, conducted or located in any zoning district except an Industrial (I-1) District.
- 3) Such use shall meet all requirements of Local Law 2002 and in the event of any conflict of the Local Law with this Local Law, the provision of that Law shall control.

Section 11.13 Commercial Communication Towers

- (a) No commercial communication tower shall hereafter be used, erected, moved, reconstructed, changed, or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a commercial communication tower unless in conformity with this Town Law.
 - (i) Site Plan Review
 - 1) The applicant shall be required to submit a site plan. The site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.
 - (ii) Supporting Documentation
 - 1) The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K below.
 - (iii) Shared Use of Existing Towers and/or Structures
 - 1) At all times, shared use of existing towers and/or structures (i.e., a water tower, building, etc.) shall be preferred to the construction of new commercial communication towers. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower.
 - a) An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.
 - b) The Planning Board may consider a new commercial communication tower where the applicant demonstrates that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers/structures as well as documentation of the physical and/or financial reasons why shared usage is not

practical. Written requests and responses for shared use shall be provided.

(iv) Shared Usage of Site with New Tower

(v) Where shared usage of an existing tower/structure is found to be impractical, the applicant shall investigate shared usage of an existing tower/structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection C, Paragraphs 1 and 2 above. Any new commercial communication tower approved for an existing tower/structure site shall be subject to the standards of Subsections (F) through (N) below.

(vi) New Tower at a New Location

1) The Planning Board may consider a new commercial communication tower on a site not previously developed with an existing tower/structure when the applicant demonstrates that shared usage of an existing tower site is impractical, and submits a report as described in Subsection C(2) above.

(vii) Future Shared Usage of New Towers

1) The applicant must examine the feasibility of designing a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. The scope of this analysis shall be determined by the Planning Board. This requirement may be waived, provided that the applicant demonstrate that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

- a) The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
- b) The kind of tower site and structure proposed;
- c) The number of existing and potential licenses without tower spaces;
- d) Available spaces on existing and approved towers; and
- e) Potential adverse visual impact by a tower designed for shared usage.

(viii) Setbacks for New Towers

1) All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines, a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

- a) All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying Zoning District, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this paragraph may be increased at the discretion of the Planning Board, or it may be decreased in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Town Engineer.
- b) Accessory structures must comply with the minimum setback requirements in the underlying district.

(ix) Visual Impact Assessment

- 1) The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to the relevant guidelines and criteria below that are determined by the Planning Board at the pre-submission conference to be appropriate.
 - a) Assessment of "before and after" views from key viewpoints both inside and outside of the Town, including State Highways and other major roads, from State and local parks, other public lands; from any privately-owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers.
 - b) Assessment of alternative tower designs and color schemes, as described in Subsection I below.
 - c) Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
- (x) New Tower Design
 - 1) Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower; provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:
 - a) Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone, or similar finish that will minimize the degree of visual impact that the new tower may have.
 - b) Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae), but artificial lighting of any kind shall be prohibited, unless required by Federal Aviation Administration (FAA), the Town of Byron or other recognized safety guidelines.
 - c) The Planning Board may request a review of the application by a qualified structural engineer for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.
 - d) Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
 - e) No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.
 - f) The applicant shall provide documentation to the Town that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.
 - g) Space on communication towers shall be made available for public safety purposes (i.e., Genesee County Public Safety Radio System) at no cost to public

safety agencies.

- (xi) Existing Vegetation
 - 1) Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground) shall take place prior to approval of the Special Use Permit. Clear cutting of all trees in a single contiguous area exceeding twenty thousand (20,000) square feet shall be prohibited.
- (xii) Screening
 - 1) Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.
- (xiii) Access
 - 1) Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- (xiv) Parking
 - 1) Parking shall be provided in accordance with Article X, Section 1000, Off-Street Parking. No parking space shall be located in any required yard.
- (xv) Fencing
 - 1) Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) foot in height from finished grade, unless the applicant demonstrates to the Planning Board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.
- (xvi) Maintenance and/or Performance Bond
 - 1) Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all

necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

(xvii) Removal of Obsolete/ Unused Facilities

- 1) Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement, letter of credit or other acceptable security with their application to ensure compliance with this requirement acceptable to the Town Attorney.

Section 11.14 Outdoor Wood Boilers

(a) Purpose.

- (i) It is generally recognized that the types of fuel used, and the scale and duration of burning by outdoor wood boilers, can create noxious and hazardous smoke, soot, fumes, odors and air pollution, which can be detrimental to citizens' health, and can deprive neighboring residents of the enjoyment of their property or premises. It is the intention of the Town Board of the Town of Byron to establish and impose restrictions upon the construction and operation of outdoor wood boilers within certain areas of the Town for the purpose of securing and promoting the public health, comfort, convenience, safety and welfare of the Town and its inhabitants. All outdoor wood boilers shall meet the requirements of the New York State Department of Environmental Conservation (NYSDEC) Title 6 NYCRR Part 247

(b) Construction and operation prohibited.

- (i) The installation, construction and operation of outdoor wood boilers or outdoor furnaces or stoves designed to provide heat to a dwelling or business ("devises") are prohibited in all zoning districts except such devises are permitted in Agricultural (A) Agricultural-Residential (A-R) and Industrial (I-1) districts.

(c) Nonconforming uses.

- (i) Such devices existing prior to December 10,2008 shall be permitted to operate subject to the provisions of B, C, E and F hereof, 6 NYCRR Part 247, and any other State or Federal rule, regulation or law.
- (ii) Any outdoor wood boilers pre-existing within the Town of Byron at the time this Local Law becomes effective must be installed and operated in full compliance with its manufacturer's recommendations. If any such devises are not in compliance with such recommendations the owner or operator thereof shall bring the said devise into full compliance within thirty (30) days of the effective date hereof. After said thirty (30) days any such devise not in compliance shall lose its status as a pre-existing non-conforming use, and a court of competent jurisdiction may order its disassembly and removal in a proceeding brought by the Byron Zoning Enforcement Officer against the owner or owners of the premises on which such devise is located.
- (iii) Any such pre-existing outdoor wood boilers must be installed no closer than fifteen (15) feet from any of the property lines of the premises on which it is located,

and no closer than three hundred (300) feet from any residence located on any adjacent property in the same neighborhood. Also the exhaust or smoke stack on any such pre-existing devices must extend to a height at least five (5) feet higher than the highest point on the roof line of any residence located on any [adjacent] property within three hundred (300) feet of such device location and a minimum of a minimum of eighteen(18) feet above ground level.

(d) Restrictions for all wood boilers.

- (i) No person shall cause or allow emissions of air containments from an outdoor wood boiler to the outdoor atmosphere of a quantity, characteristic or duration which is injurious to human, plant or animal life or to property, or which unreasonably interferes with the comfortable enjoyment of life or property. This prohibition , applies, but is not limited to, the following:
- 1) Activating smoke detectors in neighboring structures;
 - 2) Impairing visibility on a public highway; or
 - 3) Causing a visible plume emanating from an outdoor wood boiler and contacting a building on an adjacent property.

The prohibition further applies to any particulate, fume, gas, mist, odor, smoke, vapor, toxic or deleterious emission, either alone or in combination with others, emitted from an outdoor wood boiler and that results in the conditions and circumstances listed in this subdivision notwithstanding the existence of specific air quality standards or emission limits.

- (ii) No person shall operate an outdoor wood boiler in such a manner as to create a smoke plume with an opacity of twenty percent (20%) or greater six (6) minute mean as determined using EPA Reference Method 9 (or equivalent)(seeTable1 Section 200.9 of NYS DEC Title 6 NYCRR).
- (iii) A person who operated an outdoor wood boiler may only burn the following fuels in such outdoor wood boiler:
- 1) seasoned clean wood;
 - 2) wood pellets made from clean wood;
 - 3) heating oil in compliance with Subpart 225-1 of Title 6 NYCRR, liquid propane gas or natural gas may be used as starter fuels for dual fuel-fired outdoor wood boilers;
 - 4) non-glossy, non-colored papers, including newspaper, may be used only to start an outdoor wood boiler; and
 - 5) other fuels approved by the department per the certification requirements of NYS DEC Title 6 NYCRR Part 247
- (iv) Existing Devices may be replaced in Agricultural(A), Agricultural-Residential (A-R), and Industrial (I-1) districts.
- (v) Any existing outdoor wood boiler which is abandoned or discontinued for a period of ten (10) consecutive months pending the notification process described in Section 302 F(4), shall not be permitted to be reestablished as a nonconforming use, and must be immediately removed by the property owner from the subject premises.

Section 11.15 Solar Energy Systems

- (a) Solar energy systems are permitted in all districts only with approval by the Planning Board with a Special Use Permit and Site Plan review.
- (b) In a Residential (R-1) District, such Solar Energy System shall be permitted only when attached to the principal building on a lot.
- (c) Setback requirements for other than R-1 Districts:
 - (i) Front setback must be behind the principle building front setback requirements (see Table 1).
 - (ii) Side and rear setbacks must be at least 1 ½ times the height of the Solar Energy Structure.

Section 11.16 Manufactured Home Parks

- (a) Manufactured home parks may be permitted in the RA and R1 districts upon issuance of a Special Use Permit, provided that the following standards and requirements are complied with. Any changes to the approved manufactured home site plan must be presented to and approved by the Planning Board.
 - (i) Size. The size of all manufactured home parks shall be minimum of two (2) acres.
 - (ii) Construction and safety standards. All manufactured homes within the park shall comply with the current construction and safety standards set forth by the United States Department of Housing and Urban Development.
 - 1) Manufactured homes shall have a minimum habitable floor area of eight hundred (800) square feet.
 - 2) Solid fuel burning devices shall not be permitted within any manufactured home in a manufactured home park.
 - (iii) Layout and design.
 - 1) Buffer zones. The site shall be located and laid out so that no manufactured home is located within one-hundred (100) feet of any adjacent public highway right-of-way or within one-hundred (100) feet of any other adjoining property line. Additional buffer areas may be required by the Planning Board if deemed necessary in order to avoid potential conflicts with existing, permitted or planned adjacent land uses.
 - 2) Other principal structures. A private conventional residence may be located within the confines of the manufactured home park only to the extent that it is used as an office. Lot location and minimum distances shall be fixed by the Planning Board after due consideration of each case.
 - 3) Interior roadways. The layout of interior roadways, driveways and walkways shall be designed and maintained in such a manner as to provide for safe, efficient and orderly vehicular and pedestrian traffic acceptable to the Planning Board after a written report from Highway Superintendent. In addition, all interior roadways shall be clearly identified by signs at each intersection. Such signs shall be acceptable to the Planning Board.
 - a) Roadway (or driveway) clear zone width. All roadways shall have a minimum clear zone width of forty(40) feet which is completely clear of obstructions to a height of twelve(12) feet.

- b) Roadway grades. The maximum roadway grade shall be seven percent (7%). Entrance gradients shall be less than three percent (3%) for a distance of seventy-five (75) feet from edge of the right-of-way of the public highway.
- c) Minimum radius. The minimum radius of a curvature for any street shall be fifty (50) feet.
- d) Alignment. Roadways shall be laid out so as to intersect as nearly as possible at right angles, and in no case shall any angle or intersection be less than seventy-five (75) degrees. Roadways in four-way intersections shall be directly across from one another or offset a minimum of one hundred twenty five (125) feet.
- 4) Roadways. Roadways or driveway pavement shall be located in the center of the roadway clear zone and shall be at least twenty (20) feet wide with five-foot wide shoulders. If parking provision is made within the roadway clear zone, such parking shall be off the pavement, and clear zone shall be increased accordingly.
- 5) Parking. Two parking spaces shall be provided for each manufactured home lot to meet the needs of occupants of the manufactured home park and their guests without interference with normal movement or vehicular or pedestrian traffic. Such parking may be in tandem. Each parking space shall have minimum dimensions of at least ten by twenty (10 x 20) feet per vehicle and shall have stone, concrete or blacktop surfacing.
- 6) Auxiliary Parking. Auxiliary parking areas for motor vehicles shall be provided at a ratio of one parking space to every three manufactured home units. Additional auxiliary parking areas are to be provided for parking trucks, maintenance equipment, boat trailers, utility trailers and similar such equipment and vehicles as may be determined by the Planning Board.
- 7) Manufactured home lot size. All lot sizes shall be a minimum 10,000 square feet, exclusive of any common areas, and shall have a minimum dimension of eighty (80) feet across the lot. No common areas such as buffer zones, roadway clear zones, auxiliary parking lots, recreational areas, service buildings and areas, etc. shall be counted towards required individual manufactured home lot areas.
- 8) Walkways. Walkways shall be laid out so as to connect service buildings, dry yards and storage lockers with roadways. Walkways shall also provide access to recreation areas if such areas are not located adjacent to a roadway. Each roadway shall have a walkway running parallel to it, separated from the roadway by a minimum distance of seven feet. Additional walkways may also be placed along the rear of each lot. All walkways shall be a minimum of three feet wide and thickness of four inches over four inches if ROB gravel and shall be provided with joints so designed as to minimize cracking. All walkways shall be made of concrete or blacktop or other similar material approved by the Planning Board.
- 9) Recreation areas. Recreation areas shall be provided in central locations at a minimum of five percent (5%) of the total park area or as required by the Planning Board. Recreational areas shall include playgrounds for children and separate areas for more passive enjoyment by adults. The playgrounds shall be equipped with play equipment for children under ten (10) years of age and should be away from traffic.
- 10) Public telephones. If public telephones are provided within the court, they shall be

- located directly adjacent to service buildings.
- 11) Mailboxes. Mailboxes shall be located in compliance with United States Postal regulations and shall not be placed in any location where they constitute a safety hazard to pedestrians or to vehicles.
 - 12) Trees. All existing trees shall be preserved in so far as possible in the design of the park.
- (iv) Sitting of manufactured homes. Manufactured homes shall be so situated within the manufactured home park in conformance with the following:
- 1) The following minimum setback distances shall be maintained when providing specific location of mobile homes as related to each other within the park:
 - a) Side yard: Minimum distance of ten (10) feet to line.
 - b) Front and rear yards: Minimum distance of twenty-five (25) feet to line.
 - 2) In case of irregularly shaped lot, the Planning Board may modify and vary the above provisions and shall determine the application of the above listed provisions, but in no case shall any two manufactured homes be closer than twenty(20) feet from one another.
 - a) No manufactured home shall be located less than fifty (50) feet from any service or storage building other than approved accessory buildings located on and serving the specific manufactured home as set forth in D10 Letter C of this chapter.
 - b) The percent lot coverage for an individual manufactured home lot shall be no greater than twenty-five percent (25%). No occupied travel or vacation trailer or other form of temporary-type living units shall be permitted in a manufactured home park.
 - c) Every manufactured home lot shall be clearly identified by a number located on a sign or light post located on the lot.
- (v) Required improvements.
- 1) Water and sewer systems. Water supply and sewage treatment facilities shall be installed and maintained in compliance with the requirements of the New York State Health Department of Environmental Conservation and the Genesee County Health Department.
 - 2) Underground utilities. Electrical systems, gas piping systems, cable and telephone wires shall be installed underground. Community and individual fuel storage shall be installed and maintained in compliance with the New York State Uniform Fire Prevention and Building Code.
 - 3) Artificial lighting. Artificial lighting shall be provided from dusk to dawn to illuminate walks, driveway, roadways and parking spaces for the safe movement of pedestrians and vehicle. Specifically, roadway lighting shall be provided as follow:
 - a) Overhead roadway lighting shall have a minimum clearance above the pavement of twelve (12) feet and shall have a minimum power capacity necessary to meet acceptable industry standards.
 - b) Service buildings shall have sufficient exterior lighting fixture so as to properly illuminate entrances and side yards connected therewith.
 - 4) Refuse disposal. It shall be the responsibility of the park owner to ensure that garbage and rubbish shall be collected and properly disposed of outside the park as

frequently as may be necessary to ensure that garbage receptacles do not overflow, but at least every seven days. This responsibility shall include either the provision of garbage cans with tight –fitting covers to each unit or dumpsters which service a number of units. Exterior property areas shall be maintained free from organic and inorganic material that might become a health, incident or fire hazard. Suitable screening shall be provided for all community refuse (dumpster) areas.

- 5) Manufactured home lot. Each manufactured home lot shall contain a manufactured home stand to provide adequate support for the placement and tie-down of the manufactured home. The stand shall not heave, shift or settle unevenly under the weight of the manufactured home as a result of any frost action, inadequate drainage, vibration or other such forces. The material used in constructing the stand should be durable and capable of supporting the expected load, regardless of the weather, and shall be constructed in compliance with the New York State Uniform Fire Prevention and Building Code. In addition, the footings and the load-carrying portion of the ground anchors shall extend below the frost line.
- 6) Patios and/or decks. Manufactured home lots may be provided with patios and/or decks. If installed, patios and/or decks may be covered and shall conform to distance separations, lot setbacks and percent lot coverage requirements and shall not be enclosed (insect screening is allowable). No permanent or habitable additions shall be allowed.
- 7) Storm water drainage. Storm water drainage will be designed in conjunction with the towns engineers and NYSDEC and the planning board and the Genesee County Soil and Water Conservation District. At the sole cost of the expense of the applicant.
- 8) Service buildings. The developer shall be required to furnish service buildings in conformance with the following:
 - a) Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a manufactured home lot.
 - b) Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the New York State Sanitary Code.
 - c) The service buildings shall be well lighted at all times from dusk to dawn; be well ventilated with screened opening; be constructed of such moisture proof material, including painted woodwork, as shall permit repeated cleaning and washing; and be maintained at a temperature of at least sixty-eight degrees (68) Fahrenheit during the period of October 1st to June 1st. The floors of such buildings shall be of concrete and supplied with drains.
- 9) Additional structures on manufactured home lots. Additional structures on manufactured home lots are subject to the following:
 - a) No non integral structural addition or other accessory building or structure in excess of one hundred(100) square feet shall be permitted on any mobile home lot.
 - b) Accessory buildings and awnings shall conform to distance separations, lot setbacks and percent lot coverage requirements.
 - c) Accessory buildings shall not be placed in front yards.
- 10) Manufactured home park owner obligations. In general, home parks shall be properly maintained so as to ensure the desirable residential character of the property.

Specifically, the following shall apply:

- a) Yard maintenance. Manufactured home parks shall be maintained reasonably free from holes, excavations, sharp protrusions and other objects or conditions which might be a potential cause of personal injury. Walks, steps, driveways and roadways that contain holes or tripping hazards shall be filled, repaired or replaced as the need indicates. Trees or limbs of trees that constitute a hazard shall be removed. Snow removal is the responsibility of the manufactured home park owner. Buffer areas shall be mowed and maintained by the manufactured park owner.
 - b) Noxious weeds. Ragweed and other noxious weeds considered detrimental to health, such as a poison ivy or poison sumac, shall be completely eliminated from all areas of the manufactured home park. Open areas shall be maintained free of heavy undergrowths of any description.
 - c) Accessory structures. All accessory buildings or structures shall be kept in good repair, free from health, fire and accident hazards. They shall be of durable construction and appropriate for the intended use and location. Exterior wood surfaces of all structures that are not inherently resistant to deterioration shall be periodically treated with a protective coating or paint or suitable preservative.
 - d) Gravel areas. All areas surfaced with gravel shall be kept clear of all forms of vegetation.
 - e) Infestation. Grounds and structures shall be maintained free of insect, vermin and rodent harborage and infestation. Methods used for purposes of extermination shall conform to generally accepted practice.
- 11) Manufactured home park plans and registration of manufactured home park occupants. It shall be the duty of each manufactured park owner/operator to keep a register containing a record of all manufactured home owners and occupants located within the park. This register shall contain the following:
- a) The name and legal address of all occupants.
 - b) The name and address of the owner of each manufactured home.
 - c) The make, model, year and license number of each manufactured home.

Section 11.17 Manufactured Homes-Single

- (a) Regular housing situation.
 - (i) Single manufactured homes may be permitted temporarily on a lot in the A-R Districts, upon the issuance of a temporary use permit. In order to apply for such a temporary use, there must first be a valid permit issued for the erection of a residential dwelling on that lot, and the manufactured home unit must comply with the current construction and safety standards set forth by the United States department of Housing and Urban Development. Such mobile home shall be removed from the lot upon expiration of the temporary use permit or upon completion of the dwelling, whichever condition comes first.
 - (ii) All such manufactured homes shall comply with Subsections C (a),(c), (d),(e) and (f) below.
- (b) Emergency housing situation.

- (i) Single manufactured homes or recreational vehicles may be permitted as a temporary residence in any district upon the determination that an emergency housing situation exists. Such emergency housing situation shall be limited to either man-made or natural disasters (i.e. fire, flooding, hazardous material incidents, etc.) which rendered existing housing units uninhabitable.
- (ii) The location of such emergency housing is not limited to the site containing the uninhabitable housing unit. The Zoning Enforcement Officer may grant a nonrenewable temporary emergency housing permit for a period of time not exceeding ninety (90) days. Any extension shall only be granted by the Planning Board. Such manufactured home shall be removed from the lot upon expiration of the emergency housing permit.
- (c) Single manufactured home; replacement of existing unit.
 - (i) An existing manufactured home which is occupied as a one-family dwelling on any lot in an A or A-R District may be replaced with another manufactured home, provided that the following criteria are met:
 - 1) The replacement manufactured home unit shall be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24, Housing and Urban Development, Chapter XX, Office of Assistant Secretary for Housing – Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280, Manufactured Home Construction and Safety Standards.
 - 2) The location of the replacement manufactured home shall not increase the degree of nonconformity (other than unit size and square footage) relative to the area requirements that exist with the current mobile home.
 - 3) The manufactured home shall be installed in compliance with the New York Uniform Fire Prevention and Building Code and shall be protected from ground frost heaves by one of the following methods in compliance with the New York Uniform Fire Prevention and Building Code.
 - 4) The manufactured home shall be skirted with a noncombustible material so as to enclose the area between the floor of the manufactured home and the ground. Such skirting is to be properly ventilated and must be completed within thirty(30) days after arrival.
 - 5) The water supply system and sewage disposal system for the manufactured home shall be approved by the County Health Department.
 - 6) The manufactured home shall have a minimum floor area of eight-hundred(800) square feet.

Section 11.18 Dwelling, Accessory Apartment

- (a) The Planning Board may approve a Special Use Permit for an accessory apartment with in the A-R District, provided that the following standards and conditions are maintained:
 - (i) It is the intent of the Town to provide housing opportunities for elderly residents or for infirm family members who require extended personal care but are not so infirm as to require full-time care or nursing supervision to live in an apartment within the same structure as the occupants of the principal residence in quarters which are accessory to the principal residence. Should there be a change in the conditions existing

at the time of the approval of the special permitted use permit; the permit shall become null and void.

- (ii) The accessory apartment shall be occupied by a parent, either by blood, marriage, adoption or other domestic bond, of a member of the family residing in the principal residential unit on the premises.
- (iii) If the resident proposed to be the occupant of the accessory apartment is not a parent of the occupant of the principal residential unit, the applicant shall supply a letter from a physician certifying that the intended occupant of the accessory apartment cannot function independently and is in need of extended personal care but is not so infirm as to require full-time care or nursing supervision.
- (iv) No external change in the appearance of the structure shall be made that would distinguish the premises from a single-family residence.
- (v) The accessory apartment shall not exceed thirty-five percent (35%) of the total floor area of the principal building or nine-hundred and fifty (950) square feet, whichever is greater.
- (vi) The owner of the residence in which the accessory unit is created shall occupy at least one of the dwelling units on the premises.
- (vii) No less than three off-street parking spaces shall be provided to serve the residents of the principal and accessory residential unit.
- (viii) No more than one accessory apartment may be created on any single property.
- (ix) The approval granted by the Planning Board shall be for a two-year period and may be renewed for the same period of time as long as the same conditions are in effect and the property is owned by the same person or persons. If title to the property changes, if the parent is deceased or the resident requiring extended care no longer occupies the accessory unit, the permit shall not be renewed and the facilities that provide for independent occupancy (i.e., kitchen and bath facilities) shall be removed. As an alternative to the removal of the facilities, the occupant of the principal residential unit shall submit plans to show that there is unhindered internal access to the entire dwelling as a condition of the continuation of the certificate of occupancy.

Article XII. VIOLATIONS, PENALTIES, AND COMPLAINTS

Section 12.01 Violations and Penalties

- (a) It shall be unlawful for any person, firm, or corporation to construct, alter, repair, move, equip, use or occupy, or change the use of any building, structure, or land or part thereof in a manner not permitted by this Town Law or without the issuance of a valid Zoning Permit or Certificate of Compliance as required by this Town Law.
- (b) It shall be further unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.
- (c) Appearance Ticket—The Zoning Enforcement Officer may issue an appearance ticket to any person who fails to respond to a notice of violation and written order to correct the violation.
- (d) It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part or assisting in

the construction, alteration, repair, or use of any building, structure or land, to violate any of the applicable provisions of this Town Law or any lawful order, notice, directive, permit or certificates issued or made hereunder.

- (e) Any violation of this Section and/or this Town Law shall be deemed an offense punishable by a fine and/or imprisonment as set forth in Section 268 of New York State Town Law. Every week such violation continues shall be deemed a separate and distinct violation.
- (f) The Zoning Enforcement Officer may, with permission of the Town Board, engage the Town Attorney or any other attorney approved by the Town Board to initiate legal action to enforce provisions of this Town Law.
- (g) In addition to the foregoing remedies, the Town of Byron and/or its appropriate officials and authorities may maintain an action for injunction to restrain, correct, or abate any violation of this Town Law and/or maintain an action at law for damages sustained as a result of any violation of this Town Law and/or seek any other remedy permitted by law including Town Law Section 268. Damages may include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

Section 12.02 Complaint of Violations

- (a) In case of any new violation of any of the provisions of this Town Law or conditions imposed by the Planning Board or Board of Appeals in addition to other remedies herein provided, the Town Board may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure, or land or to prevent any illegal act, conduct, business, or use in or about such premises.
- (b) Whenever a violation of this Town Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, signed, and shall be filed with the Zoning Enforcement Officer who shall properly record such complaint, investigate it, and take appropriate action in a timely manner.

**SCHEDULE I
MINIMUM HABITABLE FLOOR AREAS**

Type of Use	Minimum Habitable Floor Space
Apartment 1 bedroom	750 square feet
Apartment 2 bedroom	900 square feet
Apartment 3 bedroom	1000 square feet
Efficiency Unit	550 square feet

Townhouse 2 bedroom or less	850 square feet
Townhouse 3 bedrooms or more	1000 square feet
Single family dwelling	950 square feet
Two family dwelling	1500 square feet

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Town of Byron - Table 1

District	Permitted Uses	Minimum Lot Size ⁽⁴⁾ (sq. ft.)	Minimum Frontage (feet)	Minimum Depth ⁽⁴⁾ (feet)	Minimum Yards			Accessory bldg.		% Maximum Lot Coverage	Maximum Height (feet)	Buffer	Site Plan					
					front	rear	side	side	rear									
					(feet)			setback	setback									
A Agricultural	Ag building wind & cell tower	0	0	0	20	10	10	10	10									
A-R Agricultural- Residential	Single Family Dwelling	40,000	150	200	50	30	15	10	10	20	35							
	Single Family Dwelling	35,000	125	175														
	Sewer & public water	45,000	150	250														
	Two Family Dwelling	40,000	125	225														
	Sewer & public water	3,000	175	300									75	30				
	Multi-Family ⁽³⁾	80,000	200	250									75	30	30	35	Yes	Yes
R-1 Residential	Single Family Dwelling	30,000	150	175	50	30	15	10	10	20	35							
	Single Family Dwelling - sewer	25,000	100	150														
	Single Family Dwelling	20,000	100	150														
	Sewer & public water	35,000	150	200														
	Two Family Dwelling	30,000	125	175														
	Two Family Dwelling - sewer	25,000	125	175														
	Two Family Dwelling	3,000	160	250									75	30				
	Sewer & public water	80,000	250	300									75	30	30	35	Yes	Yes
	Non-Residential																	
C-1	Retail & Service ⁽¹⁾	40,000	150	200	50	30	15			30	35	Yes	Yes					
C-2	Commercial-Retail ⁽¹⁾	80,000	250	300	60	30	50			30	35	Yes	Yes					
I-1 Industri	Industrial ⁽²⁾	80,000	250	300	75	30	30			30	35	Yes	Yes					

Town of Byron - Table 1

- (1) No commercial or business structure shall be located within 50 feet of a Residential (R-1) District
- (2) No Industrial structure shall be located within 100 feet of a Residential (R-1) District

- (3) Two family lot size plus 3,000 sq. feet per each dwelling unit over two dwelling units
- (4) Excludes the highway right-of-way (ROW)

Chapter 190

ZONING

GENERAL REFERENCES

Building construction — See Ch. 51.

Historic preservation — See Ch. 100.

Business Improvement District — See Ch. 58.

Rooming houses — See Ch. 143.

Environmental quality review — See Ch. 79.

Subdivision of land — See Ch. 162.

Flood damage prevention — See Ch. 87.

Water — See Ch. 184.

ARTICLE I
General Provisions

§ 190-1. Title.

This chapter shall be known and may be cited as the "City of Batavia Zoning Ordinance."

§ 190-2. Purposes.

The purpose of this chapter is to guide the future growth and development of the City of Batavia in accordance with a comprehensive plan of land use and population distribution that represents and promotes beneficial and convenient relationships among residential, commercial, industrial and public areas within the City, considering the suitability of each area for such uses, as indicated by existing conditions, trends in population and mode of living, and future needs for various types of land development, and to achieve the purposes more particularly described in Subdivisions 24 and 25 of § 20 of the General City Law.

§ 190-3. Definitions.

A. Generally.

(1) All words used in the present tense include the future tense; all words in the singular number include the plural number and vice versa; the word "person" includes corporations and all other legal entities; the words "lot," "plot," "parcel," "tract of land," and "premises" shall include one another; the word "premises" shall include the land and buildings thereon; the word "building" shall include "structure" and vice versa; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied" unless the natural construction of the wording indicates otherwise. The word "shall" is mandatory and not directory.

(2) Except where specifically defined herein, all words in this chapter shall carry their customary meanings.

B. Specific terms. As used in this chapter, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

ACCESSORY DWELLING UNIT — A self-contained dwelling unit, within a structure originally designed for a single-family residence, with separate kitchen facilities, with requirements set forth in § 190-37J. **[Added 10-25-1999]**

ADULT BOOKSTORE — An establishment having a stock-in-trade consisting partially or totally of books, magazines, any other periodicals or films, including videos or compact disks, for sale, rent or viewing on premises by use of motion picture devices or any other coin-operated

means, and which establishment has a substantial portion of said enumerated stock-in-trade which is distinguished or characterized by its emphasis on matter depicting, describing or related to specified sexual activities or specified anatomical areas.**[Added 11-14-1994; amended 12-13-1999]**

ADULT EATING OR DRINKING ESTABLISHMENT — An eating or drinking establishment which features any one or more of the following:**[Added 11-14-1994; amended 12-13-1999]**

- (1) Live performances which are characterized by an emphasis upon the depiction or description of specified anatomical areas or specified sexual activities; or
- (2) Films, motion pictures, video cassettes, slides, or other visual representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or
- (3) Employees who as part of their employment, regularly expose to patrons specified anatomical areas, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

ADULT ENTERTAINMENT CABARET — A public or private establishment which features topless dancers, strippers, male or female impersonators, exotic dancers or similar entertainers.**[Added 11-14-1994; amended 12-13-1999]**

ADULT MINI-MOTION-PICTURE THEATER — An enclosed building with a capacity of less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.**[Added 11-14-1994; amended 12-13-1999]**

ADULT MOTEL — A motel which makes available to its patrons in their room films, slide shows or videotapes with an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.**[Added 11-14-1994; amended 12-13-1999]**

ADULT MOTION-PICTURE THEATER — An enclosed building with a capacity of 50 or more persons used regularly and routinely for presenting material having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.**[Added 11-14-1994; amended 12-13-1999]**

ADULT USE — Within a commercial establishment, any activity or use relating to specified sexual activities or specified anatomical areas, including but not limited to the activities and uses set forth in the

definitions of adult bookstore, adult eating or drinking establishment, adult entertainment cabaret, adult mini-motion-picture theater, adult motion-picture theater, adult motel, massage establishment, nude model studio and peep shows.**[Added 11-14-1994; amended 12-13-1999]**

ALLEY — Narrow supplementary thoroughfare for the public use of vehicles or pedestrians, affording access to abutting property.

ALTERATION — Any change, rearrangement, or addition to a building, other than repairs; any modification in construction or in building equipment.

AREA, BUILDING — Total of area taken on a horizontal plane at the main grade level of principal buildings and all accessory buildings, exclusive of uncovered porches, parapets, steps, and terraces.

ART GALLERY — A structure or building utilized for the display of art work, including paintings, sculptures and prints for sale to the public.**[Added 8-14-2000]**

AUTOMOBILE SERVICE STATION — Any area of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including the sale of motor vehicle accessories and which may or may not include facilities for lubricating and other minor servicing of motor vehicles but not including the painting thereof by any means. Any rebuilding, reconditioning or collision services involving frame and fender straightening or repair, or any dismantling or disassembly of frame and exterior parts is not an automobile service station. The sale or rental of vehicles is not a permitted use under the definition of automobile service station. Such use may be allowed with special authorization of the Planning Board.

BASEMENT — That space of a building that is partly below grade, which has 1/2 or more of its height, measured from floor to ceiling, above the average finished grade.

BED-AND-BREAKFAST — A house or structure, or portion thereof, where short-term lodging rooms and meals are provided. The operator of the inn shall live on the premises or in adjacent premises.**[Added 8-14-2000]**

BREW PUB/MICRO-BREWERY — An eating and drinking establishment where certain beverages are prepared on the premises exclusively for on-site consumption. For a brew pub, the brewing of such beverages is accessory to the eating and drinking establishment. A micro-brewery, on the other hand, focuses on the production of beer, with the eating and drinking establishment as an accessory.**[Added 8-14-2000]**

BUILDING — A structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof. The term "building" shall be construed as if followed by the phrase "or part thereof," unless otherwise indicated by the text.

BUILDING COVERAGE — That percentage of the lot area covered by the building area.

BUILDING, HEIGHT OF — The vertical distance measured from the average level of the proposed finished grade across the front of the building to the ridgeline of the roof of the building.

BUILDING LINE — A line formed by the intersection of a horizontal plane at average grade level and a vertical plane that coincides with the exterior surfaces of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

BUILDING OR STRUCTURE, ACCESSORY — A structure the use of which is incidental to that of the main building and which is located on the same premises.

CELLAR — That part of a building that is partly or entirely below grade, which has more than 1/2 of its height, measured from floor to ceiling, below the average finished grade.

DENSITY — The total number of dwelling units proposed divided by the total number of acres within the tract.

DRIVEWAY — Every entrance or exit used by vehicular traffic to or from lands or buildings abutting a highway.

DWELLING, MULTIFAMILY —

- (1) A building designed or occupied for residential purposes by more than two families; or
- (2) A series of attached, detached, or semidetached buildings, which are provided as a group collectively with essential services and utilities, and which are located on a lot, plot, or parcel of land, under common ownership; or
- (3) The residential part of a mixed occupancy building. Regardless of the foregoing, any residential building, other than a one- or two-family dwelling on a single zoning lot, shall be deemed to be a multiple dwelling.

DWELLING, ONE-FAMILY — A building containing only one dwelling unit, and occupied by only one family.

DWELLING, TWO-FAMILY — A building containing only two dwelling units, and occupied by only two families.

DWELLING UNIT — A complete self-contained residential unit, with living, sleeping, cooking, and sanitary facilities within the unit, for use by one family.

FAMILY — A single person; or two or more persons maintaining a common household with not more than two boarders, roomers, or lodgers. The term family does not include live-in household employees.¹

FENCE — A fence is a structure which prohibits or inhibits unrestricted travel between properties or portions of properties or between the street or public right-of-way and a property. Fences may be constructed of wood, metal, plastic or other materials. Densely planted shrubbery or hedges which inhibit travel may also be considered as a fence.

FLOODPLAIN — Any area adjacent to a water body which is subject to inundation from high water and/or wave action, and at a minimum that area subject to a one-percent or greater chance of flooding in any given year and all areas designated as Special Flood Hazard Zones by the Federal Insurance Administration's Official Map for the City shall be considered as floodplain areas.

GARAGE, PRIVATE — A roofed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises.

GARAGE, PUBLIC — A building or part thereof used for the storage, hiring, selling, greasing, washing, servicing, or repair of motor vehicles, operated for gain.

GARDEN APARTMENTS — A residence building or group of one or more residence buildings of not more than 2 1/2 stories in height and two rooms in depth designed and erected as a project with singleness of use and operation and where joint or communal use is to be made of open areas by the occupants.

HELIPORT — An area used by helicopters which area includes passenger and cargo facilities, maintenance and overhaul, fueling service, storage space, tie-down space, hangars and other accessory buildings, and open spaces.

HELISTOP — An area on a roof or on the ground used by helicopters for the purpose of picking up or discharging passengers or cargo, but not including fuel service, maintenance or overhaul.

HIGH RISE — An apartment complex three stories or more in height.

HOME OCCUPATION — Any occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit by a member of the family residing in the dwelling unit. Home occupations shall be clearly incidental and secondary to the use of the dwelling unit for residential purposes.

- (1) In particular, a home occupation includes, but is not limited to the following: licensed plumbers, hairdressing, dressmaking, laundering, homecooking, teaching (musical instruction limited to a single pupil at a time) and the skilled practice by an accountant, architect, artist, dentist, doctor, engineer, insurance agent, lawyer,

musician, realtor, or member of any profession within a dwelling occupied by the same.

- (2) However, a home occupation shall not be interpreted to include the following: commercial stables and kennels, restaurants and tea rooms, musical instruction to groups, dancing instruction, tourist homes, convalescent homes, mortuary establishments, garages or shops for the repair of motor vehicles and other trades and businesses of a similar nature.
- (3) The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto. Not more than one person outside the family shall be employed in the home occupation. Under no circumstances shall the home occupation or professional use occupy more than 25% of the total gross habitable floor area of the principal building.

HOSPITAL — An establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including a sanitarium and sanatorium, and shall be limited to the treatment or other care of humans.

HOTEL — A building containing primarily hotel units for the purpose of furnishing lodging, with or without meals, for transient occupancy; and with management maintaining a register and providing daily housekeeping and other incidental services, including desk, telephone, or bellboy services.

JUNKYARD; RECLAMATION CENTER — The use of more than 200 square feet of the area of any lot where waste, discarded or salvaged materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled or handled, processed or reclaimed, including automobile wrecking yards, used lumberyards, and places or yards for used or salvage materials and equipment; as distinguished from such uses when conducted entirely within an enclosed building, and as distinguished from establishments for the sale, purchase or storage of used cars in operable condition, used machinery, furniture and household equipment, and the processing of used, or salvaged materials as part of a manufacturing process. Two or more abandoned, disabled, dismantled or partly dismantled vehicles allowed to remain on a premises for a period of more than 30 days shall constitute a junkyard.

KENNEL — A structure used for the harboring of more than three dogs that are more than six months old.

LARGE-SCALE MULTIFAMILY DEVELOPMENT — A development which is designed to provide habitation for six or more families. Large-scale multifamily development shall include apartment houses, flats, garden apartments, townhouses or any combination thereof which comprise six or more units.

LIVE/WORK UNIT — A place designed to be used, or used as, both a dwelling place and a place of work by an artist, artisan, or craftperson, including persons engaged in the application, teaching, or performance of fine arts such as, but not limited to, drawing, vocal or instrumental music, painting, sculpture, and writing. **[Added 8-14-2000]**

LOT — A parcel of land considered as a unit, occupied or capable of being occupied by one building and accessory buildings or uses, or by a group of buildings united by a common use or interest; and including such open spaces as are required by this chapter, and having its principal frontage on a public street or an officially approved place.

LOT AREA — The total horizontal area included within lot lines, except that no part of the area within a public right-of-way may be included in the computation of lot area.

LOT, CORNER — A lot located at the intersection of and fronting on two or more intersecting streets, and having an interior angle at the corner of intersection of less than 135°.

LOT COVERAGE — That percentage of the lot area covered by the building area. (See "building coverage.")

LOT DEPTH — The mean horizontal distance between the front and rear lot lines, measured from front to rear.

LOT, INTERIOR — A lot other than a corner lot.

LOT LINE, FRONT — In the case of a lot abutting upon only one street, the line separating such lot from such street. In the case of a lot that abuts more than one street, each street line shall be considered to be a front lot line.

LOT LINE, REAR — That lot line which is opposite and most distant from the front lot line.

LOT LINE, SIDE — That lot line not a front lot line or a rear lot line.

LOT, THROUGH — An interior lot having frontage on two approximately parallel or converging streets.

LOT WIDTH — The distance between side lot lines measured at right angles to the lot depth measured at a point from the front lot line equal to the front yard specified for the district.

MASSAGE ESTABLISHMENT — Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barbershops or beauty shops in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through

the administration of massages.**[Added 11-14-1994; amended 12-13-1999]**

MOBILE HOME — A mobile home is a movable living unit designed for year-round occupancy, sometimes termed a "house trailer." For the purposes of this chapter, a mobile home shall not be considered a dwelling.

MOBILE HOME COURT OR PARK — A parcel of land which has been planned and improved primarily for the placement of mobile homes.

MOTEL — A building with or without party walls, or any group of buildings, used primarily for sheltering transient motorists, and accessory uses, such as restaurants and parking.

NONCONFORMING BUILDING, STRUCTURE OR LOT — A building, structure, lot or use of land existing at the time of enactment of this chapter or an amendment thereto, and which does not conform to the regulations of the district in which it is situated or to the provisions of such amendment if nonconforming to such amendment only.

NONCONFORMING USE — A property use legally existing at the time of the enactment of this chapter, or any subsequent amendment, which does not conform to the use regulations of the district in which it is situated.

NUDE MODEL STUDIO — Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of the State of New York.**[Added 11-14-1994; amended 12-13-1999]**

NURSING OR CONVALESCENT HOME — Any dwelling used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnished.

PARKING SPACE — An off-street space available for the parking of one motor vehicle measuring no less than eight feet in width and 19 feet in depth and including sufficient space for aisles and maneuverability.

PEEP SHOWS — A theater which presents material in the form of live shows, films or videotapes, viewed from an individual enclosure with an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas and for which a fee is charged.**[Added 11-14-1994; amended 12-13-1999]**

PERSON — Any person, firm, partnership, corporation, association, or legal representative, acting individually or jointly.**[Added 11-14-1994; amended 12-13-1999]**

PUBLIC STORAGE RENTAL UNITS/BUILDING — A building or buildings comprised of separate rental units of varying size for private

storage of personal property by the general public. **[Added 12-9-2019 by Ord. No. 2-2019]**

RESTAURANT — Any establishment however designated, at which food is sold for consumption on the premises to patrons seated within an enclosed building. However, a snack bar or refreshment stand at a public, semipublic or community swimming pool, playground, playfield, or park operated by the agency or group or an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

RESTAURANT, DRIVE-IN — An establishment where patrons are served food, soft drinks, ice cream, and similar confections for principal consumption outside the confines of the principal building or in automobiles parked upon the premises, regardless of whether or not seats or other accommodations are provided for the patrons.

ROOMING HOUSE — Any building or portion thereof containing more than two and less than 10 rooms that are used, rented or hired out to be occupied or that are occupied for sleeping purpose for compensation, whether the compensation be paid directly or indirectly.

SALVAGE — The utilization of waste materials and processing of discarded or rejected materials that result from manufacturing or fabricating operations. **[Added 8-14-2000]**

SERVICE STATION — See "automobile service station."

SEXUAL ENCOUNTER CENTER — A business or commercial enterprise that offers for money or any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or exposure of specified anatomical areas or activities between male and female persons and/or persons of the same sex, when one or more of the persons is in the state of nudity or seminude. The definition of sexual encounter center shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of New York engages in medically approved and recognized sexual therapy.

[Added 11-14-1994; amended 12-13-1999]

SHOPPING CENTER — A group of commercial uses located on a single parcel of land under one ownership, having adequate space in rear for loading and unloading commodities; and required off-street parking.

SIGN — **[Amended 5-13-1985; 1-23-2017 by L.L. No. 1-2017; 3-11-2019 by L.L. No. 2-2019]**

- (1) AWNING SIGN — A sign where graphics or symbols are painted, sewn, or otherwise adhered to the awning material as an integrated part of the awning itself.
- (2) BACKLIT ILLUMINATION — Signs that are backlit illuminated involve a low level of external light shining out from behind solid

object, most often letters, creating a soft glow around the outside of the objects.

- (3) BRACKET SIGN — A freestanding sign attached to the ground by one or more support structures that is not higher than five feet and hangs from a bracket or support.
- (4) CANOPY SIGN — A sign placed on a canopy so that the display surface is parallel to the plane of the wall.
- (5) DIRECTIONAL SIGN — A permanent sign which is designed for the purpose of directing traffic or pedestrian traffic to the location of an activity or business.
- (6) DRIVE-THROUGH MENU BOARD SIGN — A sign located outside of a building, on a route to a point of service, with or without built-in communication devices, which displays a list of items offered. A drive-through menu board sign may be designed as a pole sign, monument sign, wall sign, projecting sign or iconic sign.
- (7) ELECTRICAL RACEWAY — A raceway (sometimes referred to as a raceway system) is an enclosed conduit that forms a physical pathway for electrical wiring. Raceways protect wires and cables from heat, humidity, corrosion, water intrusion and general physical threats.
- (8) ELECTRONIC MESSAGE BOARD — An illumination type that produces a static or changeable electronic message using light-emitting diodes (LED), liquid crystal display (LCD) or other digital display method; that is designed to provide an electronic message or display that may generate and periodically change using an internal, external or remotely located electronic control system; which contains an illuminated, programmable message or graphic, whether fixed or moving.
- (9) EXTERNAL ILLUMINATION — Signs that are externally illuminated have light shining on to the outer surface of the sign. External illumination may be downlit (lit from above) and uplit (lit from below).
- (10) FREESTANDING SIGN — A self-supporting sign not attached to any building, wall or fence, but in a fixed location, includes pole signs, pylon signs, and masonry wall-type signs, monument signs, but does not include drive-through menu boards and portable trailer-type signs.
- (11) ICONIC SIGN — A sculptural, typically three-dimensional sign whose form suggests its meaning, and which can either be building-mounted or freestanding.

- (12) ILLUMINATED SIGN — Any sign illuminated by electricity, gas or other artificial light either for the interior, back lit or exterior of the sign, and which includes reflective and phosphorescent light.
- (13) INTERNAL ILLUMINATION — Signs that are internally illuminated have light shining through the surface of the sign. Typically, these either involve a rectangular-shaped box sign or individual letters (channel letters) that are lit from inside. Neon signs are not considered internally illuminated.
- (14) MARQUEE SIGNS — A sign attached to the top or the face of a permanent roof-like structure.
- (15) MONUMENT SIGN — A freestanding sign attached to the ground along its entire length to a continuous pedestal. A monument sign is horizontally oriented or is square.
- (16) OFF-PREMISES SIGN — A sign unrelated to a business or a profession conducted, or to a commodity or service sold or offered, upon the premises where such a sign is located.
- (17) POLE SIGN — A freestanding sign constructed on a structure of one or more poles.
- (18) PORTABLE SIGN — A sign designed to be portable and not structurally attached to the ground, building, structure or another sign.
- (19) PROJECTING SIGN — A sign attached to the building facade at a ninety-degree angle, extending more than 15 inches. A projecting sign may be two or three dimensional.
- (20) SHINGLE SIGN — A small projecting sign that hangs from a bracket or support.
- (21) SIDEWALK SIGN — A moveable sign not secured or attached to the ground or surface upon which it is located.
- (22) SIGN — A structure or device designed or intended to convey information to the public in written or pictorial form.
- (23) SIGN STRUCTURE — Framework for the sign.
- (24) SIGN SURFACE AREA — The entire area within the single, continuous perimeter enclosing the limits of writing representation, emblem or any figure or similar character. Supports, uprights or structures on which any sign is supported shall not be included in the sign face area unless it is an integral part of the sign.
- (25) TEMPORARY SIGN — A sign having a duration of no more than 60 days.

- (26) WALL SIGN — A sign placed or painted against a building and attached to the exterior front, rear or side so that the display surface is parallel to the plane of the wall.
- (27) WINDOW SIGN — A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material, or located inside within four feet of the window, but not including graphics in connection with customary window display of products.²

SITE PLAN — A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

SPECIFIED ANATOMICAL AREAS [Added 11-14-1994; amended 12-13-1999] —

- (1) Less than completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES [Added 11-14-1994; amended 12-13-1999] —

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, sexual intercourse, or sodomy.
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

SUBSTANTIAL PORTION [Added 11-14-1994; amended 12-13-1999] — The following conditions are present:

- (1) The amount of actual stock-in-trade that is distinguished or characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas is equal to or greater than 15% of the total stock-in-trade of the bookstore; and/or
- (2) Fifteen percent or more of the floor area of the building accessible to customers contains the enumerated materials distinguished or characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as compared to the total floor area of the building accessible to customers.

2. Editor's Note: The definition of "sign area," which immediately followed, was repealed 5-13-1985.

STREET — A public thoroughfare which has been dedicated or deeded to the public for public use, and which has been improved in accordance with municipal standards.

STREET LINE — That line determining the limit of the highway rights of the public, either existing or contemplated.

STRUCTURE — An assembly of materials, forming a construction framed of component structural parts for occupancy or use, including buildings.

STRUCTURAL ALTERATION — Any change to a structure which is not merely a repair or replacement of an existing part, or any change which would:

- (1) Enlarge or diminish the livable floor area of the structure or any part thereof;
- (2) Change the number of dwelling units contained in any structure;
- (3) Cause a change in the location or height of the exterior walls or roof of the structure;
- (4) Move the structure from one position to another;
- (5) Change any exit or entry facilities;
- (6) Change or rearrange the structural parts including bearing walls, beams, girders, columns.

TEMPORARY USE — An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this chapter.

TOURIST HOME — A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

TOWNHOUSE — One of a series of attached one-family dwelling units, each having a common wall between adjacent sections and having direct access to private, individual rear and/or front yards designed as an integral part of each one-family dwelling unit.

USE — The specific purposes for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

YARD — An open space on the same lot with a building, unoccupied or unobstructed by any portion of a structure from the ground upward, except as otherwise provided in this chapter.

YARD, FRONT — An open, unoccupied space on the same lot with the building, between the front line of the building and the street or highway line, and extending the full width of the lot.

YARD, REAR — An open, unoccupied space, except for accessory buildings, on the same lot with the building between the rear line of the building and the rear lot line and extending the full width of the lot.

YARD, SIDE — An open, unoccupied space on the same lot with the building, situated between the building and the side lot line, and extending from the front yard to the rear yard.

§ 190-4. Condominium ownership.

Nothing in this chapter shall be construed to prohibit condominium ownership of any property under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York) if it is otherwise permissible under the provisions of this chapter.

ARTICLE II
Establishment of Districts

§ 190-5. Establishment of districts; Zoning Map.

A. ³For the purposes of this chapter the City of Batavia is hereby divided into 12 classes of zoning districts as follows:

- R-1 Residential District
- R-2 Residential District
- R-3 Residential District
- R-1A Residential District
- C-1 Limited Commercial District
- C-2 General Commercial District
- C-3 Central Commercial District
- I-1 Industrial District
- I-2 Industrial District
- L Land Conservation District
- P-1 Planned Development District - Industrial
- P-2 Planned Development District - Medical
- P-3 Planned Development District
- P-4 Planned Development District

B. The districts are shown, defined and bounded on the map entitled "Zoning Map, City of Batavia, New York," dated 1980.⁴

§ 190-6. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of the various districts as shown on the Zoning Map, the following rules shall apply:

- A. The district boundaries are intended to be lot lines unless otherwise shown, and where the designation of the Zoning Map indicates a boundary approximately upon a lot line, it shall be construed to be the boundary.
- B. Distances shown on the Zoning Map are intended to be perpendicular distances from the street lines measured back to the zoning district boundary lines, which lines in all cases where distances are given are parallel to the street line.
- C. In other cases the boundary line shall be determined by use of the scale of the Zoning Map.

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

4. Editor's Note: The Zoning Map is on file in the office of the City Clerk.

§ 190-7. Lots in more than one zoning district.

Where a district boundary line divides a lot in single or joint ownership of record at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than 30 feet into the most restricted portion, provided that the lot has frontage on a street in the less restricted portion.

ARTICLE III
Residential Districts

§ 190-8. R-1 Residential Districts.

In R-1 Residential Districts, no building or structure shall be erected, altered, or extended and no land, building, structure, or part thereof shall be used for other than one or more of the following uses:

- A. Permitted principal uses.
 - (1) Dwelling, one-family. **[Amended 10-25-1999]**
 - (2) Church or other place of worship, convent, parish house, cemetery.
 - (3) Public library, public museum, public school, parochial school, school operated by a nonstock corporation under the Education Law of the State, any institution of higher learning but not dormitory accommodations.
 - (4) Public park not conducted for profit, public playground or athletic field and field house or other accessory buildings.
 - (5) Golf course, except a miniature golf course operated on a commercial basis.
 - (6) Agricultural operations, including gardens, nurseries, greenhouses and usual buildings or structures. No greenhouse heating plant shall be less than 100 feet from any lot line.
- B. Permitted accessory uses.
 - (1) Such accessory uses as are customarily incidental to the above uses subject to the provisions of § 190-35.
 - (2) Off-street parking subject to the provisions of § 190-39.
 - (3) Signs subject to the provisions of § 190-43.
- C. Uses permitted with special use permits.
 - (1) Municipal or public utility structures or facilities when necessary for the service of a neighborhood and of a kind and character in keeping with the residential character of the neighborhood.
 - (2) Accessory dwelling units. **[Amended 10-25-1999]**

§ 190-9. R-2 Residential Districts.

In R-2 Residential Districts, no building or structure shall be erected, altered, or extended, and no land, building, structure, or part thereof shall be used for other than one or more of the following uses:

- A. Permitted principal uses.

- (1) Any principal use permitted in R-1 Residential Districts and two-family dwellings. **[Amended 10-25-1999]**
 - (2) Hospital, day nursery, sanitarium, nursing or convalescent home for the treatment of human beings, philanthropic or eleemosynary institutions, other than a penal or correctional institution. **[Amended 3-9-1981]**
 - (3) Boardinghouse, lodging house, rooming house, tourist home, but not tourist camps or cabins. Effective July 1, 2015, boardinghouse, lodging house, rooming house and tourist home will not be a permitted principal use for new applications. Only existing permits prior to July 1, 2015, will be authorized. **[Amended 7-13-2015 by L.L. No. 2-2015]**
- B. Permitted accessory uses.
- (1) Such accessory uses as are customarily incidental to the above uses including home occupations and home professional uses subject to the provisions of § 190-35 excepting physicians' and dentists' offices.
 - (2) Off-street parking, subject to the provisions of § 190-39.
 - (3) Signs subject to the provisions of § 190-43.
- C. Uses permitted with special use permit.
- (1) Municipal or public utility structures, and/or facilities when necessary for the service of a neighborhood and of a kind and character in keeping with the residential character of the neighborhood.

§ 190-10. R-3 Residential Districts.

In R-3 Residential Districts, no building or structure shall be erected, altered or extended, and no land, building, structure or part thereof shall be used for other than one or more of the following uses:

- A. Permitted principal uses.
- (1) Any principal use permitted in R-2 Residential Districts.
 - (2) Fraternity, sorority, dormitory, club house, except a club the chief activity of which is a service customarily carried on as a business.
 - (3) Private nursery school or kindergarten.
- B. Permitted accessory uses.
- (1) Such accessory uses as are customarily incidental to the above uses including home occupations and home professional uses subject to the provisions of § 190-35.

- (2) Off-street parking, subject to the provisions of § 190-39.
 - (3) Signs subject to the provisions of § 190-43.
- C. Uses permitted with special use permits.
- (1) Municipal or public utility structures or facilities when necessary for the service of a neighborhood and of a kind and character in keeping with the residential character of the neighborhood.
 - (2) Offices for attorneys, physicians, and/or dentists, not exceeding four offices in a single structure.
 - (3) High-rise apartments.
 - (4) Large-scale multifamily developments.

§ 190-11. R-1A Residential Districts. [Added 2-8-1999]

In R-1A Residential Districts, no building or structure shall be erected, altered, or extended, and no land, building, structure or part thereof shall be used for other than one or more of the following uses:

- A. Permitted principal uses.
- (1) Single-family dwelling.
 - (2) Two-family dwelling.
 - (3) Church or other place of worship, convent, parish house, cemetery.
 - (4) Public park not conducted for profit, public playground or athletic field and field house or other accessory buildings.
 - (5) Golf course, except a miniature golf course operated on a commercial basis.
 - (6) Agricultural operations, including gardens, nurseries, greenhouses and usual buildings or structures. No greenhouse heating plant shall be less than 100 feet from any lot line.
- B. Permitted accessory uses.
- (1) Such accessory uses as are customarily incidental to the above uses, subject to the provisions of § 190-35.
 - (2) Off-street parking, subject to provisions of § 190-39.
 - (3) Signs subject to the provisions of § 190-43.
- C. Uses permitted with special use permits.
- (1) Municipal or public utility structures or facilities when necessary for the service of a neighborhood and of a kind and character in keeping with the residential character of the neighborhood.

ARTICLE IV
Commercial Districts

§ 190-12. C-1 Limited Commercial Districts.

In C-1 Limited Commercial Districts, no building or structure shall be erected, altered, or extended and no land, building, or structure, or part thereof, shall be used for other than one or more of the following uses:

A. Permitted principal uses. **[Amended 8-14-2000]**

- (1) Any use permitted in the C-1 Limited Commercial Districts, regardless of the size of the new building or expansion, must be reviewed pursuant to § 190-44, Site plan review, prior to receiving a building permit.
- (2) Any principal use permitted in R-3 Residential Districts.
- (3) Banks or monetary institutions.
- (4) Business or professional offices.
- (5) Mortuary.
- (6) Bed-and-breakfast.
- (7) Restaurants.
- (8) Retail shops, excepting automobile service stations; automobile dealers, automobile rental stores and drive-in or drive-through facilities. **[Amended 10-22-2001]**

B. Permitted accessory uses.

- (1) Such accessory uses as are customarily incidental to the above uses, subject to the provisions of § 190-35.
- (2) Off-street parking, subject to provisions of § 190-39.
- (3) Signs subject to the provisions of § 190-43.

C. Uses permitted with special use permits. Any use permitted with special use permits in the R-3 Residential Districts, except professional offices, which are permitted uses in the C-1 Limited Commercial Districts.

§ 190-13. C-2 General Commercial Districts.

In C-2 General Commercial Districts, no building or structure shall be erected, altered, or extended and no land, building, or structure, or part thereof, shall be used for other than one or more of the following uses:

A. Permitted principal uses.

- (1) Any use permitted in C-1 Limited Commercial Districts. **[Amended 8-14-2000]**
 - (2) Retail store.
 - (3) Restaurant or other place for the serving of food or beverages.
 - (4) Hotel or motel.
 - (5) Theater, bowling alley, skating rink, or other place of amusement or assembly.
 - (6) Offices of veterinarians and small animal hospitals.
 - (7) Barbershops, beauty shops and florists.
 - (8) Shopping center.
- B. Permitted accessory uses.
- (1) Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of § 190-35.
 - (2) Off-street parking subject to the provisions of § 190-39.
 - (3) Signs subject to the provisions of § 190-43.
- C. Uses permitted with special use permits.
- (1) Municipal or public utility structures or facilities when necessary for the service of a neighborhood and of a kind and character in keeping with the residential character of the neighborhood.
 - (2) High-rise apartments.
 - (3) Large-scale multifamily apartments.
 - (4) Cleaning establishments.
 - (5) Automobile service stations and/or garages for the storage, adjustment or repair of motor vehicles, drive-in restaurants, and other similar uses.
 - (6) Food and beverage processing, warehousing and distribution business. **[Added 7-11-1988]**

§ 190-14. C-3 Central Commercial Districts.

In C-3 Central Commercial Districts, no building or structure shall be erected, altered or extended and no land, building or structure, or part thereof, shall be used for other than one or more of the following uses:

- A. Permitted principal uses.
- (1) Retail store, including storage, wholesale, and service operations customarily incidental thereto.

- (2) Banks or monetary institutions.
- (3) Business or professional offices.
- (4) Restaurant or other place for the serving of food or beverages.
- (5) Hotel, motel.
- (6) Theater, bowling alley, skating rink, club rooms, or other places of amusement or assembly.
- (7) Commercial printer or publisher.
- (8) Places of business of the following and businesses of a similar nature, provided that any manufacture or processing of goods on the premises is clearly incidental to a retail business conducted on the premises:

Appliance service and repairman	Florist
Baker	Furrier
Barber	Hairdresser
Caterer	Milliner
Cleaner	Optician
Confectioner	Photographer
Decorator	Shoemaker; Shoeshiner
Dressmaker	Tailor
Dyer	Upholsterer

- (9) Parking lots and/or parking garages.
- (10) Municipal or public utility structures or facilities.
- (11) Shopping centers.

B. Permitted accessory uses.

- (1) Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of Subsection C of § 190-35.
- (2) Off-street parking subject to the provisions of § 190-39.
- (3) Signs subject to the provisions of § 190-43.

C. Uses permitted with special use permits.

- (1) Drive-in facilities for banks or dry cleaners.
- (2) Restricted residential uses. **[Added 7-8-1996]**

D. Downtown design guidelines. **[Added 8-14-2000]**

- (1) Intent and purpose. The City Council of the City of Batavia hereby finds that poor quality of design in the exterior appearance of buildings in Downtown Batavia adversely affects the desirability of the area for business uses and by doing so impairs the benefits of occupancy of existing property in such areas, impairs the value of property in such area, prevents the most appropriate development of such areas, deteriorates conditions affecting the health, safety, comfort and general welfare of the businesses thereof and destroys a proper relationship between the taxable value of real property in such areas and the cost of municipal services provided therefor.
- (2) Application procedures. The Planning and Development Committee shall review all applications for the following actions that lie within the Downtown Batavia Business Improvement District as described in Chapter 58 of the Code of the City of Batavia: **[Amended 1-23-2017 by L.L. No. 1-2017]**
 - (a) Any action, except those solely related to sign permits, involving exterior changes which requires the issuance of a building permit or demolition permit.
 - (b) Any application for a sign or sign structure. Applications are not necessary for the following actions:
 - [1] Any actions that require review by the Historic Preservation Commission.
 - [2] Any action reviewed and approved for a Facade Grant award from the Downtown Batavia Business Improvement District (BID). A letter confirming approval of the award shall be forwarded to the Code Enforcement Officer by the BID Manager or President.
 - [3] Any ordinary maintenance or repair that does involve a change in design, material or outer appearance thereof. The Committee must act on all applications within 60 days of their receipt.
 - (c) Hardship criteria and procedures. An applicant whose application to the Committee has been denied may apply to the Zoning Board of Appeals for relief on the grounds that the Committee standards are working a hardship upon him. To prove the existence of a hardship, the applicant shall establish that:
 - [1] The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible, if the application is denied. Dollars-and-cents proof shall be presented to the Zoning Board of Appeals by the applicant which demonstrates to the satisfaction of the Zoning Board of Appeals that the applicant's claim of hardship is well founded.

- [2] The property cannot be adapted for any other use permitted by this chapter in the zoning district in which the property is located, whether by the current owner or by a purchaser, which would result in a reasonable return.
 - [3] In an application for demolition, reasonable good faith efforts to find a purchaser interested in acquiring the property and preserving it were made and have failed. The Zoning Board of Appeals will hold a public hearing on the hardship application within 90 days of filing the hardship application. Decisions on hardship applications shall be made not later than 60 days from the date of the final hearing.
- (d) Standards to guide Committee. To approve or disapprove an application, the Committee shall consider whether the proposed alteration or construction is compatible with the structure on the property and/or the surrounding properties in the Downtown Batavia Business Improvement District with regard to:
- [1] Neighborhood context. New construction shall be sympathetic to older buildings that surround it.
 - [a] New construction should remain the common setback distance of its neighbors. In the case of a discrepancy of setbacks, the new building should align with at least one of the neighboring buildings.
 - [b] Buildings situated at corners should "wrap" the corner by continuing certain facade elements (such as the cornice or horizontal accent bands) on all street elevations.
 - [c] Main building entrances should face the street whenever possible, should be easily identifiable and scaled to the size of the street which they are on.
 - [d] In the case of large structures, the overall building mass should be made up of smaller components. Large, uninterrupted building masses should be avoided.
 - [e] Additional parking which is required to accommodate a new building should be located in back or in a central courtyard and should be out of sight from the street.
 - [f] Parking lots, service areas and courtyards located within sight of the street should be screened with trees and a low wall or fence to help maintain the

street edge. Such parking lots should incorporate a minimum of 10% green space in the parking area.

- [g] In the case of larger developments which may occupy an entire block, pedestrian paths which allow the public to circulate through a site are encouraged.

[2] Building height and roof design.

- [a] The height of a building should take into account the heights of buildings in the immediate area. The height of proposed structures should be at least as tall as the lowest of the two neighboring buildings, but no less than two stories, especially at corners and intersections.
- [b] New facades should attempt to coordinate the relative heights of elements with adjacent buildings.
- [c] Longer buildings should provide fluctuations in the roofline which break up the long run of facade and which attract attention to key places such as entryways.
- [d] Air-handling equipment, antennas, satellite dishes and other mechanical equipment should be placed in such a manner as not to be visible from the street.

[3] Building scale.

- [a] The overall facade composition should break the building down into smaller distinct portions to provide a relatively small human scale that is in keeping with the buildings around it.
- [b] The size and scale of materials should complement the size and scale of a building. Small scale materials such as brick and wood are encouraged around pedestrian areas.

[4] Building proportions. The relative shape of a building and its parts with regards to width and height.

- [a] New construction should be sympathetic to the proportions of the surrounding buildings.
- [b] Facade elements such as windows and bays should be of a consistent proportion to each other. Elements which share a common area (e.g., all of the windows at the base level) should be of a consistent proportion and size as well.

- [c] Buildings which are "squat" in proportion or which have very strong horizontal elements that dominate the facade are discouraged.
- [5] Facade composition and rhythm. The arrangement of facade elements in a recognizable and consistent composition.
- [a] The rhythm of a facade should complement the rhythm of adjacent structures.
 - [b] The use of smaller patterns at the higher floor levels is encouraged to help reinforce a base, middle and top facade composition. (e.g. a wide bay at the base level would be divided in two at the middle levels, and divided again by two at the top level.)
- [6] Facade fenestration. Depth and openings on a facade.
- [a] The lower floor levels of a facade should provide the highest amount of facade opening and articulation. The ground floor should be very open and inviting to the pedestrian, and employ the strongest use of depth in the facade.
 - [b] The use of depth is encouraged to highlight facade openings such as windows and create a 3-D relief which produces shadows. Windows should not be mounted flush to the exterior of the facade.
 - [c] Window types above the base level should be double hung. Awning or transom windows are encouraged on street elevations. Picture and sliding windows are not recommended.
 - [d] Pairs of window shutters may be used, but should be used consistently and should appear to actually cover the entire window opening when closed.
 - [e] Storefront construction should be recessed enough at the point of entry to allow the door to swing out without obstructing the sidewalk.
- [7] Building materials.
- [a] Building materials and colors should be complementary to adjacent buildings and colors selected should be historically correct. The number of selected colors should be kept to a minimum. A color chart of historic period colors found in the local architecture is available from the Department of Community Development.

- [b] A single material should be used as the dominant theme in the facade, with secondary materials used only to highlight and accent the design.
- [8] Signs and awnings. Signs in the Downtown Batavia Business Improvement District shall comply with § 190-43 and the following: **[Amended 1-23-2017 by L.L. No. 1-2017]**
 - [a] Long, continuous lengths of awnings are not recommended. Instead, a series of similar sized smaller ones is preferred.
- (e) Submission requirements. All applicants shall submit the following information to the Building Inspector or Code Enforcement Officer: **[Added 11-14-2005 by Ord. No. 7-2005]**
 - [1] Photographs of the site and building which clearly show exterior details.
 - [2] Photographs of adjacent buildings or properties.
 - [3] Drawings of the proposed exterior changes which clearly illustrate exterior materials, material dimensions, colors, height, lighting and includes and accurate scale.
 - [4] Material details, specification sheets, and product literature/samples.
 - [5] For new buildings and building additions, applicants shall also follow site plan review submission guidelines.
 - [6] Additional information as needed.
- E. Expiration. Decisions on all applications granted after the effective date of this amendment⁵ shall expire if the applicant fails to obtain the necessary building permit to construct any project and begin actual construction within one year.

5. Editor's Note: Effective date is 30 days after adoption (8-14-2000).

ARTICLE V
Industrial Districts

§ 190-15. I-1 Industrial Districts.

In I-1 Industrial Districts, no building or structure shall be erected, altered or extended, and no land, building or structure or part thereof, shall be used for other than the following permitted uses, subject to the performance standards set forth in § 190-38:

A. Permitted principal uses.

- (1) Retail store, including storage, wholesale, and service operations customarily incidental thereto.
- (2) Any legal use of a light industrial nature which involves the processing, fabrication, assembly or packaging of previously prepared or refined materials, including uses providing repair or general services to industrial uses except:
 - (a) Those uses which, because of danger to the general public due to hazards of fire and explosion, including those uses where explosives, combustible bases or flammable liquids are manufactured or stored, shall be permitted only by a special use permit authorized by the Council according to the provisions of § 190-37 and only in conformance with the State Building Construction Code⁶ and Labor Law of the State of New York.
 - (b) Uses of an extractive nature, including but not limited to the operation of sand and gravel mines, topsoil removal and mineral removal work.
- (3) Industrial office buildings for executive, engineering and administrative purposes.
- (4) Scientific or research laboratories devoted to research, design and/or experimentation and processing and fabricating incidental thereto.
- (5) Any use permitted in § 190-24B(2), except that retail stores shall be governed by Subsection A(1) of this section.
- (6) Art gallery. **[Added 8-14-2000]**

B. Permitted accessory uses.

- (1) Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of § 190-35.
- (2) Off-street parking subject to the provisions of § 190-39.

6. Editor's Note: See Ch. 51, Building Construction.

(3) Signs subject to the provisions of § 190-43.

C. Uses permitted by special use permit. **[Amended 8-14-2000]**

(1) Junkyards, salvage and scrap processing, outside storage.

(2) Uses which may cause a danger to the public due to the hazards of fire and explosion.

(3) Automobile service stations.

(4) Live/work units. Live/work units must comply with § 190-37, Subsection J, entitled "Standards applicable for all special use permits."

(5) Brew pub, micro brewery. Brew pubs and micro breweries must comply with § 190-37, Subsection J, entitled "Standards applicable for all special use permits."

(6) Public storage rental units/buildings with or without outside storage. **[Added 12-9-2019 by Ord. No. 2-2019]**

(7) Public garages for the storage, adjustment or repair of motor vehicles. **[Added 11-9-2020 by Ord. No. 2-2020]**

§ 190-16. I-2 Industrial Districts.

In I-2 Industrial Districts, no building or structure shall be erected, altered or extended, and no land, building or structure or part thereof, shall be used for other than the following permitted uses, subject to the performance standards set forth in § 190-38:

A. Permitted principal uses.

(1) Any principal use permitted in I-1 Industrial Districts.

(2) Uses of an extractive nature, including but not limited to the operation of sand and gravel mines, topsoil removal, and mineral removal work.

B. Permitted accessory uses. Any accessory use permitted in the I-1 Industrial District.

C. Uses permitted by special use permits. Any use permitted by special use permit in the I-1 Industrial District.

§ 190-16.1. I-3 Industrial Districts. [Added 11-26-2001]

In I-3 Industrial Districts, no building or structure shall be erected, altered or extended, and no land, building, structure or part thereof shall be used, for other than the following permitted uses, subject to the performance standards set forth in § 190-38:

A. Permitted principal uses.

- (1) Retail store, including storage, wholesale and service operations customarily incidental thereto, but no uses that involve processing or fabrication of retail goods.
 - (2) Warehousing and storage of products or equipment, but not including junkyards or scrap processing.
 - (3) Office buildings.
 - (4) Scientific or research laboratories devoted to research and design.
 - (5) Art gallery.
 - (6) Railroads, railyards, and any other use associated with railroads.
- B. Permitted accessory uses.
- (1) Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of § 190-35.
 - (2) Off-street parking subject to the provisions of § 190-39.
 - (3) Signs subject to the provisions of § 190-43.
- C. Uses permitted by special use permit.
- (1) Outside storage.
 - (2) Uses which may cause a danger to the public due to the hazards of fire and explosion.
 - (3) Municipal or public utility structures or facilities.

ARTICLE VI

Adult Uses**[Added 11-14-1994; amended 12-13-1999]****§ 190-17. Purpose.**

The City of Batavia Adult Use Study finds that there are some uses which, due to their very nature, have serious objectionable characteristics and have deleterious effects on adjacent areas. The negative secondary effects of adult uses are further heightened by their concentration in any one area. The location of these uses in regard to areas where our youth may generally assemble and the general atmosphere encompassing their operation is of great importance to the City of Batavia. Special regulation of these uses is necessary to ensure that these adverse effects will not cause or contribute to the blighting or downgrading of surrounding neighborhoods and land use thereby having a direct deleterious effect on the health, safety and general welfare of the City of Batavia and its inhabitants.

§ 190-18. Definitions. [Amended 6-25-2001 by L.L. No. 1-2001]

See definitions in § 190-3.

§ 190-19. Restrictions affecting adult uses.

Adult uses, including but not limited to an adult bookstore, adult eating or drinking establishment, adult entertainment cabaret, adult mini-motion-picture theater, adult motion-picture theater, adult motel, massage establishment, nude model studio, peep shows, and sexual encounter center, shall be subject to the following regulations:

- A. No such adult uses shall be allowed within 500 feet of another existing adult use.
- B. No such adult use shall be located within 300 feet of the boundaries of any zoning district which is zoned for residential use (those zones designated R-1, R-1A, R-2 or R-3).
- C. No such adult uses shall be located within 1,000 feet of a preexisting school, place of worship, public playground or park.
- D. No such adult use shall be located in any zoning district except the Industrial (I-1) District.
- E. No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not classified as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

§ 190-20. Segregation of adult bookstore materials.

Any adult stock-in-trade as defined in § 30.54(1) of this article located within any commercial establishment in which the entire establishment is not devoted to adult materials or uses, shall be physically segregated from the nonadult use materials in order to facilitate the calculations of the percentages of floor area as set forth in § 190-3 of this chapter; and the display, storage or sale of adult materials or uses in the segregated area shall be made in a manner that does not permit the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas, by any person or member of the public who is present in the areas pertaining to nonadult uses.

§ 190-21. Special use permit required.

No adult use described in this article shall be established until the granting of a special use permit by the City of Batavia Planning and Development Committee, to be issued pursuant to the applicable terms and procedures for special use permits in this chapter; however, the only standards and criteria to be used in the reviewing process shall be the ones set forth for site plan review in § 190-44 of this chapter.

ARTICLE VII
Special Districts

§ 190-22. Land Conservation Districts.

- A. Purpose. The purpose of the Land Conservation District is to delineate those areas where substantial development of the land in the way of buildings or structures is prohibited because of:
- (1) Special or unusual conditions of topography, drainage, floodplain or other natural conditions, whereby considerable damage to buildings or structures and possible loss of life may occur due to the processes of nature; and
 - (2) The lack of proper facilities or improvements resulting in the land not being suitable for development at the present time, and where such facilities or improvements must be undertaken on an area-wide rather than individual-parcel basis in order to adequately serve the area at a reasonable cost to the City.
- B. Permitted principal uses. To promote this purpose, in Land Conservation Districts, no building or structure shall be erected, altered or extended and no land, building, structure or part thereof, shall be used for other than one or more of the following uses:
- (1) Farm and other agricultural operations, including gardens, nurseries, and usual farm accessory buildings not including dwellings.
 - (2) Park, playground, athletic field, golf course, riding academy, and other similar uses, including usual accessory buildings.
 - (3) Municipal or public utility structures or facilities.
- C. Uses permitted by special use permits. Disposal facilities, landfill operations, and similar uses shall be permitted only by special use permits according to the provisions of § 190-37.
- D. Rezoning. Whenever it is shown that the special or unusual conditions causing the land to be placed in the land conservation category have been corrected or otherwise provided for, such land may then be rezoned as provided by law for an amendment of the zoning regulations.

§ 190-23. Planned Development Districts.

In Planned Development Districts, land and buildings may be used for any lawful purpose as authorized by the Council in accordance with the provisions set forth herein.

- A. Planned Development Districts shall comprise no less than five acres.

- B. Application for establishment of a Planned Development District shall be made to the Council. The Council shall refer the application to the Planning Board for consideration.
- C. The Planning Board shall require the applicant to furnish such preliminary plans, drawings and specifications as may be required for an understanding of the proposed development. The Planning Board shall consider, among other things, the need for the proposed use in the proposed location, the existing character of the neighborhood in which the use would be located, and the safeguards provided to minimize possible detrimental effects of the proposed use on adjacent property. The precise use proposed for the property shall be designated and if any change in plans occur after approval by the Planning Board and Council, the developer shall be required to submit revised plans reflecting such change and in such case the provisions of Subsection E shall also apply.
- D. The Planning Board shall approve, approve with modifications or disapprove such application and shall report its decision to the Council.
- E. The Council shall hold a public hearing on the proposal, with public notice as provided by law for the amendment of this chapter.
- F. The Council may thereafter amend this chapter so as to define the boundaries of the Planned Development District, but such action shall have the effect only of granting permission for development of the specific proposal in accordance with the zoning regulations within the area so designated with the specifications, plans and elevations submitted.

§ 190-24. Planned Development District P-1.

- A. Area boundary. The premises hereinafter described, being formerly zoned as I-1, is rezoned as Planned Development District P-1:

All that tract or parcel of land situated in the City of Batavia, County of Genesee and State of New York, bounded as follows:

Beginning at the intersection of the south boundary of Pearl Street with the north boundary of the former NYCRR Cohocton grade;

Thence easterly along the north bounds of the former NYCRR Cohocton grade for a distance of 130± feet to a point;

Thence northerly for a distance of 60± feet to a point in the south boundary of Pearl Street 163± feet easterly from the point of beginning;

Thence westerly along the south bounds of Pearl Street to the point of beginning; also beginning at the point of intersection of the west bounds of village lot No. 64 with the City line of the City of Batavia;

Thence northeasterly along said lot line a distance of 590± feet to the south boundary of Pearl Street;

Thence easterly along said south boundary of Pearl Street 280± feet to a point;

Thence easterly along the south boundary of the former NYCRR Conhocton grade a distance of 1254± feet to a point;

Thence southwesterly along the east bounds of land belonging now or formerly to Louis L. Colantonio a distance of 630± feet to a point on the north boundary of the NYCRR Tonawanda Branch;

Thence easterly along said north boundary a distance of 1640± feet to the center of a Holland Land alley between the east bounds of village lot No. 57 and the west bounds of village lot No. 56;

Thence southwesterly along the center line of said Holland alley a distance of 210± feet to a point on the north boundary of the former NYCRR main line;

Thence southeasterly at an angle of 90 degrees from said north boundary a distance of 140± feet to a point on the south boundary of said former NYCRR main line;

Thence southwesterly along the south boundary of the former NYCRR main line a distance of 1950± feet to the City line of the City of Batavia;

Thence northwesterly along said City line a distance of 1465± feet to the point of beginning.

B. Permitted principal uses.

- (1) Residential. No residential uses shall be permitted except for a caretaker, watchman or other similar person employed on the premises concerned.
- (2) Commercial.
 - (a) A bank.
 - (b) An office building containing professional and business offices.
 - (c) A restaurant.
 - (d) A retail store or service shop, if accessory and incidental to a use permitted in an industrial zone on the same lot.
 - (e) A radio or television transmission establishment.
 - (f) An auditorium, swimming pool or other recreational or educational use if it is restricted to the interior of a building.
[Amended 6-24-1996]
 - (g) A commercial or technical school.
- (3) Automotive.
 - (a) An automobile service station, or a public garage.

- (b) A car-washing establishment.
- (c) A public parking lot.
- (4) Industrial.
 - (a) A warehouse for the storage of goods and materials within a wholly enclosed structure or outside storage located immediately behind the building, screened by fencing and landscaping from public view.
 - (b) A plant for the assembly and manufacture of products within a wholly enclosed structure as follows:
 - [1] An apparel and finished textile product plant.
 - [2] A paper and allied products plant.
 - [3] A furniture and finished lumber products plant.
 - [4] A light metal products plant for the assembly and manufacture of precision instruments, watches, radios and television sets, and other similar products.
 - [5] A printing plant.
 - [6] Manufacturing or industrial use carried on within a wholly enclosed building or structure, or outside storage, screened from public view with approved fencing and landscaping and located on the rear lot immediately behind the building. No junk or salvage yard, automobile wrecking yard or other obnoxious use shall be permitted.
- C. Uses permitted by special use permit. Those uses which because of danger to the general public due to hazards of fire and explosion, including those uses where explosives, combustible gases or flammable liquids are manufactured or stored, shall be permitted only upon issuance of a special use permit according to the provisions of § 190-37 and only in conformance with the State Building Construction Code⁷ and Labor Law of the State of New York.
- D. Frontage on a street. No person shall hereinafter erect a building or structure and no person shall use any building, structure or land in Planned Development District P-1 unless the land to be so used, or upon which the building is situated, erected or proposed to be erected, fronts on a public street or a private right-of-way having a minimum width of 30 feet, such right-of-way to be in a location approved by the City of Batavia.
- E. Yard requirements.
 - (1) Front yard.

7. Editor's Note: See Ch. 51, Building Construction.

- (a) Distance from front lot line, the greater of 30 feet or the average depth of the front yards of the existing main buildings situated on immediately adjacent lots.
- (b) Where the land on the opposite side of the street is in a residential district, distance from the center line of the original street allowance shall be 100 feet minimum.
- (c) In the case of a key lot, the front yard shall be 1/2 of the sum of the normal front yard requirements plus the normal side yard requirement of the adjacent reversed corner lot.

(2) Side yard.

- (a) Distance from side lot lines: 20 feet minimum one side; 10 feet minimum other side.
- (b) Where the side lot line is a boundary between an industrial zoning district and a residential zoning district, distance from side lot line; 50 feet minimum.
- (c) On any side lot line which abuts a street, 25 feet minimum, provided that any such side yard shall not be required to exceed the front yard for the same building.

(3) Rear yard.

- (a) Distance from rear lot line, 25 feet minimum.
- (b) Where the rear lot line is the boundary between an industrial zoning district and a residential zoning district, distance from rear lot line: 50 feet minimum.
- (c) Where the rear lot line abuts a right-of-way of any railway, no rear yard shall be required.
- (d) In the case of a through lot where the rear yard is across the street from a residential zoning district, distance from rear lot line: 50 feet minimum.

(4) Increase in yard dimension. In the case of a building in excess of 35 feet in height, the minimum side and rear yards shall be increased by one foot for every two feet of additional building height in excess of 35 feet.

F. Parking requirements.

- (1) A parking station, accessible from a street, shall be provided on the same lot on which any building is situated and/or on a parcel of land the nearest point of which is not more than 300 feet distant from the said lot, in compliance with the following: There shall be provided on the same lot or a lot adjacent thereto under the same ownership off-street parking facilities to the number of, or at least

equal to the total number of, employees employed on the premises in such industrial use on the maximum shift.

- (2) Where the front yard exceeds 30 feet, such excess yard may be used for parking and for the purpose of calculating the area available for parking.
- (3) No parking or storage of vehicles shall be permitted within 20 feet of any residential zoning district.
- (4) A parking station as required in this subsection shall be in addition to off-street loading requirements as required by Subsection G of this section.
- (5) Parking stations, together with access lanes thereto, shall be surfaced and maintained with concrete, asphalt, crushed stone or other hard surface and dustless materials.
- (6) Where lighting facilities for a parking station are provided, they shall be so constructed as to deflect the light away from any adjacent residential or park area.

G. Off-street loading space requirements.

- (1) For every building or structure hereafter erected in a Planned Development District P-1, there shall be provided and maintained accessible off-street loading facilities consisting of one or more loading spaces at least 35 feet long and 12 feet wide, and having vertical clearance of at least 14 feet and in accordance with the following:

Total Floor Area of Building	Number of Loading Spaces Required
Less than 5,000 square feet	No loading space
Over 5,000 square feet but less than 20,000 square feet	1 loading space
Every 15,000 square feet above 20,000 square feet	2 loading spaces

- (2) Loading facilities shall not face the front of the building.

H. Landscaping.

- (1) The minimum front yard of 30 feet shall be landscaped.
- (2) A chain link fence and a landscaped strip of trees and shrubs, not less than five feet in width, shall be provided along the boundary lines between residential and industrial lands.
- (3) All landscaping shall consist of at least lawn and hardy ornamental shrubs and shall be maintained in a healthy condition, neat and orderly in appearance.

§ 190-25. Planned Development District P-2.

- A. A Planned Development District, hereinafter referred to as P-2 District, shall be established to encourage the development of an integrated hospital-medical service complex in the City of Batavia.
- B. The P-2 District shall be identifiable on the official Zoning Map of the City of Batavia and as further described as follows:

Beginning at the point of intersection of the center line of Chandler Avenue with the center line of North Street; thence westerly along the center line of North Street to a point which is 150 feet easterly of the center line of Tracy Avenue;

Thence northerly parallel to and 150 feet easterly of the center line of Tracy Avenue to the center line of Bank Street;

Thence easterly along the center line of Bank Street to the northerly projection of the center line of Chandler Avenue;

Thence southerly along the center line of Chandler Avenue to the point of beginning.

- C. Uses permitted by special use permit. [See Subsection G(1) of this section.]

(1) Hospitals.

(2) Nursing and convalescent homes and infirmaries.

(3) Medical, dental offices and offices of related professions.

(4) Medical, dental or related professional office conducted in conjunction with a residential use.

(5) Hospital out-patient facilities.

(6) Drug and pharmaceutical stores when operated in conjunction with and located within a hospital or professional medical office.

(7) Laboratories for medical research and analysis.

(8) Large-scale multifamily housing and high-rise apartments. **[Added 2-13-2006 by Ord. No. 2-2006]**

- D. Height, yard and area requirements.

(1) Height. No building or structure shall exceed six stories, nor shall it exceed 75 feet in height.

(2) Yards.

(a) Front yard: 25 feet minimum.

(b) Side yards.

[1] No building shall be located less than 35 feet from any residential district boundary. In all other cases, the side yard minimum shall be as follows:

Story	One Side	Total Side Yard
1, 2 or 3	10	20
4	12	24
5	15	30
6	20	40

[2] When there is more than one principal building on a lot, the space between such buildings shall be no less than the sum of the side yards required.

(c) Rear yard. 35 feet minimum.

(3) Lot or tract coverage. The ground area occupied by the principal and accessory buildings shall not exceed 60% of the total lot or tract area.

E. Off-Street parking requirements.

(1) General.

(a) Off-street parking may be provided in any yard space, but shall not be closer than 20 feet to any street line or 10 feet to any property line.

(b) The collective provision of off-street parking areas by two or more buildings or uses located on adjacent lots is permitted, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately, and further provided that the land upon which the collective facilities are located is owned or leased by one or more of the collective users.

(c) No driveway providing access to an off-street parking area shall be located closer than 50 feet to the intersection of two public streets.

(d) All parking areas and appurtenant passageways and driveways serving permitted uses shall be illuminated adequately during the hours between sunset and sunrise when the use is in operation. Adequate shielding shall be provided to protect adjacent residential zoning districts from the glare of such illumination and from that of automobile headlights.

(e) Each separate use, grouping of attached buildings, or groupings of uses permitted shall not have more than one accessway for every 200 feet of frontage. Insofar as practical, the use of common accessways by two or more permitted uses

shall be provided in order to reduce the number and closeness of access points. Accessways shall not be less than 20 feet nor more than 30 feet in width.

(2) Parking requirements.

- (a) Home professional: two spaces for client use for offices, exclusive of spaces required for residential purposes.
- (b) Hospitals, nursing and convalescing homes: one space for each three beds plus one for each employee in the largest working shift.
- (c) Medical or dental clinics or offices: five spaces for each doctor or dentist.
- (d) Medical or research laboratories: one space for each employee on the maximum working shift.

F. Unloading requirements.

- (1) For every building, structure, or part thereof having over 5,000 square feet of gross building area erected and occupied for a hospital, and other similar uses involved in the receipt and distribution of materials or merchandise, there shall be provided a permanently maintained adequate space for standing, loading, and unloading services in order to avoid undue interference with the public use of streets or alleys.
- (2) Every building structure or addition thereto having a use which complies with the above definition shall be provided with at least one truck standing, loading and unloading space on the premises not less than 12 feet in width, 35 feet in length and 14 feet in height. One additional truck space of these dimensions shall be provided for every additional 15,000 square feet, or fraction thereof, of gross area in the building.
- (3) Access to a truck standing, loading and unloading space shall be provided directly from a public street or alley or from any right-of-way that will not interfere with public convenience, and that will permit orderly and safe movement of truck vehicles.
- (4) Loading space as required under this section shall be provided in addition to off-street parking space and shall not be considered as supplying off-street parking space.
- (5) Whenever an off-street loading and unloading area shall be in view of a residential zoning district, such loading and unloading area shall be provided with a buffer which, in the opinion of the Planning Board, will shield the residential use.

- (6) Any lighting used to illuminate any off-street loading areas shall be so arranged as to reflect the light away from the adjoining premises in any residential zoning district.

G. General requirements.

(1) Referral to Planning Board.

- (a) The Code Enforcement Officer shall refer all requests for building permits to the City Planning Board for their review and approval prior to issuance. The Planning Board shall determine that the proposed site plan, structures and uses will compare favorably with community standards, other neighborhood improvements and the properly intended and planned appearance and use within this special zoning district.
 - (b) The Planning Board shall, within 30 days after receipt of said material, approve, approve with modifications or disapprove the proposed development or construction.
 - (c) In the event of approval with modifications, the reasons shall be stated clearly to the Code Enforcement Officer in writing. The Code Enforcement Officer shall not issue a building permit for the proposed construction until such conditions in the approval with modifications have been met by the applicant and written approval of the Planning Board is obtained. In the absence of a reply from the Planning Board within 30 days after referral, it shall constitute approval, and the Code Enforcement Officer shall proceed on the basis of such approval.
- (2) All areas of the P-2 District not used for building space, accessways, off-street parking, loading areas and pedestrian walkways shall be devoted to seeding, planting, retention of tree cover, or other landscaping and maintained in a neat and orderly appearance.
- (3) Adequate provisions shall be made for the flow of emergency vehicles within the P-2 District.

§ 190-26. Planned Development District P-3.

- A. Area boundary. The premises hereinafter described formerly zoned as C-1 and R-3 are rezoned to Planned Development District P-3.

The P-3 District shall be delineated on the official Zoning Map of the City of Batavia and described as follows:

Beginning at the point of intersection of the center line of Jefferson Avenue with the center line of Alva Place; thence easterly along the center line of Alva Place through the intersection of State Street and Alva Place to the center line of the intersection of Alva Place and Bank Street;

Thence northerly from the intersection of the center line of Bank Street with the center line of Alva Place to the center line of the intersection of Bank Street with the center line of Washington Avenue;

Thence westerly from the intersection of the center line of Bank Street along the center line of Washington Avenue through the intersection of State Street and Washington Avenue to the center line of Washington Avenue and Jefferson Avenue;

Thence southerly along the center line of Jefferson Avenue from the intersection of Jefferson Avenue and Washington Avenue to the point of beginning.

For the purpose of area location in this zoning district, the following shall apply:

Area A - Block of State Street to Bank Street between Alva Place and Washington Avenue.

Area B^B - Block of Jefferson Avenue to State Street between Alva Place and Washington Avenue.

- B. Uses permitted with special use permits.
 - (1) High rise for the elderly.
- C. Height, yard and area requirements.
 - (1) Area A:
 - (a) Height. No building or structure shall exceed 25 feet in height.
 - (b) Yards.
 - [1] Front yard:
 - [a] Washington Avenue: 20 feet minimum.
 - [b] Bank Street: 10 feet minimum.
 - [c] State Street: 20 feet minimum.
 - [2] Side yards:
 - [a] Minimum yard area allowed: zero feet.
 - [b] Minimum side yard allowed opposite side: 10 feet.
 - [c] Total side yard minimum: 10 feet.
 - [3] Rear yard (parking lot area): 15 feet.
 - (c) Frontage, minimum allowed: 60 feet.

8. Editor's Note: Ordinance adopting this Section on 4-9-1979 qualified that "zoning for Area B not be effective until such time as start of construction of the high rise."

- (d) Lot area, minimum allowed: 2,400 square feet.
 - (e) Percentage of lot coverage: The ground area occupied by a principal building shall not exceed 70% of the total lot. Accessory buildings are not permitted.
- (2) Area B:
- (a) Height. The high-rise structure may not exceed 10 stories in height.
 - (b) Yards.
 - [1] Front yard:
 - [a] Washington Avenue: 20 feet.
 - [b] State Street: 25 feet.
 - [c] Jefferson Avenue: 25 feet.
 - [d] Alva Place: 25 feet.
 - (c) Parking shall be situated in the southeast section of Area B. (See off-street parking requirements for parking spaces required.)
 - (d) Area B as described hereinbefore shall be devoted to a high-rise construction for the elderly with required parking and landscaping.
 - (e) Frontage and lot area shall be as indicated by street boundaries for Area B.
 - (f) Percentage of lot coverage. The ground area occupied by the high rise shall not exceed 70% of the total lot.
- D. Canopies (Area A). Canopies may be located over the sidewalk area between buildings running in north-to-south direction.
- (1) Front yard setback Washington Avenue: two feet. (Two feet behind sidewalk.)
 - (2) South setback from rear property line: eight feet. (Rear area butting parking lot.)
- E. Off-street parking.
- (1) Area A: Parking on individual parcels of land in the P-3 District Area A is prohibited. Parking is allowed in designated municipal parking lot.
 - (2) Area B: Parking for the high rise shall consist of one parking space for every three units plus balance of parking area shall be accessible to the general public.

F. Sewer and water requirements.

(1) Water service.

- (a) Each common water service from the main in the street to the master curb shutoff box will be the responsibility of the owner to install and the City of Batavia's responsibility to maintain.
- (b) Each individual water service line from the master curb shutoff box to each individual building will be the responsibility of the owner to install and to maintain.

(2) Sanitary sewer.

- (a) Each common sanitary sewer service and individual sewer service from the main in the street to each individual building will be entirely the responsibility of the owner or owners to install and maintain.
- (b) If operational problems are encountered in the sanitary sewer service lines and there cannot be an agreement reached as to which owner or owners are responsible, then the City will perform the necessary repairs and/or cleaning and will back-charge each owner using the service line in question.

(3) Storm sewer.

- (a) All storm sewer piping from the main in the adjacent street to each individual building shall be installed and maintained by the property owner.
- (b) If operational problems are encountered in the storm sewer service lines and there cannot be an agreement reached as to which owner or owners are responsible, then the City will perform the necessary repairs and/or cleaning and will back-charge each owner using the service line in question.

G. General requirements.

- (1) The Code Enforcement Officer shall refer all requests for building permits to the City Planning Board for their review and approval prior to issuance. The Planning Board shall determine that the proposed site plan, structures and uses will compare favorably with community standards, other neighborhood improvements and the properly intended and planned appearance and use within this special zoning district.
 - (a) The Planning Board shall, within 30 days after receipt of said material, approve, approve with modifications or disapprove the proposed development or construction.
 - (b) In the event of approval with modifications, the reasons shall be stated clearly to the Code Enforcement Officer in writing.

The Code Enforcement Officer shall not issue a building permit for the proposed construction until such conditions in the approval with modifications have been met by the applicant and written approval of the Planning Board is obtained. In the absence of a reply from the Planning Board within the 30 days after referral, it shall constitute approval, and the Code Enforcement Officer shall proceed on the basis of such approval.

- (2) All areas of the P-3 District not used for building space or pedestrian walkways shall be devoted to seeding, planting, retention of tree cover, or other landscaping and maintained in a neat and orderly appearance.

H. Signs permitted in Planned Development District P-3.

(1) Area A:

- (a) Two signs shall be allowed for each permitted use. The applicant may have the choice of two signs which may be attached to the building or two signs which may be part of a group-use freestanding sign, or one sign attached to the building and one sign to be part of a group-use freestanding sign, not to exceed the allowable two signs per use.

[1] If attached to the front or rear wall, such signs shall not exceed an area equal to 10% of the front or rear wall area of the building or portion thereof devoted to such use or activity. If there are two permitted uses joined by a common building wall and said uses have building fronts facing north or south, each use may consider the front wall of the adjoining use for rear wall sign purposes, if the legal owner authorizes permission in writing. If this choice is requested, signs for both uses must appear to be one sign, not to exceed 10% of the front wall and said signage for both uses must be aesthetically compatible.

[2] If there are two uses joined by a common wall and said building offices are situated east and west, said uses may be permitted a front wall sign not to exceed 10% of the portion of said front wall devoted to such use. Signage for both uses must be aesthetically compatible.

[3] If attached to a side wall for office entrance identification purposes in canopy area, such sign shall not exceed one square foot in area. If attached to side walls of open areas (buildings not abutting canopy), signs may not exceed six square feet in area. No signs may project more than one foot from the facade of the building.

- (b) In lieu of a sign attached to the building, two freestanding group-use signs may be permitted. Such signs shall be erected

directly adjacent to the canopy area. Front yard setback requirements of freestanding group-use signs on Washington Avenue and the south rear property line must be a minimum of five feet. Group use signs may not project into walkway areas. Individual freestanding signs are not allowed. No sign will be allowed to be attached to the top of the canopy. Group use signs shall have an area of not more than 16 square feet. Such signs may not exceed four feet in height.

- (2) Area B: For a high-rise apartment complex, one project identification sign shall be permitted which shall not exceed 25 square feet in area and shall be situated not less than 10 feet within the property lines. The sign may include only the name of the property, the street address, and the presence or lack of vacancies.

§ 190-27. Planned Development District P-4.

- A. Purpose. A Planned Development District, hereinafter referred to as P-4 District, shall be established to help satisfy a demand in the City for residential development where there are common areas, elements or facilities owned and/or maintained either by a homeowners' association or by dwelling unit owners having either a proportionate, undivided interest in fee simple absolute therein or a proportionate undivided leasehold interest in the common elements appertaining to each unit. In addition, the creation of said district shall ensure the efficient and functional use of land in such development.
- B. P-4 District shall be created by rezoning lands within the City of Batavia in accordance with § 190-51 of this chapter, as amended from time to time.
- C. Permitted uses. In the P-4 District, no building or structure shall be erected, altered or extended and no land, building or structure, or part thereof, shall be used for other than one or more of the following uses:
 - (1) Permitted uses. Any principal or accessory uses as permitted and regulated in the R-1 Residential Districts within an approved subdivision lot.
 - (2) Uses permitted with special use permits. In accordance with § 190-48B hereof and subject to the requirements specified below and elsewhere in this chapter, including site plan approval, Council may approve proposals for the construction of dwelling units having common structural parts. The procedures and standards governing the review and approval of such special uses are as follows:
 - (a) Qualifications: In order to qualify for review of an application for a special use permit under this section, the applicant shall submit a concept proposal with sufficient detail and supporting information to enable the Council to determine if the proposal

meets the qualifying standards contained herein. The applicant's concept proposal shall include sufficient evidence to establish that:

- [1] The proposed development will be in harmony with the general purpose, goals, objectives and standards of the City's Comprehensive Plan and this chapter, especially as stated in §§ 190-2 and 190-23.
- [2] The proposed buildings and uses will not have an adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility systems and other matters which affect the public health, safety and general welfare.
- [3] The proposed development will be constructed, arranged and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring properties.
- [4] The proposed development will be adequately served by essential public facilities and services, including, but not limited to sanitary sewers, public water supply, stormwater drainage facilities, street capacity, police protection, fire-suppression services and public schools as well as other public and private facilities and services essential to support and serve the proposed residential use.

(b) General requirements:

- [1] Each dwelling unit shall be located, constructed and served by public facilities and services and utilities in such fashion that each dwelling unit may be sold individually.
- [2] Dwelling units located in a building common to other dwelling units shall be separated from such dwelling units by a fire wall. Such fire wall shall be of masonry construction, shall extend from the foundation to the roof and shall be unpierced.
- [3] Natural features, including streams, drainageways and existing trees, shall be preserved and incorporated in the landscaping of the development.
- [4] All utility which lines providing electric, gas, telephone, television or other similar services shall be installed underground. Surface-mounted equipment shall be located in a manner so as to minimize potential conflict with other uses and activities.

- [5] Plans submitted for development within the P-4 District shall identify areas proposed for dedication to the City, areas to be held in common ownership and property to be owned by individuals.
- [6] Common property shall, except when accepted by the Council for dedication, be privately owned. Where property is to remain in common ownership, the developer shall provide for and establish an organization for the ownership and maintenance of such common property. Rules and regulations proposed to govern the operation and maintenance of all common property shall be submitted for review and approval by the Planning Board. Common property shall not be changed from its status or use as common property without first obtaining a special use permit from the Council. In reviewing proposals for the establishment of organizations to govern the ownership and maintenance of any common property, the Planning Board shall consider and determine the adequacy of:
 - [a] The timetable for the creation of the organization.
 - [b] The requirements for membership in the organization by residents.
 - [c] The safeguards to ensure the continuance of the common property as common property.
 - [d] The liability of the organization for insurance, taxes and maintenance of all facilities.
 - [e] The provision for pro rata sharing of costs and assessments.
 - [f] The financial capacity of the organization to maintain and administer common facilities.
 - [g] The proposed relationship between the developer and the organization and the plan to turn over the responsibility for the maintenance and administration of common facilities to the organization.
- (3) Special accessory uses. The following special accessory uses may be established for the common and exclusive use of owners of residences in the P-4 District and their guests. Such special accessory uses shall be operated on a not-for-profit basis and subject to the approval of the Planning Board.
 - (a) Recreational facilities such as open or enclosed tennis courts, exercise facilities, picnic areas, gazebos, or swimming pools as further regulated by § 190-35 of this chapter.

- (b) One structure to house maintenance shops and vehicles to be used exclusively for the maintenance and management of the P-4 District.
 - (c) Common space for the exclusive use and convenience of residents of the P-4 District to store vehicles, boats, campers, recreational vehicles and other similar household items. Such space may be provided within the single maintenance structure permitted in Subsection C(3)(b) above or located outside and immediately adjacent to the building. If outside storage is proposed, adequate landscaping and buffering shall be provided in order to screen the site from adjacent areas and uses.
- D. Design standards for uses permitted with special use permit. The following design standards shall be used to regulate developments requesting a special use permit in the P-4 District:
- (1) Density, height, area and yard requirements.
 - (a) Density. The special use permit shall establish the maximum density of residential development per gross acre of land (including roadways, pedestrian walkways, common recreation areas, open areas and all nonresidential areas) within the P-4 District. Under no circumstances shall the proposed development exceed six dwelling units per gross acre.
 - (b) Open space. Not less than 25% of the land area within the P-4 District, excluding parking areas and vehicle access facilities, shall be developed and maintained as open space for the use and enjoyment of residents of the district.
 - (c) Lot coverage. The lot coverage of all buildings and structures within the P-4 District shall not exceed 25% of the area within the entire district.
 - (d) Building height. No building within the P-4 District shall exceed 30 feet in height.
 - (e) Distance between buildings. The minimum distance between a dwelling structure and any other structure, including a swimming pool, shall not be less than 25 feet.
 - (f) Setback from other districts. No structure within the P-4 District shall be located closer than 40 feet to any boundary line of the P-4 District.
 - (g) Other setbacks. No minimum front, side or rear setbacks shall be required within the P-4 District except when dwelling units are positioned relative to a public street. Where a structure abuts a public street, no part of the structure shall be located

closer than 35 feet to the public right-of-way. No structure shall be set back less than 10 feet from any common parking area.

(2) Building standards.

- (a) No more than six dwelling units shall be included in a single dwelling building.
- (b) No building shall exceed a maximum length of 160 feet on any exterior facade.
- (c) All principal and access buildings in the P-4 District shall be located in accordance with an overall plan for the district approved as a part of the special use permit.
- (d) Individual buildings within the P-4 District shall be related to one another in design, building mass, materials and placement to provide a visually and physically integrated development.
- (e) The treatment of the sides and rear facades of all buildings within the district shall be comparable in amenity and appearance to the treatment of any building facade which faces a public street.
- (f) Building walls shall be oriented so as to ensure adequate exposure of light and air to the rooms within.
- (g) Buildings shall be arranged so as to preserve visual and audible privacy between adjacent buildings.
- (h) Building entranceways of adjacent dwelling units in the same building shall be designed to ensure the privacy of occupants. This may be accomplished by varying the setbacks of entranceways or by providing screening or landscaped plantings, as appropriate.
- (i) Building entranceways shall be provided with appropriate illumination for the convenience and safety of residents. Such lighting shall be shielded to avoid glare disturbing other properties.
- (j) All dwelling units shall include ground floor living space. The location of an enclosed garage shall not qualify as meeting this requirement.

(3) Parking standards.

- (a) No less than two off-street parking spaces shall be provided for each dwelling unit.
- (b) No less than one of the two off-street parking spaces required shall be wholly enclosed and located on the residential property the parking space is designed to serve.

- (c) The developer may meet the requirements for off-street parking by providing parking spaces in an enclosed garage plus any combination of spaces on private driveways and/or in a common parking lot.
 - (d) No common off-street parking lot or outdoor storage area shall be located closer than 25 feet to any boundary of the P-4 District.
 - (e) All off-street parking areas shall be privately owned and maintained.
 - (f) Common off-street parking facilities be landscaped and screened from public view to the extent necessary to eliminate unsightliness and the monotony of parked cars.
 - (g) Common off-street parking areas shall be designed with careful regard to orderly arrangement, topography, landscaping, ease of access and shall be developed as an integral part of the overall site plan.
 - (h) Common off-street parking areas shall be provided with suitable lighting, for the convenience and safety of residents but positioned and shielded to minimize glare and potential inconvenience to residents of the district and adjacent properties.
- (4) Size of dwelling units. The minimum total habitable floor area for all dwelling units shall be 1,200 square feet, exclusive of garage space.
- (5) Landscape design standards.
- (a) Landscaping shall be provided along and adjacent to all streets, common driveway areas and common off-street parking areas. Landscaping treatments shall be designed and installed as part of a coordinated landscape design plan for the entire P-4 District.
 - (b) Landscape treatment shall consist of shrubs, ground cover and street trees and shall be designed and installed to provide an attractive development pattern. Landscape materials selected should be appropriate to the growing conditions of the local environment.
 - (c) Whenever possible, existing trees shall be conserved and integrated into the landscape design plan.
 - (d) All landscaping, except for trees, shrubs and grasses either existing or to be installed within the public right-of-way, shall be privately owned and maintained.
- (6) Circulation system design standards.

- (a) An adequate, safe and convenient circulation system shall be provided.
- (b) The arrangement of streets and common parking areas shall be designed as integral parts of an overall site plan. These features shall be properly related to existing and proposed buildings and appropriately landscaped.
- (c) Buildings, open spaces and other vehicular circulation system shall be arranged so that pedestrian movements are not unnecessarily exposed to vehicular traffic.

E. Miscellaneous regulations.

- (1) No home occupations and no business activities of any type shall be permitted within the P-4 District.
- (2) No signs shall be permitted within the P-4 District except for a single illuminated nonflashing nameplate sign not more than two square feet in area attached to the dwelling and bearing only the name of the principal occupant or the street number of the dwelling.
- (3) One temporary advertising sign pertaining only to the sale of a residential unit, provided that such sign shall not exceed 12 square feet in area. Such signs shall be located not more than 10 feet from the dwelling which is for sale and shall be removed within seven days after the execution of any agreement for the sale of the premises.
- (4) As part of the site plan for the P-4 District, the developer may propose to carry out the project in stages. The staging plan shall be clearly identified on documents submitted with the special use permit application and shall contain dates anticipated for the start and completion of project activities and various phases. The proposed staging plan shall be a part of the special use permit application.
- (5) All fencing of common areas shall be shown on the site plan.
- (6) Individual owners may erect privacy fences to enclose outdoor areas of individual dwelling units. Such fences may be up to six feet above ground level, provided that such fencing is located not less than 15 feet from a public street, common off-street parking or storage area, or vehicular accessway thereto. Fencing which is closer than 15 feet to a public street, or common off-street parking or storage area or vehicular accessway thereto, shall not exceed three feet above ground level.
- (7) Except for land which is owned in common, no property owner within the P-4 District shall erect or place an accessory building or structure on the premises.

- (8) No property owner within the P-4 District shall store any unregistered vehicles, boats, campers, recreational vehicles, snowmobiles or other similar equipment out of doors overnight except in a common outdoor storage area and regulated in accord with § 190-27C(3) of this chapter.
- (9) No commercial vehicle shall be parked out of doors overnight in the P-4 District except in a common storage area.

§ 190-28. Historic District Overlay. [Added 8-14-2000]

A. Purpose. The Historic District Overlay zone is intended to provide for the preservation of historic sites, areas, buildings and landmarks located in the City of Batavia and to promote the economic, cultural, educational and general welfare of the public. The purpose of establishing an Historic District Overlay zone is to:

- (1) Safeguard the heritage of the City of Batavia by preserving an area in the City which reflects its cultural, social, economic and architectural history.
- (2) Protect buildings, structures and areas within the district which are recognized as historic sites and landmarks.
- (3) Encourage new development that is compatible with and supportive of the distinctive character of such areas.
- (4) Protect and enhance the City of Batavia's attractiveness to visitors and the support and stimulus to the economy thereby provided.
- (5) Foster community spirit and civic pride in accomplishments of the past.

B. Definitions.

ALTERATION — Any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction, or removal of any structure.

CONSTRUCTION — The act of adding an addition to an existing structure or the erection of a new principle or accessory structure on a lot or property.

DEMOLITION — Any act or process that destroys in part or in whole a landmark or structure.

OVERLAY — A zoning district that exists in conjunction with and provides alternative or additional regulations applicable to the primary, underlying zoning district shown on the Zoning Map.

REMOVAL — Relocation of a structure on its site to another site.

REPAIR — Any change that is not construction, removal, or alteration.

- C. Establishment of Historic District Overlay. Pursuant to these purposes, there is designated in the City of Batavia an overlay zone known as the "Historic District Overlay" zone with the following boundaries:

Beginning at a point at the intersection of the centerlines of Court Street and Main Street; thence southerly a distance of 360 feet along the centerline of Court Street to the intersection of the centerlines of Evans Street and Ellicott Street; thence southerly a distance of 350 feet along the centerline of Evans Street; thence westerly a distance of 162.69 feet across Evans Street and along the southerly property line of a parcel owned by Genesee County; thence northerly 27.83 feet along the easterly property line of said parcel; thence westerly 213.04 feet along the southerly property lines of parcels owned by St. Mary's R.C. Church, the City of Batavia and Cosima Realty, Inc.; thence northerly a distance of 130 feet along the easterly property line of said parcel owned by Cosima Realty, Inc.; thence northwesterly a distance of 133.26 feet along the southerly property line of said parcel; thence westerly a distance of 78.75 feet along the southerly property line of a parcel owned by Dean Lapp; thence southerly a distance of 20 feet along the easterly property line of a parcel owned by Genesee County; thence westerly a distance of 20 feet along the southerly property line of said parcel; thence southerly a distance of 110 feet along the easterly property line of said parcel; thence southwestwardly a distance of 114.88 feet along the easterly property line of said parcel to the centerline of Tonawanda Creek; thence westerly a distance of 1220 feet along the centerline of Tonawanda Creek; thence northerly a distance of 226.5 feet across Tonawanda Creek and along the westerly property line of a parcel owned by Genesee County to the centerline of West Main Street; thence easterly a distance of 826 feet along the centerline of West Main Street to the intersection of the centerlines of Porter Avenue and West Main Street; thence northerly a distance of 260 feet along the centerline of Porter Avenue; thence easterly a distance of 96.88 feet across Porter Avenue and along the northerly property line of a parcel owned by Genesee County; thence northerly a distance of 33 feet along the easterly property line of said parcel; thence southerly a distance of 32 feet along the westerly property line of said parcel; thence easterly a distance of 354 feet along the northerly property lines of parcels owned by City of Batavia and the United States Government to the centerline of Jefferson Avenue; thence southerly a distance of 200 along the centerline of Jefferson Avenue to the intersection of the centerlines of Jefferson Avenue and Main Street; thence easterly a distance of 400 feet along the centerline of Main Street to the intersection of the centerlines of Main Street and Court Street which is the point of the beginning.

- D. Designation on Zoning Map. Upon approval by the City Council, the Historic District Overlay Zone shall be classified and designated as an "H-O District" on the Official Zoning Map.

- E. Permitted uses. The Historic District Overlay Zone overlays underlying districts. The permitted uses are determined by the underlying zoning districts.
- F. Building height, lot area and yards. The provisions of this chapter governing the permitted height of buildings, the required lot area and the requirements of front, side and rear yards and other applicable provisions of the underlying district shall apply.
- G. Projects requiring review by Historic Preservation Commission.
 - (1) Prior to the issuance of a special sign permit, variance, or zoning amendment for a property in the Historic District Overlay, the proposal under consideration shall be referred to the Historic Preservation Commission.
 - (2) All plans for construction, alteration, change in exterior color, repair, removal or demolition of structures or erection/installation of a sign, light fixture, sidewalk, fence, steps, paving, or other exterior elements in the Historic District Overlay zone shall be reviewed by the Historic Preservation Commission. The Historic Preservation Commission shall review only such exterior features of the structure as are visible from public streets, sidewalks, greens, parks or alleys and shall not review alterations on the interior of the structure. Ordinary maintenance to a property which does not involve a change in design, material, color, or outward appearance does not need to be reviewed by the Historic Preservation Commission.
- H. Review standards and procedures.
 - (1) The Historic Preservation Commission shall make a recommendation to the Planning and Development Committee based on the criteria established for review of a certificate of appropriateness in § 100-5 of Chapter 100, Historic Preservation. It shall be unnecessary for the Historic Preservation Commission to act upon a Certificate of Appropriateness unless the property is a locally designated landmark or district.
 - (2) The Historic Preservation Commission shall forward the application along with their recommendation and a summary of their reasoning to the Planning and Development Committee. The Planning and Development Committee shall review the application based on the same criteria as the Historic Preservation Commission. The Planning and Development Committee shall approve, approve with modifications or disapprove the proposed alteration, removal, repair, demolition or construction.
- I. Application requirements. The application requirements for any project in the Historic District Overlay Zone requiring review by the Historic Preservation Commission shall be the same as outlined in § 100-6A of Chapter 100, Historic Preservation.

ARTICLE VIII
Area, Yard and Height Regulations

§ 190-29. Lot area, frontage, coverage and height regulations.

- A. The minimum requirements of lot area and frontage for residential uses and the minimum requirements of lot area and frontage for commercial uses and the minimum requirements for yards and the maximum permissible height and land coverage for all districts and uses are summarized on Schedule I.⁹ In case of conflict between the text and Schedule I, the requirements contained in the text shall control.
- B. The minimum requirements of lot area and frontage for uses in Residential Districts R-1 and R-2, as summarized on Schedule I, shall apply to subdivisions created after April 21, 1969, but not to lands where utility services have been previously installed.

§ 190-30. Modification of requirements.

Upon obtaining a special use permit according to the provisions of § 190-37, the requirements concerning lot area, frontage, side yards, and coverage may be modified for a development of not less than three acres, provided that the maximum density of the overall development is not greater than that normally allowable in the district in which it is located. Such land as may be made available under this section shall be devoted to common purposes for all residents, including, but not limited to, a park, playground or garden for the use of surrounding residents.

§ 190-31. Existing lots.

Other provisions of this chapter notwithstanding, nothing shall prohibit a lot of less area than that required for a single-family dwelling, provided that all other provisions of this chapter are complied with, when such lot, on May 28, 1962, was held under separate ownership or lesseeship from the adjoining lots.

§ 190-32. Reduction of lot area.

Whenever a lot upon which exists a building or structure is changed in size or shape so that the area and yard requirements of this chapter are no longer complied with, such building shall not thereafter be used until it is altered, reconstructed or relocated so as to comply with such requirements. The provisions of this section shall not apply when a portion of a lot is taken for a public purpose.

§ 190-33. Yard regulations.

9. Editor's Note: Schedule I is included at the end of this chapter.

- A. Yards on corner lots. Any yard adjoining a street shall be considered a front yard for the purposes of this chapter and shall comply with all requirements for a front yard in the district in which located.
- B. Front yard exceptions. Where front yards in any district have been established for more than 50% of the frontage in any block at a depth greater than the minimum required for the district, the depth of the required front yard shall be increased to comply with such established depth. In no case shall the depth of the required front yard be less than that specified for the district in which it is located.
- C. Open porches and attached carports and garages. In determining the percentage of building coverage of a lot or the size of yards for the purpose of this chapter, porches or carports open at the sides but roofed and all attached garages shall be considered as a part of the principal building.
- D. Fences, walls and hedges. Fences, hedges and walls in residential districts shall not exceed three feet above ground level when located within 15 feet of the property line abutting any street and shall not exceed six feet above ground level when located elsewhere on the property. However, there shall be no height limit for hedges in rear yards within residential zones. In commercial and industrial districts, fences, hedges and walls shall not exceed eight feet in height unless permitted by a special use permit from the Planning and Development Committee. A fence designed to be structurally supported by posts, cross members or rails on one (1) side only shall be erected with the posts, cross members or rails on the fence owner's side, and the finished side of the fence shall face adjacent properties. **[Amended 2-22-1999; 11-25-2002]**
- E. Corner visibility. In any district except a Central Commercial District, no structure, fence or shrubbery over three feet in height shall be maintained on any corner lot within a triangular area formed by the lot lines along the streets to the points on such lines a distance of 40 feet from their intersection, and a line connecting such points.
- F. Projection in yards.
- (1) Every part of a required yard shall be open from its lowest part to the sky unobstructed, except for the ordinary projections of sills, belt cornices, pilasters, leaders, chimneys, eaves and ornamental features, provided that no such projection may extend more than three feet into any required yard.
 - (2) Open or enclosed fire escapes, fireproof outside stairways and balconies projecting into a required yard not more than 4 1/2 feet may be permitted by the Code Enforcement Officer where such projections are so placed as not to obstruct light and ventilation.

ARTICLE IX
Supplementary Regulations

§ 190-34. Landscaping and buffering. [Added 8-14-2000]

A. Purpose.

- (1) The purpose of this article is to promote the public health, safety, welfare and aesthetics of the community and enhance the City of Batavia's environmental and visual character for its citizens' use and enjoyment. The provisions in this article shall apply to multifamily, large-scale multifamily, and commercial development. Applications for site plan approval shall comply with this article.
- (2) This article is intended to provide a better transition between various land uses, provide for the natural visual screening of parking areas, preserve the existing visual quality of adjacent lands, establish coordination among architecturally diverse buildings, create a harmonious strip appearance along the roadway, enhance, conserve and stabilize property values, enhance the overall visual quality of new development in accordance with the City of Batavia's Visual Preference Survey, reduce surface runoff, minimize soil erosion, reduce air and sound pollution and create a safe and pleasant corridor for pedestrians.

B. Definitions.

BERM — An earthen mound designed to provide visual interest, screen undesirable views, and/or decrease noise.

BUFFERING — The use of landscaping, other than mere grass on flat terrain, or the use of landscaping along with berms, walls or decorative fences that at least partially and periodically obstruct the view from the street, in a continuous manner.

DECIDUOUS — A plant with foliage that is shed annually.

DRIPLINE — A vertical line from the outer edge of a tree canopy to the ground.

EVERGREEN — A plant with foliage that persists and remains green year-round.

GROUNDCOVER — Low-growing plants such as grasses and other materials such as stone, mulch or paving used to cover the ground.

LANDSCAPING — Any combination of living plants and nonliving landscape material.

ORNAMENTAL TREE — A deciduous tree planted primarily for its ornamental value or for screening purposes; tends to be smaller at maturity than a shade tree.

PERIMETER LANDSCAPING — Landscaping that defines parking areas and prevents two adjacent lots from becoming one large expanse of paving.

SCREEN — A method of reducing the impact of noise and unsightly visual intrusions with less offensive or more harmonious elements, such as plants, berms, fences, walls, or any appropriate combination thereof.

SHADE TREE — A self-supporting woody plant or species normally growing to a mature height of at least 20 feet and a mature spread of at least 15 feet.

SHRUB — A self-supporting woody perennial plant of low to medium height characterized by multiple stems and branches continuous from the base, usually not more than 10 feet in height at its maturity.

VINE — A plant which normally requires support to reach mature form.

WOODLANDS, EXISTING — Existing trees and shrubs of a number, size and species that accomplish the same general function as new plantings.

C. Approval process.

- (1) The landscaping and or buffering plan shall be reviewed by the Planning and Development Committee following the same process as outlined in § 190-44 for site plan review. Landscaping and or buffering plan review shall take place at the same time as site plan review.
- (2) All landscaping and/or buffering plans shall comply with the New York Environmental Quality Review Act and Article 27-A of the General City Law regarding approvals and time periods for review.

D. Exceptions. The following types of development are exempt from compliance with this article:

- (1) Previously approved development.
- (2) Expansion to an existing structure that increases the lot coverage by less than 3% or 1,300 square feet, whichever is less and does not require that additional parking be provided.
- (3) An approved use variance that increases the lot coverage by less than 3% or 1,300 square feet, whichever is less and does not require that additional parking be provided.
- (4) Property in the C-3 Downtown District where the property has a structure that occupies 90% or more of the lot and will continue to do so after the building permit is issued.

E. Submission requirements. Applicants shall submit four copies of the landscaping and/or buffering plan to the Code Enforcement Officer at a scale not to exceed one inch equals 50 feet. Copies shall be distributed to the members of the Planning and Development Committee, City

Engineer and other appropriate City staff. The City Engineer shall decide if the plan should be prepared by a New York State licensed professional engineer, landscape architect or architect. The required information may be submitted as part of the site plan or as a separate plan.

F. Plan review.

- (1) Preliminary landscaping and/or buffering plan. Preliminary landscaping and/or buffering plan review is optional and provides an opportunity for the applicant to meet with the Planning and Development Committee prior to final submission of the landscaping and/or buffering plan for direction and guidance. When possible, preliminary landscaping and/or buffering plan review shall take place in conjunction with sketch plan review. A preliminary landscaping and/or buffering plan shall consist of the following:
 - (a) Basic information about the type, number, size and location of any existing vegetation.
 - (b) Basic information about the type, number, size and location of any vegetation to be added.
 - (c) Basic information about existing natural features, such as streams, wetlands, rock outcropping and large boulders.
 - (d) General concept of proposed landscaping and/or buffering plan.
- (2) Final landscaping and/or buffering plan. Final landscaping and/or buffering plan review shall take place in conjunction with final site plan review. The final landscaping and/or buffering plan shall include the following:
 - (a) Location, spacing, general type, quantity and size of existing vegetation.
 - (b) Location, spacing, general type, quantity and size of all proposed vegetation, new and existing, in graphic form.
 - (c) Plant lists or schedules with the general type, location, height and diameter of all proposed vegetation, new and existing, in written form.
 - (d) Location of other landscape features and improvements, including but not limited to earth berms, walls, fences, screens, sculptures, courts, fountains, street furniture, signs, storage areas and lights.
 - (e) Location of parking spaces, driveways, sidewalks, public rights-of-way and other similar features.

- (f) Location of existing natural features, such as streams, wetlands, rock outcroppings and large boulders.
 - (g) Treatment of ground surfaces, including paving, turf, gravel, seeding and other ground cover.
 - (h) Proposed building outlines.
 - (i) Location of utilities.
 - (j) Methods of controlling erosion and protecting landscaped areas, if determined necessary by the City Engineer.
 - (k) General information about adjacent properties, including but not limited to building outlines, landscaping, fencing and parking areas.
- G. Landscape standards and specifications. The following standards shall be considered the minimum standards for the installation of all landscaping and buffering materials required by this article:
- (1) Landscaping and or buffering shall not be placed where it interferes with site drainage.
 - (2) Utility lines must be identified to prevent the installation of vegetation with root systems that may damage utilities.
 - (3) Vegetation whose roots are known to cause damage to public roadways or other public works shall not be planted closer than 12 feet to such public works.
 - (4) All new plant materials shall be compatible with the existing vegetation of the site and the surrounding area. Plant materials judged to be inappropriate by the Planning and Development Committee will not be approved.
 - (5) Vegetation shall be of nursery stock and robust when planted.
 - (6) The landscape contractor shall furnish and install and/or dig, ball burlap and transplant all plant materials listed on the plant schedule. Bare root is not permitted for any tree.
 - (7) Plants shall conform to following the measurements immediately after planting:
 - (a) Shade trees shall be a minimum of 2.5 to three inches in diameter; 12 to 14 feet in height.
 - (b) Ornamental trees shall be a minimum of 1.5 to 1.75 inches in diameter and seven to nine feet in height.
 - (c) Evergreen trees shall be six to eight feet in height.
 - (d) Shrubs shall be a minimum of two feet in height.

- (e) Vines shall be minimum of 30 inches in height.
 - (8) After cultivation, all plant materials shall be mulched with a two- to three-inch layer of tan bark, peat moss or another approved material over the entire area of the bed or saucer.
 - (9) The preservation of trees and vegetation of special significance due to size, age, habitat or historical importance may be required.
 - (10) The preservation of existing woodlands is encouraged and may be substituted for all or part of the landscaping and/or buffering requirements listed hereafter.
 - (11) No tree planting area may be less than five feet wide in any dimension.
 - (12) Acceptable screening materials include shade, ornamental and evergreen trees, shrubs, walls, fences, and berms. Vines may be used in conjunction with fences, screens, or walls. Fences and walls may not consist of corrugated metal, corrugated fiberglass, sheet metal, or wire mesh. Chain link shall not be considered a buffer.
 - (13) Trees that drop gum may produce an unkempt appearance and messy vehicles. Such trees should be avoided near public rights-of-way and parking areas.
 - (14) Selected vegetation should be able to stand up to the environmental abuse it will receive from exhaust fumes, dirt, soot, salt and deicing compounds.
 - (15) Grading shall not be allowed within the dripline of trees to be retained.
- H. Sight distance requirements. All landscaping and buffering must comply with the regulations set forth in § 190-33D and E of this chapter and § 159-12D of Chapter 159, Streets and Sidewalks, of the Code of the City of Batavia. In addition, all trees in a parking lot must have a clear trunk at least six feet above the finished grade, and landscaping with the exception of required grass or other ground cover shall not be located closer than three feet to the edge of any accessway or pavement.
- I. Required buffers.
- (1) The amount of buffering required shall depend on the nature of adjacent land uses. The more incompatible the use, the more buffering that shall be required. The amount of required buffering is to be determined by Tables A and B.

Table A
Minimum Required Buffer Yard
Adjoining Use

	Single-Family	Two-Family	Multi-family	Large Scale Multifamily High Rise	Commercial Uses
Single-family	None	None	A	B	C
Two-family	None	None	A	B	C
Multifamily	A	A	None	A	C
Large scale multifamily, high rise	B	B	A	None	B
Commercial uses as set forth in Article IV	C	C	C	B	None

Table B
Development Type
(See Table A)
Number of Plant Units* Required Per 100 Linear Feet of Property Line or Right-of-Way

A	40
B	80
C	120

*Plant units:

Shade tree = 10

Ornamental tree = 5

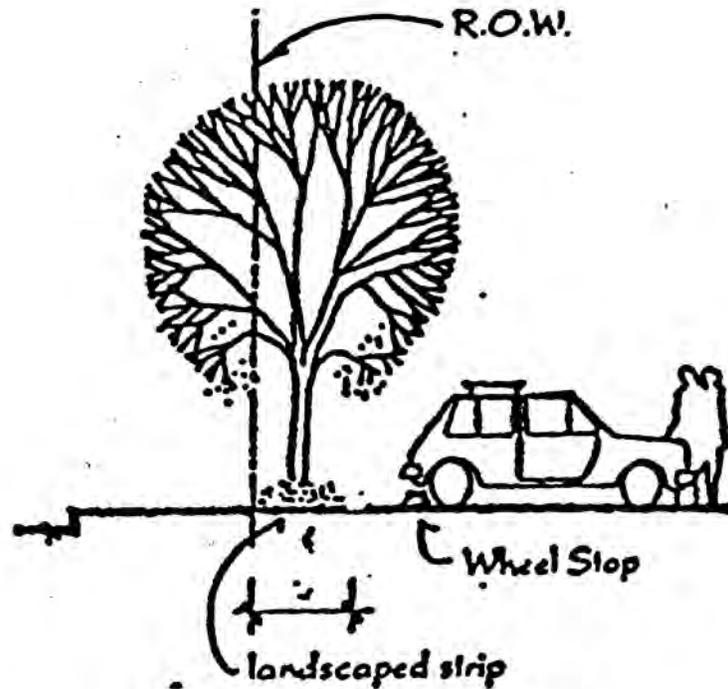
Evergreen = 5

Shrub = 1

- (2) Buffer planting shall include an area of at least 10 feet in depth provided along the side and rear property lines of the subject property.
- (3) If all or any part of the buffer has been provided on the adjacent property, the proposed use must provide only that part of the buffer that has not been provided on the adjacent property.
- (4) Buffer areas shall be within the property lines of the subject lot.

- J. Perimeter parking lot landscaping. The following requirements shall apply to all parking lots that are directly adjacent to another parking lot:
- (1) A landscape strip must be provided between the parking lots at least five feet in depth.
 - (2) The landscape strip shall be located on the property of the subject lot.
 - (3) One shade or ornamental tree and three shrubs are required for 35 linear feet of perimeter.
 - (4) If all or any part of the landscaped strip has been provided on the adjacent property, the subject lot must provide only that amount of the landscaped strip that has not been provided on the adjacent property.
 - (5) Requiring perimeter landscaping between adjacent parking lots shall not preclude the need to provide vehicular access between lots.
- K. Landscape strip. Landscape strip requirements shall apply to that portion of a property with a commercial or multifamily use that is adjacent to a public right-of-way. Landscape strip requirements are as follows:
- (1) A minimum of one shade or ornamental tree and 10 shrubs shall be planted for every 35 feet of frontage in the aforementioned strip, excluding driveway openings.

**Figure 2
Landscaped Strip**



**plant landscaped strip along street
frontage with a minimum of one shade tree per 35 linear feet**

- (2) A landscaped strip of land at least 10 feet in depth shall be located between the abutting right of way and the subject lot.
- (3) If the applicant provides a berm that is at least 2.5 feet higher than the finished elevation of the parking lot, planting requirements are reduced to one shade tree and five shrubs for every 35 linear feet of frontage.
- (4) The landscaped strip must be located on the property, adjacent to the public right-of-way and shall be landscaped with grass or other ground cover approved by the Planning and Development Committee. The strip may not include any paved surfaces with the exception of pedestrian sidewalks or trails that cross the strip.

L. Maintenance.

- (1) The owner, tenant and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping and or buffering which shall be maintained in good condition so as to present a healthy, neat and orderly appearance.

- (2) All approved landscaping and or buffering must be maintained in accordance with the following standards:
 - (a) All plants shall be maintained in a vigorous growing condition. Plants not so maintained shall be replaced in a timely fashion, which shall be no later than the beginning of the next growing season.
 - (b) Plants are to be maintained free of debris and litter.
 - (c) All fences and other screening materials shall be maintained or replaced to the same quality required of said items at the time of initial installation.
 - (d) All required landscaping shall be properly pruned and maintained in good condition at all times, in accordance with accepted standard practice.
 - (e) No obstruction to driver vision shall be erected or maintained on any lot.
 - (f) All planted areas shall be maintained in a relatively weed-free condition.

M. Minor revisions to approved plans.

- (1) Due to seasonal planting problems and a lack of plant availability, approved landscaping and/or buffering plans may require minor revisions.
- (2) Minor revisions to planting plans are accepted if there is no reduction in the quality of plant material or no significant change in the size or location of plant materials, and if new plants are of the same general category and have the same general characteristics as the materials being replaced.
- (3) Minor revisions may be made without review by the Planning and Development Committee if it is the judgment of the Code Enforcement Officer that a revision to an approved plan is a minor revision.

N. Alternative methods of compliance.

- (1) Methods of alternative compliance shall be considered when one or more of the following conditions apply:
 - (a) The site involves space limitations or unusually shaped parcels.
 - (b) Topography, soil, vegetation, or other site conditions are such that full compliance is impossible or impractical.
 - (c) Due to a change of use of an existing site, the required landscaping and or buffering is larger than can be provided.

- (d) Safety considerations are involved.
 - (e) Strict application of the provisions of this article would deprive the applicant of a reasonable use of the land in the manner equivalent to the use permitted other landowners in the same zone.
- (2) Review of alternative methods of compliance shall take into consideration how the proposed materials, placement of materials and number of materials equal the prescribed regulations in terms of quality, effectiveness, durability, hardness and performance.
 - (3) The applicant must describe which of the requirements will be met with modifications, which project conditions justify using alternatives and how the proposed measures equal, exceed or fall short of normal compliance.
 - (4) The applicant must show that the method will not alter the essential character of the neighborhood.
- O. Declaration of covenants, restrictions, conditions and easements. The Planning and Development Committee may require the applicant to file a declaration of covenants, restrictions, conditions and easements in conjunction with the landscaping and/or buffering plan to be recorded in the Genesee County Clerk's office within five working days of the decision.
- P. Enforcement.
- (1) The Code Enforcement Officer or Building Inspector shall oversee the installation and maintenance of required plants.
 - (2) The Code Enforcement Officer or Building Inspector shall deny a building permit application where the Planning and Development Committee has disapproved a landscaping and/or buffering plan.
 - (3) The Code Enforcement Officer or Building Inspector shall not issue a certificate of occupancy until all conditions specified by the Planning and Development Committee in the landscaping and/or buffering plan have been met.
 - (4) In the event maintenance or replacement is not conducted in accordance with these provisions, the Code Enforcement Officer shall give written notice of noncompliance to the owner of record of such property. The notice shall order compliance within 30 days.
 - (5) The Code Enforcement Officer may authorize additional time to comply to coincide with the planting season.
 - (6) If the property owner remains in noncompliance at the end of 30 days and an extension has not been granted by the Code Enforcement Officer, a fine may be issued to the property owner no less than \$50 and no greater than \$250.

- Q. Conflicts. If the provisions of this article conflict with other ordinances or regulation, the more stringent limitation or requirement shall govern or prevail to the extent of the conflict.

§ 190-35. Accessory uses.

A. Residential districts.

- (1) Accessory uses permitted in residential districts shall not alter the character of the premises on which they are located or impair the neighborhood and shall be located on the same lot with the use to which they are accessory.
- (2) Permitted accessory uses shall include the following:
 - (a) The sale of produce raised on the premises.
 - (b) Customary home occupations, except in R-1 Districts, provided that no goods or products are publicly displayed on the premises.
 - (c) Garage space or parking space for not more than two motor vehicles, provided that for each 2,000 square feet that the area of the lot exceeds 5,000 square feet, one additional motor vehicle may be garaged or parked; provided, however, that except on a farm not more than one commercial vehicle shall be garaged or parked on any lot in a residential district. Space for one motor vehicle, which must be noncommercial, may be rented to persons not residents on the same lot. The above provisions shall apply to private stables, one horse being considered the equivalent of one motor vehicle. Notwithstanding the above, in the case of multifamily dwellings, the provisions of § 190-39 shall apply.
 - (d) A temporary building for commerce or industry in a residential district where such building is necessary or incidental to the development of a residential area. Such building may not be continued for more than one year.
 - (e) Swimming pools and fencing. No swimming pool, other than a portable aboveground swimming pool, shall be constructed or erected without a building permit and the provisions of Subsection D of this section shall apply.
 - [1] Fencing. No person, firm or corporation shall maintain a swimming pool without first enclosing such swimming pool with a permanent protective fence. Such fence shall be a minimum of four feet in height measured from ground level. The wall of a dwelling or an accessory building may form a part of such fence. If walls of a structure used for swimming purposes are four feet or more above ground

level and are constructed of a solid material, no other fencing is required.

- [2] Gates. All gates or doors opening through a fence surrounding a pool shall be equipped with a self-latching device for keeping the gate or door securely closed at all times when not in actual use, except that the door of any dwelling, house or any accessory building which forms a part of the enclosure need not be so equipped. Any gate or door shall be kept locked while the swimming pool is not under the direct supervision of an adult. All ladders or steps used to gain entrance to a pool shall be removed, deactivated or otherwise made unusable when the pool is not in use.

B. Limited Commercial Districts.

- (1) Accessory uses permitted in Limited Commercial Districts shall not alter the character of the premises on which they are located or impair the neighborhood, and shall not include any use not on the same lot with the use to which they are accessory.
- (2) Permitted accessory uses include the following:
- (a) Any accessory use permitted in residential zoning districts.
- (b) The following uses, subject to the provisions hereafter set forth:
- [1] Dispensary or pharmacy for the sale of drugs, medicines, medical or dental supplies and accessories.
- [2] Licensed opticians, place of business for the sale of prescription glasses.
- [3] Lunch room or lounge for the sale of light lunches and nonalcoholic beverages.
- [4] Uses of a similar nature, provided that such is clearly incidental to a primary permitted use.
- (c) The accessory uses set forth in Subsection B(2)(b) above are permitted subject to the following conditions, restrictions and limitations.
- [1] Such uses shall be solely for the rendering of service and sales to the tenants or occupants of the buildings located on the same lot as the accessory use, and to their employees, clients or patients.
- [2] There shall be no direct exterior public entrance or exit from the specific areas occupied by such accessory uses except for fire or emergency purposes.

- [3] No sign, display, or advertising device directly or indirectly relating to any such accessory use shall be visible from a street.
 - [4] The aggregate area occupied by all such accessory uses shall not exceed 20% of the rentable space contained in the one building or building complex.
- C. General and Central Commercial Districts. Accessory uses in General and Central Commercial Districts shall not alter the character of the premises on which they are located, shall be clearly incidental to a permitted primary use, and shall be located on the same or adjacent parcel of land, except for parking facilities, which shall be governed by § 190-39.
- D. Accessory buildings. Accessory buildings, including swimming pools, may not occupy any required open space other than a rear yard, and any such accessory building may occupy not more than 40% of any required rear yard and shall be not less than three feet from any lot line, except that a private garage may be built across a common lot line by mutual agreement between adjoining property owners. Accessory buildings shall in no case exceed 20 feet in height. Garages built into or attached to dwellings shall not be considered accessory buildings, but part of the principal building.
- E. Satellite dishes.
- (1) Satellite dishes (disks) for television reception shall be allowed in any zone subject to the restriction set forth in § 190-35D.
 - (2) A building permit must be obtained to install a satellite dish greater than five feet in diameter.
 - (3) Freestanding satellite dishes greater than 13 feet in diameter, or any satellite dish greater than eight feet in diameter to be mounted on a building, shall require installation design certified by a registered architect or licensed professional engineer.
 - (4) Freestanding satellite dishes not more than 13 feet or not less than 10 feet in diameter shall be installed as follows:
 - (a) Pad size: a pad of poured concrete (3,500-pound mix or greater) which measures three feet wide by three feet long by four feet deep.
 - (b) Mounting: The frame of the satellite dish shall be attached to the pad by the appropriate hardware (J-bolt, superstud, etc.) of a size greater than or equal to 5/8 inch diameter.
 - (c) Electrical connections: All electrical wiring shall be installed in accordance with the National Electrical Code. All circuits of 110 volts or larger shall be protected by a ground fault

interrupter, unless a factory installed grounding unit is provided.

- (d) Freestanding satellite dishes of less than ten-foot diameter may be mounted on a correspondingly smaller concrete pad with a minimum depth of 42 inches. **[Added 5-28-1985]**

§ 190-36. Nonconforming uses. [Amended 10-12-1999]

A. Intent.

- (1) Unless otherwise provided for elsewhere in this chapter, any use of land or a structure, which use was lawful at the time of the effective date of this chapter, may be continued; provided, however, that such use or structure shall have continued in operation, does not constitute a nuisance and shall not be enlarged, altered or changed in area, activity or content during its continuance, except as provided otherwise in this chapter.
- (2) Any use or structure which was in violation of this chapter prior to adoption of this chapter shall not be regarded as nonconforming under this chapter.

B. Authority to continue.

- (1) The use or occupancy of a nonconforming structure which was a lawful structure at the time of the effective date of this chapter may be continued; provided, however, that no enlargement, change or alteration shall be permitted upon such structure, except upon a finding by the Code Enforcement Officer that such enlargement, change or alteration will produce greater compliance with this chapter and that the use within such structure is in conformity with the requirements of this chapter; and further provided that no enlargement, change or alteration of a structure housing a nonconforming use shall be permitted, except upon a finding by the Board of Appeals that such enlargement, change or alteration will permit greater compliance with the provisions of this or other appropriate regulations, as required by the Board of Appeals, and is installed or instituted to minimize the detrimental effects of the nonconforming use upon adjoining conforming uses.
- (2) Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any structure, or part thereof, declared to be unsafe by any official charged with providing for the public safety, which strengthening or restoration is ordered by such official.
- (3) Any building, other structure or use of land which is made nonconforming by any lot size, open space, height or building size regulations of this chapter, or by any subsequent amendments thereto, may be continued, except as hereinafter provided.

C. Alterations.

- (1) A structure containing a nonconforming use may not be renovated or structurally altered during its life to an extent exceeding, in aggregate cost, 50% of the market value of the building unless said building is changed to a conforming use. The market value shall be the product of the structure's current assessed value as indicated on the City's assessment records times the City's equalization rate. Nothing in this chapter shall prevent the renovation or repair of nonstructural members or the maintenance of a structure made necessary by ordinary wear and tear. Under this provision a nonconforming use within a structure shall not be substantively extended or physically expanded.
- (2) Any portion of a structure that is determined to be nonconforming in regard to any provision of this chapter shall not be renovated or structurally altered for a nonconforming use except under the regulations set forth in the preceding Subsection A, but may be renovated or structurally altered, but not expanded, if occupied by a conforming use.

D. Extensions.

- (1) A nonconforming use shall not be extended, but the extension of a lawful use to any portion of a structure which existed prior to the enactment of this chapter shall not be deemed the extension of such nonconforming use. An extension of a nonconforming use shall include any activities or actions that expand the area or volume occupied by a nonconforming use. Such activity or action shall include, but not be limited to, the physical expansion of a nonconforming use into previous underutilized, vacant or a new constructed space; the increase in size of any parking related to a nonconforming use; and the increase in any item that will result in a larger parking requirement as defined in § 190-39.
- (2) Any portion of a structure that is determined to be a nonconforming in regard to any provision of this chapter shall not be extended unless such extension is in conformance with this chapter or any necessary variances are obtained from the Zoning Board of Appeals.

E. Destruction of structure. Nothing in this chapter shall prevent the restoration, rebuilding or repairing of any structure containing a nonconforming use, which structure has been damaged by fire, acts of God or by any means not within the control of the owner, provided that such restoration or construction is commenced within one year after the destruction and is completed within one year of the date of issuance of a building permit. For any structure containing a nonconforming use which is destroyed, by any cause, not within the control of the owner, to an extent exceeding 50% of its market value, the future structure or use on the site shall conform to this chapter. The market value shall be the

product of the structure's current assessed value as indicated on the City's assessment records times the City's equalization rate.

- F. Definition of structure. For the purpose of this subsection, structure shall be defined as hereinafter stated to determine the percentages set forth herein. If there is only one building upon real property, structure shall be that one building. If there is more than one building upon real property, structure shall be defined as the total square footage of all buildings as compared to the portion destroyed or altered.
- G. Change in use.
- (1) Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to another nonconforming use only under the following conditions:
 - (a) Such change shall be permitted only upon issuance of a special use permit.
 - (b) The applicant shall show that the nonconforming use cannot reasonably be changed to a use permitted in the district where such nonconforming use is located.
 - (c) The applicant shall show that the proposed change will be less objectionable in external effect than the existing nonconforming use with respect to:
 - [1] Traffic generation and congestion, including truck, passenger car and pedestrian traffic.
 - [2] Noise, smoke, dust, noxious matter, heat, glare and vibration.
 - [3] Storage and waste disposal.
 - [4] Appearance.
 - (2) With any change in use from a nonconforming use, any nonconforming area dimension on the premises shall cease to be a valid preexisting nonconforming use.
- H. Displacement. No nonconforming use shall be extended to displace a conforming use.
- I. District changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein.
- J. Discontinuance. Whenever a nonconforming use or a nonconforming structure has been discontinued for a period of one year, such structure shall not be reused without appropriate variances or only in conformity with the provisions of this chapter or such use shall not thereafter be

reestablished, and any future use shall be in conformity with the provisions of this chapter.

- K. Accessibility to public right-of-way. No building permit or certificate of occupancy shall be issued for any new land use activity where there is no reasonable access from the lot or area upon which such activity is located to an existing public street; provided, however, that this provision shall not prohibit the continued use of any structure or lot as such use existed at the effective date of this provision.
- L. Construction approved prior to adoption of or amendment to chapter. Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued, provided that active and substantial construction shall have been originated prior to the enactment of this chapter and further provided that the entire building shall be completed according to such plans filed within two years from the effective date of this chapter.

§ 190-37. Special use permits. [Amended 11-9-1998]

The following uses may be permitted provided a special use permit is authorized by the Planning and Development Committee under the terms and specifications herein. The necessity for certain specific uses is recognized. At the same time they, or any of them, may be or become inimical to the public health, safety and general welfare of the community if located without consideration to the existing conditions and surroundings. Special use permits authorize a particular land use that is permitted by the provisions of this chapter, but may require additional conditions to assure that the proposed use is in harmony with this chapter and will not adversely affect the neighborhood conditions. The following standards and proceedings are hereby established which are intended to provide the Planning and Development Committee with a guide for the purpose of reviewing certain uses not otherwise permitted in this chapter.

- A. Municipal or public utility structures. Municipal or public utility structures or facilities may be permitted by special use permit in residential and commercial zoning districts provided that:
 - (1) The proposed installation in a specific location is necessary and convenient for the efficiency of the public utility system or the satisfactory and convenient provision of service by the utility to the neighborhood or area in which the particular use is to be located.
 - (2) The design of any building in connection with such facility conforms to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights of the district in which it is located.
 - (3) Adequate and attractive fences and other safety devices will be provided.

- (4) A buffer strip 10 feet in width shall be provided around the perimeter of the property.
 - (5) Adequate off-street parking shall be provided.
 - (6) All of the area, yard and building coverage requirements of the respective zoning district will be met.
- B. Professional offices. Professional offices for attorneys, physicians and/or dentists may be permitted by special use permit in the R-3 Residential District, provided that:
- (1) A minimum area of 10,000 square feet with 75 feet of frontage shall be provided.
 - (2) Not more than 30% of the lot shall be covered by building area.
 - (3) A minimum of 35 feet for rear and front yards and a minimum of 12 feet for one side yard and a total of 25 feet for both side yards shall be required for all new construction.
 - (4) On an existing structure which is connected and providing no additions are required, the City Council shall determine that the proposed use and structure will not be detrimental to adjoining properties.
 - (5) Off-street parking shall be provided at a rate of one space per 150 square feet of floor area or fraction thereof. No parking shall be permitted within any portion of the front yard.
 - (6) Where a parking area for four or more cars adjoins a residential property, a planted buffer strip at least 10 feet wide shall be provided between the parking area and the adjoining property.
 - (7) No more than four physicians or dentists shall occupy one building.
 - (8) If the proposed use is to be located in a residential building, the residential facade shall be maintained.
- C. High-rise apartments. High-rise apartments may be permitted by special use permit in the R-3 Residential, C-1 Limited Commercial and C-2 General Commercial Districts, provided that:
- (1) Detailed plot plans, showing parking, building location, buffer areas, etc., shall be submitted.
 - (2) No structure shall contain more than one dwelling unit per 650 square feet of lot area. For structures which exceed eight stories in height, the minimum lot area per dwelling unit shall not exceed 800 square feet.
 - (3) The minimum lot width shall be 150 feet.

- (4) All yards shall have a minimum depth equal to not less than 1/2 the height of the tallest building but in no case shall the required yard areas be less than 35 feet.
 - (5) No apartment unit shall have less than 396 square feet of gross living area.
 - (6) Parking may be provided in any yard area but the front yard and shall be in the ratio as approved by the City Council.
 - (7) Not more than 40% of the lot area shall be covered by building area.
 - (8) Each building shall be provided with at least one passenger elevator and one service/passenger elevator.
 - (9) One project identification sign shall be permitted which shall not exceed 25 square feet in area and shall be situated not less than 10 feet within the property lines. The sign may include only the name of the project, the street address, and the presence or lack of vacancies.
- D. Cleaning establishments. Cleaning establishments may be permitted by special use permit in the C-2 General Commercial and Industrial Districts, provided that:
- (1) It shall be determined that the proposed use is compatible in the adjoining land uses.
 - (2) The proposed use will not adversely affect the general health, safety and welfare of the public.
 - (3) The applicant shall indicate precautions taken to protect the general health, safety and welfare of the public.
- E. Automobile service stations; garages; drive-in restaurants. Automobile service stations and/or garages for the storage, adjustment or repair of motor vehicles, drive-in restaurants and other similar uses where specific attention and consideration must be given to traffic generation and the disruption of traffic flow as well as the danger to the general public due to hazards by fire and explosion may be permitted by special use permit in C-2, I-1 and I-2 Districts, provided that: **[Amended 11-9-2020 by Ord. No. 2-2020]**
- (1) A site plan shall be prepared to show the location of buildings, parking areas, and driveways. In addition, the site plan shall show the number and location of fuel tanks to be installed; the dimensions and capacity of each storage tank; the depth the tanks will be placed below the ground; the number and location of pumps to be installed; the type of structure and accessory buildings to be constructed; the location, height, and lighting power of proposed lighting standards; and the manner in which buffering is to be provided.

- (2) Automobile service stations and drive-in restaurants shall have the following yard restrictions:
 - (a) A minimum lot size of 15,000 square feet with a minimum width of 125 feet.
 - (b) Minimum front and side yard areas of 25 feet with a minimum rear yard of 35 feet.
 - (c) Maximum lot coverage of 20%.
 - (d) Maximum building height of one story or 18 feet.
- (3) Driveways at service stations, drive-in restaurants and other uses providing drive-in service shall not be less than 20 feet nor more than 24 feet in width at any point. Driveways must be at least 20 feet from any side lot line and 50 feet from the intersection of street lines. No more than two driveways shall be permitted for each 125 feet of street frontage.
- (4) The entire area of the site traveled by motor vehicles shall be hard surfaced.
- (5) Any repair of motor vehicles shall be performed in a fully enclosed building, and no motor vehicle shall be offered for sale on the site. No motor vehicle parts or partially dismantled motor vehicles shall be stored outside an enclosed building.
- (6) Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans and/or antifreeze and similar products may be displayed on the respective island if provided for in a suitable stand or rack.
- (7) All fuel pumps shall be located at least 20 feet from any street or property line and pumps shall have automatic shutoffs as approved by the Fire Department.
- (8) Parking for service stations shall be provided in the ratio of one space per 100 square feet of floor area or fraction thereof in the principal building. Parking for drive-in restaurants shall be provided in the ratio of four spaces per 100 square feet of floor area or fraction thereof in the principal building.
- (9) Where such parking areas abut a residential zoning district, they shall be screened by a buffer area not less than 10 feet in depth composed of densely planted evergreen shrubbery, solid fencing, or a combination of both which, in the opinion of the City Council will be adequate to prevent the transmission of headlight glare across the district boundary line. Such buffer screen shall have a minimum height of six feet above finished grade at the highest point of the parking area. The materials shall be in keeping with the character of the adjacent residential area.

- (10) No automobile service station or public garage shall be located within 500 feet of any public entrance to a church, school, library, hospital, charitable institution or place of public assembly. The distance shall be measured in a straight line from the public entrance to the lot line nearest such entrance along the street line.
 - (11) No service station shall be located within 1,000 feet of an existing station on the same side of the highway. If a station is located at the intersection of two streets, this distance shall be measured along both streets which abut the property.
 - (12) The areas shall be illuminated by nonglare lighting standards, focused downward, and which, in the opinion of the City Council, will not create a nuisance to adjoining property owners.
 - (13) Drive-in restaurants for the purposes of this subsection are defined as eating establishments for customers normally arriving by motor vehicles, who are provided quick service, food and drink, and such customers obtain their own food and drink at a counter or other place for dispensing food therein and consume such food and drink upon the premises; or in such type restaurants where customers may be waited upon without leaving their vehicles by employees of the drive-in restaurant.
 - (14) The use of an automobile service station may include the sale or rental of vehicles with a special permit from the City Council. No vehicles shall be parked or displayed in the required front yards, and a detailed plot plan showing the areas in which such vehicles are to be stored shall accompany the application for the special use permit.
- F. Automobile junkyards; reclamation centers. As defined by this chapter, junkyards, automobile junkyards, or reclamation centers may be permitted by special use permit in the I-1 and I-2 Industrial Districts, provided that:
- (1) All wrecking, dismantling, processing and other related operations shall be conducted within the property lines which shall be completely enclosed by a solid fence material of not less than six feet in height. Such fence shall be of a height sufficient to preclude the visibility of materials from all public rights-of-way.
 - (2) The keeping of such fence in good maintenance shall be a condition of the issuance of the special use permit. The Council may revoke this authorization if such fence is not maintained in good condition.
 - (3) No junkyard shall be located within 200 feet of a residential district. This distance shall be measured from the nearest point of the property line of the junkyard to the residential district.
- G. Large-scale multifamily developments. Large-scale multifamily developments, including garden apartments and townhouses may be

permitted in any residential district and the C-1 Limited Commercial District, provided that:

- (1) A detailed site plan showing the location of all buildings, driveways, parking areas, and recreation space buffer areas, is submitted in accordance with § 51-8B of Chapter 51, Building Construction, of the Code of the City of Batavia.
- (2) Special use permit for such uses shall be required at any time the number of units in a particular development reaches six or more, whether the six are proposed at any one time, single, or in any combination totaling six or more.
- (3) The total number of dwelling units for a multifamily project shall not exceed a density of:
 - (a) Six units per gross acre of land in R-1 Districts.
 - (b) Twelve units per gross acre of land in R-2 Districts.
 - (c) Twenty units per gross acre of land in R-3 and C-1 Districts.
- (4) There shall be no dwelling units below the first story or above the second story.
- (5) Each dwelling unit shall contain complete kitchen facilities, toilet and bathing facilities, and shall have a minimum gross floor area in accordance with the following:
 - (a) One-bedroom dwelling units and/or efficiency units shall have a minimum of 600 square feet.
 - (b) Two-bedroom dwelling units shall have a minimum of 800 square feet.
 - (c) Three-bedroom dwelling units shall have a minimum of 1,000 square feet.
- (6) There shall be no more than 16 dwelling units in each building or structure.
- (7) No multifamily dwelling structure shall be located within 25 feet of another dwelling structure, swimming pool, recreation building, or garage.
- (8) Every building shall have a minimum setback of 20 feet from any and all interior roads, driveways, and parking areas.
- (9) There shall be a buffer strip planted with evergreen shrubs along the entire perimeter of the property, exclusive of the front yard(s), of at least 15 feet in width measured from the property line. No parking or recreation areas shall be permitted within this buffer strip.

- (10) Parking shall be required at the ratio of no less than 1 1/2 spaces per dwelling unit.
 - (11) A minimum of 10% of the total tract area shall be designated for common recreational purposes. The area designated for recreation shall, in the opinion of the City Council, be suitable for such purposes.
 - (12) Sufficient laundry, drying, garbage pickup and other utility areas must be provided and shall be located with a view both to convenience and to minimizing the detrimental effect on the aesthetic character of the building(s) and shall be enclosed and shielded from view by fencing, walls or shrubbery of at least six feet in height around the perimeter.
 - (13) There shall be a minimum common storage area in each building for bicycles, perambulators and similar type of equipment of 30 square feet in area and a minimum of six feet in height per dwelling unit.
 - (14) Driveways, parking areas, dwelling entranceways, and pedestrian walks shall be provided with sufficient illumination to minimize hazards to pedestrians and motor vehicles. Such light sources shall, where necessary, be shielded to avoid glare disturbing to occupants of buildings.
 - (15) Other standards and conditions to the site plan and to curbing, driveways, parking areas, pedestrian walks, landscaping and planting not otherwise specified herein may be attached as conditions by the City Council as circumstances indicate they will further the purposes and intent of this chapter.
 - (16) The proposed use shall meet the area and yard requirements specified in Schedule I of this chapter.¹⁰
- H. Heliports and helistops. Heliports and helistops may be permitted by special use permit in the I-1 and I-2 and P-1 and P-2 Districts, provided that:
- (1) All applications for a heliport or helistop in the City shall include all of the information identified in § 51-8D of Chapter 51, Building Construction, of the Code of the City of Batavia, as well as anticipated frequency of helicopter operations; proposed landing areas, including ground and building sites; types of craft to be utilized; takeoff and landing approaches, emergency landing sites; fire participation facilities; and structural support capabilities for rooftop landing sites.

10. Editor's Note: Schedule I is included at the end of this chapter.

- (2) Heliports or helistops shall not be permitted within 1,000 feet of any residential district except by special use permit authorized by the City Council.
- (3) All helicopter landing areas shall be enclosed by wind-deflection fences which are four feet in height.
- (4) All helicopter landing surfaces shall be free from dust, dirt and other loose material and shall be covered by a surface approved by the City Engineer.
- (5) For rooftop landing areas the structure shall be capable of supporting a gross concentrated load equal to 1.75 times the helicopter's weight.
- (6) Routes of helicopters shall be over terrain which affords suitable emergency landing areas no farther away than a glide angle of one foot vertically to four feet horizontally.
- (7) Minimum landing areas for a heliport shall be 100 feet by 100 feet exclusive of tie-down facilities, taxi-ways, service and parking areas. On rooftop sites, the minimum landing area shall be 40 feet by 40 feet for helicopters of less than 3,500 pounds gross weight. The minimum size of the touchdown area for helicopters over 3,500 pounds gross weight shall be at least 1 1/2 times the rotor diameter.
- (8) Rooftop helicopter landing facilities shall be located in an area that will permit a glide slope angle of eight feet horizontal distance for every one foot vertical clearance required. Two such approaches shall be available, at least 90° removed from each other.
- (9) On all touchdown or landing areas, whether elevated or flush with the roof, provision shall be made for collecting fuel which may be spilled in event of any emergency. Separator or clarifier tanks for collecting spilled fuel shall be installed under approval and supervision of the City Engineer.
- (10) Fire-fighting facilities approved by the Batavia Fire Department shall be provided at all landing sites.
- (11) All landing sites shall be approved and marked as prescribed by the Federal Aviation Administration.
- (12) For rooftop sites no light standards, roof vents, guy lines, television antennas, or other similar rooftop obstructions which may be difficult to see from the air shall be permitted within the required glide slope on three sides, or within an arc of 270°.
- (13) Such lights as are installed shall illuminate and be directed onto the touchdown pad only, and in such a manner that the light rays cannot interfere with the helicopter pilot's vision.

- (14) Approved means of communication, such as telephone, radio, fire alarm box or signaling device, shall be provided adjacent to the landing area.
- I. Restricted residential uses. Restricted residential uses shall be permitted in C-3 Central Commercial Districts as defined herein with the following provisions: **[Added 7-8-1996]**
- (1) A detailed site plan showing the location and size of all buildings, entrances, exits, driveways, signage, parking areas, and dumpsters is submitted in accordance with § 51-8 of Chapter 51, Building Construction, of the Code of the City of Batavia.
 - (2) A detailed floor plan drawn to scale of all interior portions of any building or any renovations to existing buildings shall be submitted as part of the special use permit application.
 - (3) The maximum height from curb level for any new building constructed shall be four stories.
 - (4) No residential use shall be permitted on the first floor. The first floor use must be consistent with other allowed uses in the C-3 Central Commercial Districts.
 - (5) There shall be no more than two bedrooms per unit.
 - (6) Any new building constructed shall be built to the front lot lines on Main Street and Jackson Street within the C-3 Central Commercial District.
 - (7) A parking plan shall be submitted detailing plans for parking. An annual fee for parking shall be required for any use by residents of City-owned parking lots with those limitations set forth by the City Council if the special use permit application is approved.
 - (8) Separate signage denoting residential use shall be allowed as approved in the special use review.
 - (9) Other standards and conditions to the site plan and to curbing, driveways, parking areas, pedestrian walks, landscaping and planting not otherwise specified herein may be attached as conditions by the City Council as circumstances indicate they will further the purposes and intent of this chapter.
- J. Accessory dwelling units. Accessory dwelling units may be permitted by special use permit in the R-1 Residential District, provided that: **[Added 10-25-1999]**
- (1) No changes are made to the front exterior of the single-family dwelling to maintain the appearance of a single-family home.
 - (2) Accessory units will only be allowed in owner-occupied single-family residences.

- (3) Garages may not be converted to accessory dwelling units.
 - (4) Entrances for the accessory unit shall not be on the front exterior to maintain the single-family appearance of the structure.
 - (5) One parking space to be provided for the accessory dwelling unit.
- K. Standards applicable for all special use permits. The Planning and Development Committee may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this chapter. **[Added 11-9-1998; amended 11-9-2020 by Ord. No. 2-2020]**
- (1) The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons therewith will not be hazardous and shall be in harmony with the orderly development of the district.
 - (2) The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.
 - (3) The operation of any such use shall not be more objectionable to nearby properties than would be operation of any permitted use.
 - (4) The operation of any such use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact adjacent properties.
 - (5) When a commercial or industrial special use abuts a residential property, the Planning and Development Committee may find it necessary to require screening of sufficient height and density (i.e., fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.
 - (6) Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.
 - (7) The proposed use shall meet the off-street parking and loading requirements of similar uses.
 - (8) Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water-related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.
 - (9) Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards.
 - (10) Such use shall be attractively landscaped.

- (11) A special use permit shall not be issued for a use on a lot where there is an existing violation of this chapter unrelated to the use which is the subject of the requested special use permit, as determined by the Planning and Development Committee.
- (12) As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.
- (13) In addition to the general standards for special use permits as set forth herein, the Planning and Development Committee may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this chapter.
- (14) The above standards are not intended to apply to uses whose regulation has been preempted by the state or federal government.

L. Adult uses as per Article VI. **[Added 12-13-1999]**

M. Public storage rental units/buildings. Public storage rental units/buildings may be permitted by special use permit in the I-1 and I-2 Districts provided: **[Added 12-9-2019 by Ord. No. 2-2019]**

- (1) A site plan be prepared and show the arrangement of storage buildings and outside storage areas, exterior lighting, landscaping, screening, fencing, and garbage/trash storage areas, in addition to the site plan requirements of § 190-44.
- (2) Buildings are not to exceed one story in height and not more than 20 feet above grade.
- (3) Buildings and outside storage areas are to be a minimum of 100 feet from any residential use property.
- (4) Storage of the following will be prohibited:
 - (a) Flammable liquids, gases or solids in excess of those permitted by the International Fire Code.
 - (b) Storage of food products.
 - (c) Outside storage of junk automobiles/vehicles, auto parts, or mechanical equipment other than recreational vehicles, motor homes, travel trailers, campers, boats.
 - (d) Storage of garbage, trash or recyclable materials.
- (5) Off-street parking shall be provided for visitors at the rate of one space per 20 rental units.
- (6) No materials or products of any kind may be displayed or offered for sale on site.

- (7) Outdoor lighting shall be designed so the maximum illumination at the property line does not exceed zero footcandle on adjacent residential use properties.

§ 190-38. Industrial performance standards. [Amended 8-14-2000]

It is the purpose of this section to provide appropriate standards relating to the operation of industrial activities throughout the City of Batavia. Such operations may create or maintain such excessive noise, vibration, air pollution, odor or electromagnetic interference as to be a deterrent to the public health, comfort, convenience, safety, and welfare. These standards are therefore provided to protect the public interest, and promote the public health and welfare.

A. Noise.

- (1) Any use, or portion thereof, established in an industrial district after the effective date of this amendment shall be so operated as to comply with the performance standards governing noise set forth hereinafter. Construction projects shall be exempt from the performance standards, but shall be controlled so as not to become a nuisance to adjacent uses.
- (2) Sound levels shall be measured with a sound level meter at the property line.
- (3) Maximum permissible sound levels in industrial districts:
 - (a) Between 7:00 a.m. and 10:00 p.m.: 80 decibels.
 - (b) Between 10:00 p.m. and 7:00 a.m.: 70 decibels.

B. Odor. It shall be unlawful for any person, firm or corporation to permit the emission of any odor that exceeds thresholds set by the New York State Department of Environmental Conservation for odor, measured at the individual property line.

C. Smoke. It shall be unlawful for any person, firm or corporation to permit the emission of any smoke from any source whatever exceeding thresholds established by the New York State Uniform Fire Prevention and Building Code.

D. Dust and dirt. It shall be unlawful for any person, firm or corporation to permit or cause the escape of such quantities of soot, cinders, or fly ash, that exceeds thresholds set by the New York State Department of Environmental Protection.

E. Noxious gases. The emission of noxious odorous matter in such quantities as to produce a public nuisance or hazard beyond lot lines is prohibited. New York State Uniform Fire Prevention and Building Code and state laws pertinent to the Public Health Law shall apply to noxious gases

- F. Vibration. Any use, or portion thereof, established after the effective date of this comprehensive amendment, that creates intense earth-shaking vibrations, such as are created by heavy drop forges or heavy hydraulic surges, shall be set back at least 300 feet from the boundary of a residential or commercial district, unless such operation is controlled in such a manner as to prevent transmission beyond the lot lines of earth-shaking vibrations perceptible without the aid of instruments. But in no case shall any such vibration be allowed to create a nuisance or hazard beyond the lot lines.
- G. Fire and safety hazards. Operations and processes that are commonly held to be usually dangerous or hazardous, including the manufacturing or storage of explosives, combustible gases and flammable liquids, shall comply with the provisions (and amendments or successors) of the New York State Uniform Fire Prevention and Building Code. In addition to these regulations, the bulk storage of flammable liquids, liquid petroleum, gases or explosives shall be below ground per the New York State Department of Environmental Conservation. All such storage shall not be located outside the building setback lines as outlined in Schedule I of this chapter.¹¹
- H. Industrial sewage wastes. It shall be unlawful for any person, firm or corporation to permit the discharge of industrial wastes of any nature, into an open stream, until it is treated according to the regulations set by the New York State Departments of Health and Environmental Conservation. Any wastes discharged into a public sewer shall be treated in accordance with the regulations established in Chapter 147 of the Code of the City of Batavia.
- I. Radioactive materials. It shall be unlawful for any person, firm or corporation to permit the emission of such quantities of radioactive materials, in any nature whatever, such as to be unsafe as established by the United States Bureau of Standards.
- J. Electrical interference. It shall be unlawful for any use, activity or process to be conducted which produces electromagnetic interference with radio or television reception in neighboring residential or commercial districts.
- K. Outside storage. All materials which might cause fumes or dust or which constitute a fire hazard or which may be edible by or otherwise be attractive to rodents or insects shall be stored outdoors only in closed containers.
- L. Noncompliance.
- (1) If it has been adequately demonstrated to the Board of Appeals that compliance with the terms of this chapter cannot be effectively and immediately made, the Code Enforcement Officer shall have the authority to grant a temporary permit for the continued operation

11. Editor's Note: Schedule I is included at the end of this chapter.

of such noncomplying equipment, but only in the event that the party has taken all necessary steps to secure compliance with this chapter.

- (2) Such temporary permit shall be issued for no longer a period than three months, at the expiration of which period of time the party holding such permit shall be deemed in violation of this chapter.

§ 190-39. Parking requirements. [Amended 2-22-1982; 8-14-2000]

For every building or structure erected, altered, or extended after the enactment of this chapter there shall be provided parking facilities of vehicle storage as set forth below. As defined in this chapter an off-street parking space shall measure no less than eight feet in width and 19 feet in depth and include sufficient space for aisles and maneuverability.

A. Off-street parking.

- (1) Purpose: The City finds that large and highly visible parking areas represent one of the most objectionable aspects of commercial development. Such parking lots may damage the historic layout and architectural fabric of historic areas, harm the natural environment and visual character of the community, interfere with pedestrian safety and accessibility and reduce the quality of life in developed areas, as measured by the City's Visual Preference Survey™. However, the City also recognizes that inadequate parking can diminish quality of life by creating traffic congestion, safety hazards and inconvenience. The City therefore seeks to balance the need for adequate parking with the need to minimize harm resulting from the provision of parking and to avoid the negative impacts of excessive parking requirements.
- (2) Residential and related uses. Minimum parking spaces required for residential and related uses:
 - (a) For single family or two-family dwelling: two spaces per dwelling unit.
 - (b) For multifamily dwellings, large-scale multifamily and high-rise apartments: 1 1/2 spaces per dwelling unit.
 - (c) Home occupation in a dwelling: one space for each 400 square feet devoted to such home occupation, plus the required spaces per dwelling unit.
 - (d) These requirements may be reduced for dwelling units with less than 1,000 square feet of floor space, senior citizen housing, mixed-use development or other appropriate circumstances if the Planning and Development Committee determines that such reductions are warranted.

(3) Nonresidential uses. The number and layout of parking spaces for nonresidential uses shall be based on the need to protect public safety and convenience while minimizing harm to the character of the community and to environmental, historic and scenic resources. Since businesses vary widely in their need for off-street parking, it is most appropriate to establish parking requirements based on the specific operational characteristics of the proposed uses. The provisional parking standards in Subsection A(3)(a) below may be varied by the Planning and Development Committee according to the criteria in subsection A(3)(b).

(a) Provisional parking standards.

- [1] Art gallery or museum: one space per 400 square feet of floor area plus one space per two employees.
- [2] Auditorium, movie theater or other places of public assembly: one space for each two employees and five seats.
- [3] Auto rental: one space per 250 square feet of sales floor area plus one space per company vehicle.
- [4] Auto repair: one space per 200 square feet of sales floor area plus one space per 600 square feet of service floor area, plus one space per company vehicle.
- [5] Auto sales: one space per 200 square feet of enclosed sales floor area, plus one space per 600 square feet of service floor area, plus one space per company vehicle.
- [6] Bakery: one space per 200 square feet of sales plus one space per two employees.
- [7] Bank (with drive-in and walk-in facilities): one space for each 100 square feet of floor area for customers plus one space for each 250 square feet devoted to office use.
- [8] Barbershop/beauty parlor: one space per 200 square feet plus one space per two employees.
- [9] Boardinghouse or rooming house: one space for each roomer owning and/or keeping a motor vehicle.
[Amended 7-13-2015 by L.L. No. 2-2015]
- [10] Bowling alley: five spaces for each lane of the bowling alley.
- [11] Car wash: one space per bay plus one space per two employees
- [12] Church, synagogue or other place of worship: one space per eight seats.

- [13] Clubs and lodges: one space per four seats plus one space per two employees.
- [14] Convalescent center or nursing home: one space per two beds plus one space per two employees.
- [15] Convenience store: one space per 200 square feet of sales floor area, plus one space per two employees.
- [16] Day-care center: two spaces plus one space for each employee.
- [17] Funeral home: one space per four seats, plus one space per two employees, plus one reserved space for each hearse or company vehicle.
- [18] Furniture store: one space per 400 square feet of sales floor area.
- [19] Gas station: five spaces per facility or, if the station's floor area is primarily devoted to convenience store items, then one space per 200 square feet of floor area.
- [20] Hospital: one space per two beds plus one space per two employees.
- [21] Hotel, motel or bed-and-breakfast: one parking space per guest room plus one parking space per four employees.
- [22] Library: one space per 300 square feet of floor area.
- [23] Manufacturing/industrial: one space per two employees, plus one space per company vehicle.
- [24] Night club: one space per four seats.
- [25] Office (not including medical or dental offices): one space per 300 square feet of professional office floor area.
- [26] Office, medical/dental: one space per 200 square feet of building area.
- [27] Restaurant: one space per 100 square feet of leasable area.
- [28] Retail store: one space per 300 square feet of sales floor area plus one space per two employees.
- [29] School, elementary: one space per employee plus two spaces per classroom.
- [30] School, high school: five spaces for each classroom.
- [31] Shopping center: one space per 250 square feet of gross leasable area

[32] Supermarket: one space per 300 square feet of sales floor area plus one space per two employees.

(b) Criteria for applying provisional standards. In applying or modifying the provisional parking standards for any proposed use, the Planning and Development Committee shall consider:

[1] The maximum number of persons who would be driving to the use at times of peak usage. Parking spaces shall be sufficient to satisfy 85% of the anticipated peak demand. The likelihood of people walking or bicycling to the proposed use shall also be taken into consideration.

[2] The size of the structure(s) and site.

[3] The environmental, scenic or historic sensitivity of the site (including applicable limitations on impermeable surfaces). In cases where sufficient area for parking cannot be created on the site without disturbance to these resource values, the Planning and Development Committee or Code Enforcement Officer may require a reduction in the size of the structure so that the available parking will be sufficient.

[4] The availability of safely usable on-street parking.

[5] The availability of off-site, off-street parking within 400 feet that is open to the public, owned or controlled by the applicant, or available on a shared-use basis, provided that the applicant demonstrates a legal right to shared use. Availability of available satellite parking shall also be considered. [See Subsection A(3)(d) below.]

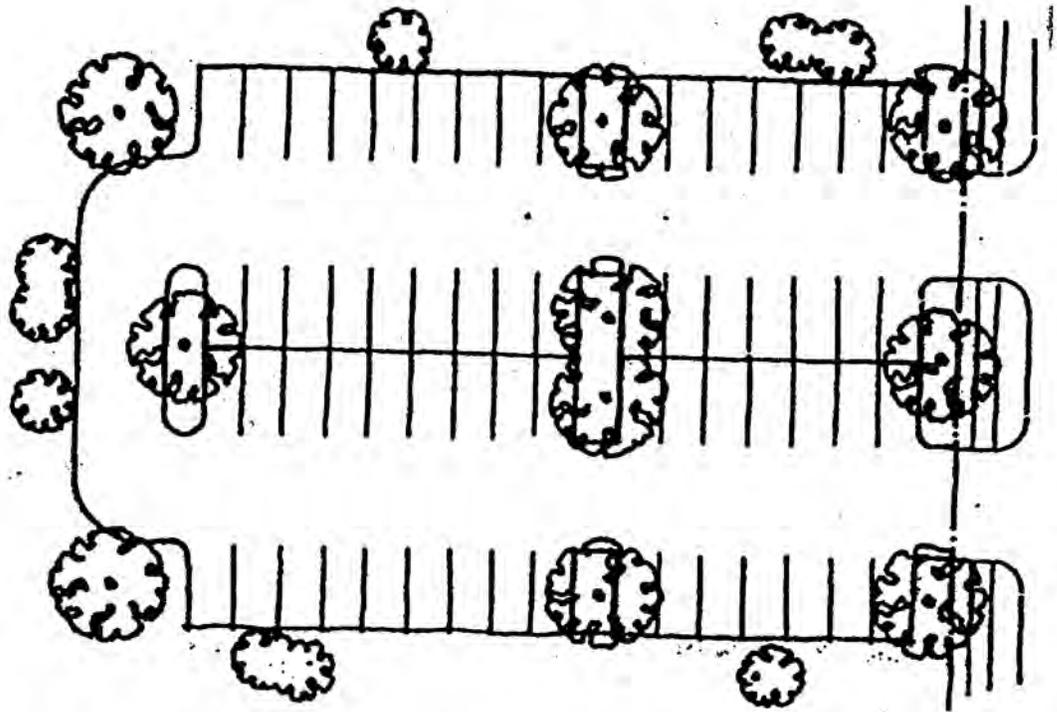
(c) Set-aside for future parking. The Planning and Development Committee may require that an applicant set aside additional land to meet potential future parking demands, especially in cases where there is a phased approach to development. Such land may remain in its natural state or be attractively landscaped but may not be used in a manner that would prevent it from being used for parking in the future.

(d) Satellite parking lots. Parking lots may be constructed as a principal use by special use permit to provide remote parking for Downtown Batavia or other intensively used locations. If used year round, such parking lots shall comply with § 190-34, Landscaping and buffering, of this chapter. Satellite parking lots may be used as park-and-ride lots for carpoolers and bus passengers and for holding specified types of special events if so provided in the special use permit.

B. Design, layout and construction of parking areas.

- (1) Location and screening.
 - (a) All off-street parking shall be located behind or to the side of the principal building. Parking spaces located in a side yard shall, if possible, be screened from public view. Adjoining parking areas shall be connected directly to one another or to a service road or alley wherever feasible to reduce turning movements onto roads.
 - (b) Within the C-2 District only, a maximum of two rows of parking may be located in the front of the principal building. Such parking shall be set back from the front lot line by a landscaped buffer at least 10 feet in width. Any green space or landscaping can be included in the percentage calculation of § 190-34, Landscaping and buffering, of this chapter.
 - (c) Parking areas shall be designed and landscaped to avoid long, uninterrupted rows of vehicles. (See Figure 1.)

Figure 1
Example of Parking Lot Broken up by Landscaping



- (2) Construction of parking areas. Parking areas shall be surfaced with a suitable dustless, durable surface appropriate for the use of the land, with adequate drainage. Surfacing, grading and drainage shall facilitate groundwater recharge by minimizing impermeable pavement and runoff. Overflow or peak period parking surfaces

shall be permeable. Oil traps may be required for larger paved parking lots. Parking areas to be used at night shall be lighted in a manner that does not result in glare to adjoining residential properties or cause traffic hazard due to glare. In addition to the requirements of § 190-34, Landscaping and buffering, of this chapter, parking areas containing more than 30 spaces shall be broken into separate lots by tree lines, alleys, pedestrian areas or buildings. (See Figure 1.)

- (3) Residential buffer required. As part of the perimeter landscaping plan outlined in § 190-34, Landscaping and buffering, of this chapter, a ten-foot buffer is required between commercial properties and residential properties.
- C. C-3 District waiver. Since public parking facilities are provided in the C-3 Downtown Batavia District and the C-2 Ellicott Street business area adjacent to the C-3 District, off-street parking facilities are not required for properties located there. This waiver recognizes that lots in these areas are too small for vehicle storage. Moreover, private off-street parking lots would ignore the Comprehensive Plan recommendation to create pedestrian-oriented and visually attractive commercial areas in these districts.
- D. Weight limit. Not more than one commercial vehicle over 1/2 ton gross vehicle weight shall be garaged or parked on any lot in a residential (R) district. No tractors, tractor trailer combinations, or trucks in excess of five tons gross vehicle weight shall be parked in residential (R) districts. The parking or garaging of any vehicle used for the purpose of removing, transporting or disposing of any sewage, sludge, human or animal excreta, industrial waste, garbage or any refuse shall be prohibited in a residential or commercial district, or within 300 feet of any residential or commercial district.
- E. Residential driveways and parking spaces. Driveways and parking spaces located in front yards shall conform with the following standards: **[Amended 8-13-2001]**
- (1) The width of driveways and parking spaces located in front yards shall not exceed 1/4 of the lot frontage and shall be constructed subject to the provisions of §§ 190-39B and 159-11.
 - (2) Permit required. It is unlawful for any person to construct, enlarge or relocate a residential driveway or parking space to the front yard of a property, without first obtaining a driveway and parking space permit. Routine maintenance and resurfacing of an existing driveway or parking space, not involving construction, enlargement or relocation, shall not require a permit.
 - (3) Application for permit. An application shall be made in writing to the Zoning Enforcement Officer on forms prescribed and provided by the City of Batavia and shall contain the following information:

- (a) Name, address and telephone number of applicant and property owner.
 - (b) Scaled dimensions of the subject property with location of existing principal building, existing and proposed driveway and/or parking space.
 - (c) Type of surfacing material for proposed driveway or parking space.
- (4) Fees. Fees for a driveway and parking space permit shall be set by resolution of the City Council.
- F. Collective parking. The collective provisions of off-street parking areas by two or more commercial or industrial buildings or uses located on the same parcel of land or adjacent parcels of land is permitted, provided that the total of such facilities shall not be less than 75% of the total sum required of the various buildings or uses computed separately. This provision is valid if adjacent parcels are owned or leased by one or more of the collective users.
- G. Penalties. **[Added 9-10-2001]**
- (1) It shall be unlawful to park any motor vehicle in violation of §§ 190-39E and 190-39B(2).
 - (2) This article may be enforced by the City of Batavia police and the Zoning Enforcement Officer in the same manner as elsewhere provided for the enforcement of traffic or parking ordinances, including the uses of tags, summonses and towing, and any other procedure authorized by law.
 - (3) Proof of ownership of vehicle shall be presumptive evidence in an action for enforcement of this article that the owner parked or caused his or her vehicle to be parked in violation of this section.
 - (4) A violation of this section shall be deemed an offense and shall be punishable by a fine in an amount not to exceed \$10.

§ 190-40. Off-street loading and unloading requirements.

- A. Uses requiring. For every building, structure or part thereof having over 5,000 square feet of gross building area erected and occupied for commerce, hospital, laundry, dry cleaning, places of public assembly, industry, and other similar uses involved in the receipt and distribution of vehicles of materials or merchandise, there shall be provided and permanently maintained adequate space for standing, loading and unloading services in order to avoid undue interference with the public use of streets or alleys.
- B. Computation. Every building, structure or addition thereto having a use which complies with the above definition shall be provided with at least one truck standing, loading and unloading space on the premises not

less than 12 feet in width, 35 feet in length, and 14 feet in height. One additional truck space of these dimensions shall be provided for every additional 15,000 square feet, or fraction thereof, of gross area in the building.

- C. Joint use. Off-street loading facilities for separate uses may be provided jointly if the total number of spaces so provided is not less than the sum of the separate requirements for each use, and provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to.
- D. Access. Access to a truck standing, loading and unloading space shall be provided directly from a public street or alley or from any right-of-way that will not interfere with public convenience, and that will permit orderly and safe movement of truck vehicles.
- E. Separate from off-street parking. Loading space as required under this section shall be provided in addition to off-street parking space and shall not be considered as supplying off-street parking space.
- F. Surface. Off-street loading and unloading areas shall be surfaced with a dustless, durable, all-weather pavement, which shall be adequately drained, all subject to the approval of the City Engineer.
- G. Residential buffer. Whenever an off-street loading and unloading area shall be located next to a residential district, said loading and unloading area shall be provided with a buffer adequate to provide a screen to minimize potential nuisance problems to residents.
- H. Lighting. Any lighting used to illuminate any off-street loading areas shall be so arranged as to reflect the light away from the adjoining premises in any residential district.

§ 190-41. Access control.

In order to encourage the sound development of street frontage, the following special regulations shall apply to all uses permitted within the commercial and industrial districts:

- A. Access barrier. Access to streets shall be controlled in the interest of public safety. Each building or group of buildings used for nonresidential purposes, and its parking or service areas, shall be physically separated from the highway by a curb, planting strip, or other suitable barrier of not less than 10 feet in depth along all streets against unchanneled motor vehicle access or egress except for accessways authorized therein.
- B. Accessways.
 - (1) Each separate use, grouping of attached buildings or groupings of uses permitted shall not have more than one accessway for every 200 feet of frontage except as permitted by this chapter.

- (2) Insofar as practical, the use of common accessways by two or more permitted uses shall be provided in order to reduce the number and closeness of access points along the streets and to encourage the fronting of business and industrial structures upon a parallel access street and not directly upon a primary road.
- (3) Accessways for industrial uses shall not be less than 24 feet, nor more than 40 feet in width. Except where otherwise permitted, all other accessways shall not be less than 20 feet nor more than 24 feet in width.

§ 190-42. Miscellaneous regulations.

- A. Rear dwelling. No building in the rear of a principal building on the same lot shall be used for residence purposes, except that an accessory building may house domestic employees of the occupants of the principal building.
- B. Location of certain activities. Other provisions of this chapter notwithstanding, the following uses or activities shall not be permitted within 200 feet of any residential district:
 - (1) Garage or shop for painting of automobiles or for the repairing of automobile bodies or fenders involving hammering or other work causing loud or unusual noise or fumes or odors.
 - (2) Junkyard, animal hospital, kennel or place for the boarding of animals.
- C. Access of business, commercial, or industrial use. No driveway or other means of access for vehicles, other than a public street, shall be maintained or used in any residential district for the servicing of a commercial or industrial use located in a commercial or industrial district, except with special permission of the City Planning Board.
- D. More than one building on a lot. When there is more than one principal building on a lot in any district, the space between such buildings shall be no less than the sum of the side yards required, or the sum of the rear and the front yards, as the case may be and minimum lot area requirements shall apply to each structure.
 - (1) Public storage rental units/buildings are exempt from this requirement and must be constructed in compliance with the separation requirements of the New York State Building and Fire Codes. **[Added 12-9-2019 by Ord. No. 2-2019]**
- E. Mobile homes. The use of a mobile home for dwelling purposes in any district over 48 hours, whether on wheels or otherwise supported, is prohibited except as provided herein. Upon application, the Code Enforcement Officer may issue a temporary permit for the use of a mobile home for dwelling purposes for a period not to exceed two months in any twelve-month period, or issue a permit for a period of 12

months, which shall not be renewed, for the occupancy of a mobile home during construction of a permanent dwelling for the occupant.

F. Parking lots. Parking lots may be allowed in Residential R-2 and R-3 Districts upon compliance with the following conditions and procedures:

- (1) Application for a parking lot in an R-2 or R-3 District shall be made to the Code Enforcement Officer and the application shall be accompanied by a fee as set by resolution of the City Council. It shall be reviewed by the Code Enforcement Officer and forwarded by him or her within 30 days to the Planning Board for its consideration. If the application is thereafter approved, the Planning Board shall note its approval on the application and return it to the Code Enforcement Officer who shall then issue a permit and upon the completion of all the conditions required, the Code Enforcement Officer shall issue a certificate of compliance. **[Amended 4-22-1991; 3-13-1995; 6-25-2001 by L.L. No. 1-2001]**
- (2) The lot shall be used only for the parking of passenger automobiles of employees, customers or guests of the person or firm submitting an application as aforesaid, and such person or firm shall be responsible for the maintenance of the lot and ensuring compliance with the provisions hereof.
- (3) No charge shall be made for parking on the lot.
- (4) The lot shall not be used for sales, repair work or servicing of any kind.
- (5) Entrance to or exit from the lot shall be located so as to do the least harm to the residential district and reasonable time limits for the use of such lot may be established.
- (6) No advertising sign or material shall be located on the lot.
- (7) All parking shall be back of the front yard as defined in this chapter, and no motor vehicles shall be parked within 10 feet of any property line.
- (8) The parking area shall have a fence at least six feet high around the perimeter of the lot, and curbs with bumper tire barriers shall be installed at all parking spaces.
- (9) All lighting shall be arranged so that there will be no glare therefrom annoying to the occupants of adjoining property in a residential district.
- (10) The surface of the parking area and the approaches and exits thereto shall be composed of at least two inches of stone treated with asphaltic road oil or such other surfacing as may be required

by the Planning Board and shall be smoothly graded and adequately drained.

- (11) The Planning Board may require such other conditions as may be deemed necessary to safeguard the health, safety and general welfare of the public and to minimize possible detrimental effects of the parking lot on adjacent property.¹²

G. Landscaping regulations.

- (1) Landscaping consisting of attractive trees, shrubs, plants and grass lawns shall be required and planted in accordance with the site plans submitted and approved by the Planning Board. Buffer planting as defined in this chapter shall include an area of at least 10 feet in depth provided along the side and rear property lines of all commercial and industrial districts or uses including parking lots permitted in Subsection F of this section, so as to provide protection to adjacent properties where such lot lines abut Residential Districts or uses.
- (2) In addition to such buffer planting, the owner of the commercial or industrial property shall erect on the buffer area a fence six feet in height for the purpose of protecting the residential property from litter, debris and light glare and such other nuisances that would disturb peaceful possession.
- (3) Such fence shall contain no more than 25% open space. The responsibility for maintenance of the commercial or industrial property referred to herein shall be the shared responsibility of the owners of the property and any other tenants who may be in possession thereof.
- (4) Such fencing referred to above shall be located only as shown on the site plan approved by the Planning Board.

§ 190-43. Signs. [Amended 11-25-1996; 12-10-2001; 1-23-2017 by L.L. No. 1-2017; 3-11-2019 by L.L. No. 2-2019]

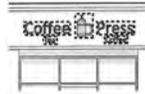


12. Editor's Note: Original Subsection 12, amended 3-13-1995, which immediately followed this section, was repealed 10-14-1997.



- A. Statement of purpose. The purpose of this section is to promote the public health, safety and welfare of the community by regulating the placement and size of outdoor signs and advertising displays. It is intended to protect all property values by ensuring that individual signs do not detract from the overall appearance and safety of the community.
- B. Applicability.
- (1) Permit required. It is unlawful for any person to erect, enlarge, relocate or change the copy of any sign, other than those identified as exempt in this section, without first obtaining a sign permit and paying the fee therefor as provided in this section. Routine maintenance of existing signs, not involving erection, enlargement, relocation or change of copy, shall not require a permit.
 - (2) All signs must be located on the same lot as the permitted use.
- C. Application for permit. Application shall be made, in writing, to the Department of Public Works on forms prescribed and provided by the City of Batavia and shall contain the following information:
- (1) Name, address and telephone number of applicant and property owner.
 - (2) Location of the building, structure or land upon which the sign now exists or is to be erected.
 - (a) If a new sign is to be erected, elevation and plan drawings should be included. A clear description of the placement and appearance of the proposed sign should include the following:
 - [1] Location on the premises, specifically, its position in relation to adjacent buildings, structures and property lines.
 - [2] The method of illumination and position of lighting.
 - [3] Graphic design, including symbols, letters, materials, and possible color combinations.
 - (b) If the sign is in compliance, the Department of Public Works shall issue a permit for the proposed or existing sign. The Department of Public Works shall give written notice to the applicant if the sign application has been denied.

- D. Common sign plan. A common sign plan must be filed with the Department of Public Works for all sites occupied by more than one tenant. After the filing of a common sign plan, all tenant signs must meet the requirements of the common sign plan.
- E. Computation of sign type area. The area of a sign type is determined as follows:
 - (1) For signs consisting of freestanding letters or logos, sign area is calculated as the total area of the rectangle, circle or square that fully encloses each word or logo.



- (2) For wall signs and signs on a background, the entire area of the background is calculated as sign area, including any material or color forming the sign face and the background used to differentiate the sign from the structure against which it is mounted. Sign area does not include any supports or bracing.



- (3) The sign area of a three-dimensional sign is calculated as the total area of the smallest rectangle, circle or square that fully encloses the largest profile of the three-dimensional sign.



- (4) The area for a sign with more than one face is computed by adding together the area of all sign faces, except where the angle at which the two sign faces are placed does not exceed 45°.



- F. Measurement of sign height. The total height of a freestanding sign is measured from the highest point of the sign or supporting structure to the adjacent grade.



- G. Fees. Fees for sign permits shall be as set by resolution of the City Council.
- H. Permitted signs. All signs which comply with the provisions and conditions set forth in this section and obtain a permit shall be allowed, and all signs not so compliant are specifically prohibited.
- I. Exempt signs. The following signs are considered to be exempt from obtaining a permit, but not exempt from the provisions of this section. Exempt signs of a temporary nature shall not be attached to fences, utility poles or the like and shall not impair traffic visibility.
- (1) Historical markers, tablets and statues, memorial signs or plaques, when cut into a masonry surface or when constructed of bronze, stainless steel or similar material and not exceeding six square feet.
 - (2) Flags.
 - (3) Nonilluminated "warning," "private drive," "posted" or "no trespassing" signs, not exceeding two square feet per face.
 - (a) "Warning," "private drive," "posted" or "no trespassing" signs shall not be in excess of four feet in height and shall not be in excess of two square feet per face. A maximum of one "posted," "warning" or "no trespassing" sign shall be permitted to be placed along the perimeter of property lines at intervals not less than 100 feet apart. This restriction will not apply to properties owned by public entities or utility companies.
 - (4) Three or fewer temporary signs (banner, window, posters, lawn, and directional) not exceeding 60 days, and per the overall area allocation in Subsection M below.
 - (5) Open and closed signs, hours of operation, and decorations, including lighting.
 - (6) On-premises directional signs not exceeding four square feet in area and no more than four feet in height.
- J. Prohibited signs.
- (1) No off-premises signs shall be allowed other than those permitted by other subsections contained in this article.
 - (2) No sign shall be illuminated by or contain flashing, rotating, scrolling, strobing, or moving lights.

- (3) No sign shall impair or cause confusion of vehicular or pedestrian traffic, in its design, color or placement.
- (4) No sign shall be placed upon the roof of any building.
- (5) No sign shall consist of or simulate moving, revolving or fluttering devices such as ribbons and streamers.
- (6) No advertising message shall be extended over more than one sign placed along a street or highway.
- (7) No signs shall be attached to utility poles in all zones of the City of Batavia. No permanent, temporary or exempt signs shall be attached, placed, painted or drawn upon fences, trees or man-made or natural features, including permanent, temporary or exempt signs.
- (8) No signs shall be placed anywhere within the City or state rights-of-way without the permission of the Department of Public Works, excepting awning signs, canopy signs, projecting signs, and shingle signs in commercial, industrial and planned development districts not exceeding six square feet and sidewalk signs not exceeding 20 square feet in commercial, industrial and planned development districts. All signs must be a minimum of 18 inches inside the street line.

K. Portable signs.

- (1) Portable signs, if powered by electricity, must meet all the construction standards of the New York State Uniform Fire Prevention and Building Code.
- (2) Portable sign size shall not exceed 32 square feet and shall be limited to five feet above grade.
- (3) Portable signs must be removed after 60 days. Another portable sign permit can be applied for 30 days after removal of a portable sign.

L. Sign types allowed by district. Signs are allowed by district as set forth below. Specific requirements for each sign are shown on the following pages.

Sign Types	Zoning Districts							
	R-1, R-1A, R-2	R-3	C-1	C-2	C-3, H-O	I-1	I-2, I-3, P-1, P-2, P-3	L
Wall	•	•	•	•	•	•	•	
Awning			•	•	•	•	•	

Sign Types	Zoning Districts							
	R-1, R-1A, R-2	R-3	C-1	C-2	C-3, H-O	I-1	I-2, I-3, P-1, P-2, P-3	L
Canopy			•	•	•	•	•	
Projecting	•	•	•	•	•	•	•	
Shingle	•	•	•	•	•	•		
Window			•	•	•	•	•	
Pole				•		•		
Monument	•	•	•	•	•	•	•	•
Marquee				□	•			
Iconic			□	□	•			
Bracket	•	•	•	•	•	•	•	•
Sidewalk			•	•	•	•		
Drive-through menu board sign ¹			•	•	•			

NOTES:

¹ No more than two drive-through menu board signs are permitted per establishment.

KEY:

- = Sign type allowed
- = Sign type allowed on state highways
- Blank Cell = Sign type not allowed

M. Allocation of overall sign area. The maximum sign area allocation for each sign type is determined by the district and is established below. For each cell, there is a maximum sign area allocation that may be utilized with any combination and any number of signs associated with that cell, except only one freestanding sign per 200 feet of street frontage and one wall sign per establishment, per building wall visible from a public right-of-way is allowed (awning and window signs excluded). The total area of wall or canopy signs shall not exceed what would be allowed on the largest wall visible from the public right-of-way. Sign area is measured in square feet or percentage of wall area and total window space for window signs.

Sign Types	Zoning Districts										
	R-1, R-1A, R-2	R-3	C-1	C-2	C-3, H-O	I-1	I-2, I-3	P-1	P-2	P-3	L
Wall	2 sf	2 sf	10%	15%	15%	15%	15%	15%	15%	10%	
Awning			15%	25%	20%	20%	20%	20%	20%	20%	
Canopy			15%	25%	20%	20%	20%	20%	20%	20%	
Projecting	2 sf	2 sf	10 sf	10 sf	10 sf	10 sf	10 sf	10 sf	10 sf	10 sf	
Shingle	2 sf	2 sf	10 sf	10 sf	10 sf	10 sf	10 sf	10 sf	10 sf	10 sf	
Window			25%	25%	25%	25%	25%	25%	25%	25%	
Pole				40 sf		15 sf					
Monument	15 sf	15 sf	15 sf	40 sf	15 sf	15 sf	15 sf	15 sf	15 sf	6 sf	6 sf
Marquee				100 sf	175 sf						
Iconic			15 sf	40 sf	15 sf						
Bracket	2 sf	2 sf	10 sf	10 sf	10 sf	10 sf	10 sf	10 sf	10 sf	10 sf	
Sidewalk			20 sf	20 sf	20 sf						
Temporary	9 sf	9 sf	32 sf	32 sf	32 sf	32 sf	32 sf	32 sf	32 sf	32 sf	9 sf
Drive-through menu board			42 sf	42 sf	42 sf						

N. Wall signs.



Description

A sign placed or painted against a building and attached to the exterior front, rear or side so that the display surface is parallel to the plane of the wall.

General Provisions

1. No portion of a wall sign may extend beyond the ends, above the roofline, above a parapet wall of a building with a flat roof, or above the second story in a building with more than two stories.

2. No portion of a wall sign may extend above the lower eaveline of a building with a pitched roof.
3. A wall sign cannot cover windows or architectural details.
4. A wall sign may be illuminated in accordance with Subsection Z below.
5. As many as two drive-through menu board signs designed as wall signs shall be permitted, but in no case shall the total number of menu board signs exceed two.

Standards

A	Overall area allocation (max)	Subsection M above
B	Projection measured from building facade (max)	15 inches
C	Electrical raceway (max % of letter height)	50%

O. Awning signs.



Description

A sign where graphics or symbols are painted, sewn, or otherwise adhered to the awning material as an integrated part of the awning itself.

General Provisions

1. An awning sign cannot extend outside the awning.
2. Only awnings over ground-story doors or windows may contain signs.
3. A maximum of one sign is allowed per awning face, per establishment.
4. Signs are only allowed in the vertical areas of the awning.
5. An awning sign may only be externally illuminated in accordance with Subsection Z below.

Standards

A	Overall area allocation (max)	Subsection M above
B	Width (max % of awning width/depth)	75%

- C Height of text and graphics on valance 2 feet (max)
- P. Canopy signs.



Description

A sign placed on a canopy so that the display surface is parallel to the plane of the wall.

General Provisions

1. A canopy sign cannot extend outside the overall length or width of the canopy. However, a canopy sign may extend above or below the canopy.
2. A maximum of one sign is allowed per canopy, per establishment.
3. A canopy sign must be located over an accessible building entrance.
4. Electrical raceways are permitted for signs extending below or above the canopy. Otherwise, electrical raceways are not permitted and the sign must be flush with the canopy face.
5. A canopy sign may be illuminated in accordance with Subsection Z below.

Standards

A Overall area allocation (max)	Subsection M above
B Width (max % of canopy width)	75%
C Height of text and graphics (max)	2 feet
D Depth (max)	1 foot
E Electrical raceway (max % of letter height)	50%
F Clear height above sidewalk (min)	10 feet

- Q. Projecting signs.



Description

A sign attached to the building facade at a ninety-degree angle, extending more than 15 inches. A projecting sign may be two- or three-dimensional.

General Provisions

1. A projecting sign must be located at least 25 feet from any other projecting sign.
2. A projecting sign may be erected on a building corner when the building corner adjoins the intersection of two streets. Allocation of sign area from both streets may be used; however, in no case can the sign exceed the maximum height and width standards.
3. The top of a projecting sign can be no higher than the top of the building. However, on one-story buildings, the top of a projecting sign may have a maximum of 20% of the sign height above the top of the building.
4. Buildings four stories and higher. A projecting sign must be located below the window sills of the fourth story.
5. A projecting sign may be illuminated in accordance with Subsection Z below.
6. As many as two drive-through menu board signs designed as projecting signs shall be permitted, but in no case shall the total number of menu board signs exceed two.

Standards

A	Overall area allocation (max)	Subsection M above
B	Height ¹ (max)	
	Mounted below 2nd floor	4 feet
	Mounted on 2nd or 3rd floor	8 feet
C	Spacing from building facade (min/ max)	1 foot/2 feet
D	Projection width (max)	6 feet
E	Depth (max)	1 foot
F	Clear height above sidewalk ² (min)	10 feet

NOTES:

- (1) If a sign is mounted across two floors, then the maximum height is the average of the maximum heights for each respective floor.
- (2) Drive-through menu board signs are exempt from the clear height above sidewalk requirement when not located over a pedestrian way.

R. Shingle signs.



Description

A small projecting sign that hangs from a bracket or support.

General Provisions

- 1. A shingle sign must be located within five feet of an accessible building entrance.
- 2. The hanging bracket must be an integral part of the sign design.
- 3. A shingle sign must be located below the window sills of the second story on a multistory building or below the roofline on a single-story building.
- 4. A shingle sign cannot be illuminated.

Standards

A Overall area allocation (max)	Subsection M above
B Height (max)	3 feet
C Spacing from building facade (min/ max)	6 inches/12 inches
D Projection width (max)	3.5 feet
E Depth (max)	6 inches
F Clear height above sidewalk (min)	10 feet

S. Window signs.



Description

A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material, or located inside within four feet of the window, but not including graphics in connection with customary window display of products.

General Provisions

1. Window signs are only allowed on ground- and second-story windows and doors, except that second-story window signs are only allowed if for a different establishment than that of the ground story and if no other sign is attached to the building for that establishment.
2. A window sign can only be internally illuminated in accordance with Subsection Z below.
3. Overall area allocation shall be calculated for all windows per floor, per establishment, per side of the building.

Standards

A Overall area allocation (max) Subsection M above

T. Pole signs.



Description

A freestanding sign constructed on a structure of one or more poles.

General Provisions

1. One pole sign is allowed per street frontage, except that one additional monument sign is allowed for properties with 200 feet or more of street frontage. Where more than one monument sign is permitted, signs along the same street frontage must be spaced a minimum of 150 feet apart.

- 2. Additionally, as many as two drive-through menu board signs designed as pole signs shall be permitted, but in no case shall the total number of menu board signs exceed two.
- 3. A pole sign must be set back at least five feet from any property line.
- 4. A pole sign may be illuminated in accordance with Subsection Z below.

Standards

A	Overall area allocation (max)	Subsection M above
B	Height ¹ (max)	25 feet (C-2), 18 feet (I-2)
C	Vertical clearance ² (min/max)	10 feet/15 feet

NOTES:

- (1) Maximum height of drive-through menu board signs shall be 7 ft.
- (2) Drive-through menu board signs are exempt from the vertical clearance requirements.

U. Monument signs.



Description

A freestanding sign attached to the ground along its entire length to a continuous pedestal. A monument sign is horizontally oriented or is square.

General Provisions

- 1. One monument sign is allowed per street frontage, except that one additional freestanding sign is allowed for properties with 200 feet or more of street frontage. Where more than one freestanding sign is permitted, signs along the same street frontage must be spaced a minimum of 150 feet apart.
- 2. Additionally, as many as two drive-through menu board signs designed as monument signs shall be permitted, but in no case shall the total number of menu board signs exceed two.
- 3. A monument sign must be set back at least five feet from any property line, except for signs in the Land Conservation (L) District where the sign has to be 10 feet from any property line.

4. A sign erected on a retaining wall is required to meet the standards for a monument sign. The height of the wall is included in the overall height calculation.
5. A monument sign may be illuminated in accordance with Subsection Z below.

Standards

A Overall area allocation (max)	Subsection M above
B Height ¹ (max)	6 feet
C Depth (max)	18 inches

NOTES:

- (1) Maximum height of drive-through menu board signs shall be 7 ft.

V. Marquee signs.



Description

A sign attached to the top or the face of a permanent roof-like structure.

General Provisions

1. A maximum of one marquee sign is permitted per building. Only the following types of establishments may erect a marquee sign: assembly, large or small; cultural facility; school, college/university; hotel/hostel; amusement facility, indoor or outdoor; or live entertainment.
2. A marquee may be erected over a main entrance only, and may be no wider than the entrance over which it is erected, plus five feet on each side.
3. A marquee sign must be supported solely by the building to which it is attached. No exterior columns or posts are permitted as supports.
4. All marquees, including anchors, bolts, supporting rods and braces, must be constructed of noncombustible material and must be designed by a licensed design professional.
5. Water from the marquee roof must not drain, drip, or flow onto the surface of a public right-of-way. Sufficient gutters, downspouts, and drains must be installed as part of each marquee to prevent water from flowing onto the surface of a public right-of-way.
6. A marquee sign may be illuminated in accordance with Subsection Z below.

Standards

- A Overall area allocation (max) Subsection M above
- B Vertical clearance from sidewalk level (min/max) 10 feet
- C Setback from curblines (min) 18 inches

W. Iconic signs.



Description

A sculptural, typically three-dimensional sign whose form suggests its meaning, and which can either be building mounted or freestanding.

General Provisions

1. A maximum of one iconic sign is permitted per establishment.
2. An iconic sign may contain only iconographical elements representing a product or service offered on site and may not contain any other items of information.
3. The top of an iconic sign can be no higher than the top of the building. However, on one-story buildings, the top of an iconic sign may have a maximum of 20% of the sign height above the top of the building.
4. Buildings four stories and higher: An iconic sign must be located below the window sills of the fourth story.
5. An iconic sign may be illuminated in accordance with Subsection Z below.
6. Additionally, as many as two drive-through menu board signs designed as iconic signs shall be permitted, but in no case shall the total number of menu board signs exceed two.

Standards

- A Overall area allocation (max) Subsection M above
- B Projection from wall (max, including supports) 5 feet
- C Vertical clearance from sidewalk level¹ (min) 10 feet
- D Setback from curblines (min) 18 inches

NOTES:

- (1) Drive-through menu board signs are exempt from the clear height above sidewalk requirement when not located over a pedestrian way.

X. Bracket signs.



Description

A freestanding sign, attached to the ground by one or more support structures, that is not higher than five feet and hangs from a bracket or support.

General Provisions

- 1. Only one bracket sign is allowed per building.
- 2. A bracket sign must be located at least 25 feet from any other bracket sign.
- 3. The hanging bracket must be an integral part of the sign design.
- 4. A bracket sign can only be externally illuminated in accordance with Subsection Z below.

Standards

A	Overall area allocation (max)	Subsection M above
B	Sign structure height (max)	5 feet
C	Sign area height (max)	3 feet
D	Sign area width (max)	3 feet
E	Sign structure/area depth (max)	6 inches

Y. Sidewalk signs.



Description

A moveable sign not secured or attached to the ground or surface upon which it is located.

General Provisions

- 1. Sidewalk signs do not require a permit but must be taken inside the place of business at the close of business.
- 2. A sidewalk sign must be located at least 25 feet from any other sidewalk sign.
- 3. Sidewalk signs cannot obstruct vehicular, bicycle or pedestrian traffic and must comply with ADA clearance and accessibility.
- 4. A sidewalk sign cannot be illuminated.

Standards

- A Overall area allocation (max) Subsection M above
- B Height (max) 5 feet
- C Width (max) 4 feet

Z. Sign illumination. Illumination of signs must be in accordance with the following requirements.

(1) External illumination.

- (a) Lighting directed toward a sign must be shielded so that it illuminates only the face of the sign and does not shine directly onto the public right-of-way or adjacent properties.
- (b) Projecting light fixtures shall not obscure the sign.



External light sources

(2) Internal illumination. The background must be a darker color than the message of the sign.



Internally lit channel letters



Internally lit sign with darker background

- (3) Exposed neon. Exposed neon may be used for lettering or as an accent.
- (4) Backlit illumination.
 - (a) Light can be white or a color.
 - (b) The background surface that the light shines onto shall not be reflective.



Backlit channel letters

- (5) Prohibited light sources. The following light sources are not allowed:
 - (a) Blinking, flashing and chasing.
 - (b) Bare bulb illumination except for marquee signs.
- (6) Electrical raceways and transformers.
 - (a) If a raceway is necessary, it cannot extend in width or height beyond the area of the sign.
 - (b) A raceway must be finished to match the background wall or canopy, or integrated into the overall design of the sign.
 - (c) Visible transformers are not allowed.
- (7) Electronic message boards.



- (a) Electronic message boards are allowed as part of a permanent freestanding sign and can only comprise as much as 30% of the

total square footage permitted in Subsection M above, excluding drive-through menu board signs.

- (b) One electronic message board is allowed per street frontage and shall also be considered a pole or monument sign per the density/spacing provisions in those sections above, excluding drive-through menu board signs.
 - (c) An electronic message board may not change or move more often than once every 10 seconds when located in districts other than residential. When located in residential districts, electronic message board signs may not change more than once daily.
 - (d) The images and messages displayed must be static and shall not produce the illusion of scrolling, moving objects, expanding or contracting shapes, rotation or any similar effect of animation.
 - (e) The transition from one static display to another must be instantaneous without any special effects.
 - (f) The images and messages displayed must be complete in themselves, without continuation in content to the next image or message or to any other sign.
 - (g) An electronic message board must be designed and equipped to freeze the device in one position if a malfunction occurs. The display must also be equipped with a means to immediately discontinue the display if it malfunctions, and the sign owner must immediately stop the display when notified by the City that it is not complying with this section.
 - (h) An electronic message board must not be brighter than is necessary for clear and adequate visibility.
 - (i) An electronic message board must not be of such intensity or brilliance as to impair the vision of a motor vehicle driver or to otherwise interfere with the driver's operation of a motor vehicle.
 - (j) An electronic message board must not be of such intensity or brilliance that it interferes with the effectiveness of an official traffic-control sign, device or signal.
 - (k) An electronic message board must be equipped with a mechanism that automatically adjusts the brightness in response to ambient conditions.
 - (l) An electronic message board must not be equipped with audio speakers, excluding two-way communication devices.
- (8) Illumination types allowed by district.

Illumination Types	Zoning Districts ¹							
	R-1, R-1A, R-2	R-3	C-1	C-2	C-3, H-O	I-1	I-2, P-1, P-2, P-3	L
External illumination	•	•	•	•	•	•	•	•
Internal illumination			•	•		•	•	
Backlit illumination			•	•	•	•	•	
Exposed neon			•	•	•	•		
Electronic message board	•	•	•	•		•	•	•

NOTES:

- (1) Electronic message boards are not permitted on parcels directly adjacent to the H-O District.

KEY:

- = Allowed
- Blank Cell = Not allowed

AA. Nonconforming signs.

- (1) Any sign not conforming to the regulation of the district in which it is located at the time of adoption of this chapter shall be nonconforming.
- (2) Any sign or other advertising structure in existence on the date this amendment to this section is enacted or the effective date of any amendment to this section may continue and shall be maintained.
- (3) An existing sign may change the face or panel of the sign that does not meet the area or height standards of this section. However, there shall be no increase in the degree of nonconformity. All new panels must conform to all illumination standards of Subsection Z above.
- (4) A sign must be brought into compliance with this section if at any time the sign is altered, repaired, restored or rebuilt to the extent that the cost exceeds 50% of the estimated replacement cost of the sign (in current dollar value). All sign permits within any six consecutive calendar months will be aggregated for purposes of measuring the fifty-percent standard.

- (5) If the repair is caused by involuntary damage or casualty and not deferred maintenance, the sign may be repaired to any extent.
- BB. Removal of signs. Any sign, existing on or after the effective date of this amendment to this section, which is no longer associated with the establishment upon which such a sign is located or is unsafe, shall be removed within 30 days upon written notice from the Department of Public Works. Upon failure to correct, the Department of Public Works shall remove or cause to be removed said sign and shall cause to be assessed against the property all costs and expenses incurred.
- CC. Maintenance. All signs shall be maintained in such a condition so as to not constitute a danger to the public health, safety or welfare. The Department of Public Works shall inspect and have the authority to order the painting, repair and alteration or removal of signs which become dilapidated or are abandoned, or which constitute physical hazard to the public safety.
- DD. Construction standards. All signs shall be constructed and installed in conformance with the New York State Uniform Fire Prevention and Building Code. Separate certification may be required for illuminated signs indicating compliance with the National Electrical Code (NFPA 70). The Department of Public Works shall have the option to require a review by the City Engineer. If the City Engineer finds the mounting technique questionable, a professional review by a New York State registered engineer would be required.
- EE. Appeal procedures. Any person aggrieved by a decision of the Department of Public Works relative to provisions of this section may appeal such decision by applying for a variance. The Department of Public Works shall refer the application to the Zoning Board of Appeals for approval or denial. In granting a variance, the Zoning Board of Appeals must determine that the sign is in harmony with the general purposes of this section, does not harm the neighborhood character, and is not detrimental to public health, safety or welfare. The Zoning Board of Appeals should also consider the benefit to the applicant versus the detriment to the community in the granting of any variance. The City Planning and Development Committee shall review and issue recommendations to the Zoning Board of Appeals regarding variances for signs within the Central Commercial (C-3) District.
- FF. Substitution clause. The owner of any sign which is otherwise allowed by this section may substitute noncommercial copy in lieu of any other commercial or noncommercial copy. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This provision prevails over any more specific provision to the contrary.
- GG. Severability clause. Should any section or provision of this section be declared by a court of competent jurisdiction to be invalid, that decision

shall not affect the validity of the section as a whole or any part thereof, other than the part so declared to be invalid.

§ 190-44. Site plan review. [Added 10-13-1998]

- A. Intent. The purpose of site plan review is to promote the public health, safety, welfare and aesthetics of the community. Site planning is distinguished from subdivision review as it concerns only one parcel whereas subdivision review concerns more than one parcel. A site plan is a plot of land showing structures, landscaping, topography and other property features. The Planning and Development Committee will review these features to determine if they compare favorably with the principles of the City's Comprehensive Plan and associated Visual Preference Survey. It is not the intent of site plan review to limit or discourage any land use, but to allow all land uses that meet the standards of this section.
- B. Delegation to Planning and Development Committee.
- (1) The Planning and Development Committee is hereby authorized to conduct site plan reviews pursuant to Article 27-A of General City Law. Requirements for site plan review can also be waived by the Planning and Development Committee.
 - (2) It shall be the responsibility of the Code Enforcement Officer to transmit to the Planning and Development Committee and City Engineer any plans that meet the thresholds listed below and require conformity with this section. The Planning and Development Committee shall not accept any application that includes a parcel with a preexisting reported violation pertaining to any provisions of this chapter until it is brought into compliance.
- C. Review thresholds.
- (1) The Planning and Development Committee shall review the following applications for compliance with this section:
 - (a) Nonresidential construction: applications for any new buildings or an expansion of an existing building that increases the demand for parking or increases the lot coverage by more than 3% or 1,300 square feet, whichever is less. **[Amended 6-22-2009 by L.L. No. 3-2009]**
 - (b) Residential construction: applications for structures of more than two families or expansion of structures for more than two families that increases the demand for parking or increases the lot coverage by more than 3% or 1,300 square feet, whichever is less.
 - (c) Special use permits: any applications for special use permits, reviewed for site plan compliance.

- (d) Use variances: any applications for use variances that increases the demand for parking or increases the lot coverage by more than 3% or 1,300 square feet, whichever is less.
- (2) C-3 District waiver. Site plan review can be waived by the Code Enforcement Officer in the C-3 District if the property has a structure that occupies 90% or more of the lot and will continue to do so after the building permit is issued. However, an architectural review and building design compatibility may be reviewed by the Committee if the changes proposed are considered significant by the Code Enforcement Officer. Some examples of significant changes are, but not limited to partial demolition and reconstruction, new facades, changes in size or number of window openings or any changes that may significantly change the original appearance of the building.

D. Review process.

- (1) Sketch plan review. Sketch plan review is optional and provides an opportunity for the applicant to meet with the Planning and Development Committee prior to final submission of the site plan for direction and guidance.
 - (a) The sketch plan shall include basic information on principal and accessory structures, parking areas, existing and proposed vegetation, nearby streets, property lines and easements, utilities and other pertinent information.
 - (b) The Code Enforcement Officer shall transmit one copy of the sketch plan to the City Engineer prior to Planning and Development Committee review to obtain his comments on street improvements, drainage, sewerage, water supply and other City services that the site plan may impact and vice versa. The City Engineer shall transmit his comments to the Planning and Development Committee prior to its review.
- (2) Site plan requirements. Applicants shall submit four copies of the site plan to the Code Enforcement Officer at a scale not to exceed one inch equals 50 feet. Copies shall be distributed to the members of the Planning and Development Committee, City Engineer and other appropriate City staff. The City Engineer shall determine if the plan should be prepared by a New York State licensed professional engineer, landscape architect or architect. The plan shall include the following:
 - (a) Principal and accessory structures.
 - (b) Parking areas and quantities, sidewalks, lighting, areas for trash or dumpsters, entrances and exits.
 - (c) Signs.

- (d) Existing and proposed vegetation including a plant listing of the quantity, size and species.
 - (e) Tax parcel number, North arrow, street names, date of revisions.
 - (f) Applicant, property owner and areas for the signatures of the City Engineer and Chairman of the Planning and Development Committee.
 - (g) Flood zones.
 - (h) Elevations for new construction and expansions of structures.
 - (i) Survey information prepared by a New York State licensed surveyor unless waived by the Code Enforcement Officer.
 - (j) Other elements as per the City Engineer including, but not limited to, drainage, utilities, water supply and sewer system requirements.
- (3) Site plan review. Review of the site plan shall consider, but not be limited to, the following criteria:
- (a) Location, arrangement, size, design and site compatibility of buildings and signs including an architectural review of the building or expansion.
 - (b) Traffic circulation and fire lanes.
 - (c) Landscaping.
 - (d) Stormwater drainage, water supply, sanitary sewer and location of fire hydrants.
 - (e) Any other pertinent items included under Article 27-A of the General City Law.
 - (f) Conformity with the recommendations of the City of Batavia Comprehensive Plan and associated Visual Preference Survey™.
- (4) New York State review requirements. All site plan reviews shall comply with the New York Environmental Quality Review Act¹³ or Article 27-A of the General City Law regarding approvals and time periods for review.
- E. Declaration of covenants, restrictions, conditions and easements. The Planning Board may require the applicant to file a declaration of covenants, restrictions, conditions and easements in conjunction with the site plan to be recorded in the Genesee County Clerk's office.

F. Committee actions.

- (1) The Code Enforcement Officer or Building Inspector shall deny a building permit application where the Planning and Development Committee has disapproved a site plan.
- (2) The Code Enforcement Officer or Building Inspector shall not issue a certificate of occupancy until all conditions specified by the Planning and Development Committee have been met.

ARTICLE X
Administration

§ 190-45. Code Enforcement Officer.

This chapter shall be enforced by the Chief Inspector designated herein as the Code Enforcement Officer. The Code Enforcement Officer shall not approve an application or issue a building permit or certificate of occupancy for any purpose, except in compliance with the provisions of this chapter and such other provisions of the Code of the City of Batavia, laws, rules and regulations of the City of Batavia, together with any applicable laws, rules and regulations of the State of New York.

§ 190-46. Duties of Code Enforcement Officer.

- A. Inspections. It shall be the duty of the Code Enforcement Officer, or his or her duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this chapter.
- B. Violation orders. Where the Code Enforcement Officer, in the course of his or her duties, determines that any plans, buildings or premises are in violation of the provisions of this chapter, he or she shall order the responsible party in writing to remedy such conditions. Such order shall conform to the provisions of § 51-14 of Chapter 51, Building Construction, of the Code of the City of Batavia.
- C. Effect of service. On the serving of notice by the Code Enforcement Officer to the owner of any violation of any of the provisions of this chapter, the certificate of occupancy, if issued, for such building or use shall be deemed revoked. A new certificate of occupancy shall be required and must be applied for within the time provided for correction of the violation.
- D. Records. The Code Enforcement Officer shall maintain a permanent record of all matters considered and all action taken by him or her.¹⁴

§ 190-47. Certificates and permits.

The certificates and permits enumerated herein are hereby established for the equitable enforcement and administration of the provisions of this chapter.

- A. Building permits. The Code Enforcement Officer is hereby empowered to issue a building permit for any plans regarding the construction or alteration of any building or part of any building, or the change in the use of any land or building or part thereof, where he or she shall determine that such plans are not in violation of the provisions of this

14. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

chapter. Such permit shall be issued in accordance with Article III of Chapter 51, Building Construction, of the Code of the City of Batavia.

- B. Special use permits. Upon written authorization of the City Council, the Code Enforcement Officer is hereby empowered to issue a special use permit provided for by this chapter.
- C. Certificate of occupancy. The Code Enforcement Officer is hereby empowered to issue a certificate of occupancy which shall certify that all provisions of this chapter and other provisions of the Code of the City of Batavia have been complied with in all respects to the location and use of the building, structure or premises in question. No building erected, altered or extended after July 1, 1962, and/or land the use of which is changed after July 1, 1962, shall be used until a certificate of occupancy has been issued by the Code Enforcement Officer. Such certificate of occupancy shall be issued in accordance with Article IV of Chapter 51, Building Construction, of the Code of the City of Batavia.
- D. Temporary use permit. A temporary use permit may be issued by the Code Enforcement Officer only upon approval by the City Planning Board for a period not to exceed one year. The City Planning Board shall authorize such permit only where such use is reasonably necessary during construction operations or the denial of the permit would cause unnecessary hardship and would be in keeping with the purposes of this chapter and would not be incompatible with the uses permitted in the zoning district in which it is proposed. Such permit may be renewed only upon approval of the City Planning Board.

§ 190-48. Application procedures.

- A. Procedures for a building permit. **[Amended 10-13-1998]**
 - (1) All applications for a building permit shall be made to the Code Enforcement Officer in the detail specified in Article III of Chapter 51, Building Construction, of the Code of the City of Batavia. Where the proposed use is for the expansion, alteration or modification of an existing building or use, the Code Enforcement Officer shall carefully consider the application and supporting documents for compliance with this chapter and either issue or deny the permit applied for.
 - (2) When the application is for a new building or use or an expansion thereof in any district, exclusive of single- and two-family residential buildings and buildings in industrial zones, the Code Enforcement Officer shall follow the procedures set forth in § 190-44, Site plan review.
- B. Procedures for special use permits. **[Amended 11-9-1998]**
 - (1) All applications for special use permits shall be made to the Enforcement Officer. The Enforcement Officer, after determining that an application is in the proper form, shall transmit one copy of

the application and all supporting documents to the City Planning and Development Committee and the City Engineer for review of the site plan, and for the evaluation of the proposed use and its relationship and conformity to the goals and policies established by the City Comprehensive Plan.

- (2) The City Planning and Development Committee may suggest any revision to the site plan or other plans as will, in its opinion, cause the proposed use to be in substantial conformance with the Comprehensive Plan and its principles of land use and development.
- (3) In approving an application, the Planning and Development Committee may impose any modifications or conditions it deems necessary, based on the standards in all the sections below, to carry out the intent of this chapter or to protect the health, safety and general welfare of the public.
 - (a) If an application is approved by the Planning and Development Committee, the Enforcement Officer shall be furnished with a copy of the approving resolution or minutes of the Committee, and he or she shall issue the permit applied for in accordance with the conditions imposed by the Planning and Development Committee.
 - (b) If any application is disapproved by the Planning and Development Committee, the reasons for such denial shall be set forth in the Planning and Development Committee's resolution or meeting minutes, and a copy of such resolution or minutes shall be transmitted to the Enforcement Officer. The Enforcement Officer shall deny the application accordingly by providing the applicant with a copy of the Planning and Development Committee's reasons for disapproval.
 - (c) The Enforcement Officer shall transmit one copy of all approved and denied applications to the City Engineer and one copy of all approved applications to the City Assessor.

C. Procedures for a temporary use permit.

- (1) All applications for a temporary use permit shall be made to the Code Enforcement Officer. The Code Enforcement Officer after determining that an application is in the proper form shall transmit the application together with all supporting documents to the City Planning Board.
- (2) Within 45 days of the referral from the Code Enforcement Officer, the Planning Board shall conduct a public hearing on the application. Within 45 days from the date of such public hearing, the City Planning Board shall either approve or disapprove the application so heard.

- (3) In approving an application, the Planning Board may impose any modifications or conditions it deems necessary to carry out the intent of this chapter or to protect the health, safety or general welfare of the public. The Planning Board shall find, in approving an application, that approval will not be injurious to the neighborhood nor to the community, that the proposed use is truly of a temporary nature and that the term of the permit is the minimum time necessary to accomplish the desired purpose.
- D. Procedures for a certificate of occupancy. Following the completion of the construction, reconstruction or alteration of any building, or where a change in the use of a structure or parcel of land is proposed, the applicant shall apply to the Code Enforcement Officer for a certificate of occupancy. An application for a certificate of occupancy shall be processed as provided in Article IV of Chapter 51, Building Construction, of the Code of the City of Batavia.

§ 190-49. Board of Appeals.

- A. Established. A Board of Appeals is hereby established in accordance with the provisions of the General City Law. The Board of Appeals shall, consistent with the General City Law, determine its own rules and procedures and shall have the power and duties granted to it in the General City Law and as specified in this chapter.
- B. Referral to County Planning Board. Request for variances shall be referred to the County Planning Board when required by law.
- C. Referral to City Planning Board. Any application for variances that include nonpermitted uses or the extension thereof or parking variances shall be referred to the City Planning Board for their recommendations prior to submittal to the Board of Appeals. If the City Planning Board takes no action within 30 days after such referral, it shall be deemed to approve such application, and the Board of Appeals may proceed thereon.
- D. Appeals.
- (1) The Board of Appeals shall, in accordance with the provisions hereinafter set forth in this section, hear and determine appeals from any refusal of a building permit or certificate of occupancy by the Enforcement Officer, or review any order or decision of the Code Enforcement Officer where such order or decision is based upon the requirements of this chapter.
 - (2) The Board of Appeals shall have the power, in passing upon appeals to vary or modify the application of any of the regulations or provisions of this chapter so that the spirit of the chapter shall be observed, public safety and welfare secured and substantial justice done. The Board of Appeals shall also hear and decide all matters

referred to it or upon which it is required to pass by the terms of this chapter.

- E. Matters to be considered. In deciding such matters referred to it by the terms of this chapter, the Board of Appeals shall give consideration to the health, safety, morals and general welfare of the community.
- F. Grounds for variance. Specifically, no variance shall be granted by the Board of Appeals unless it finds:
 - (1) That the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the land or building for which such variance is sought, that the granting of the variance is necessary for the reasonable use of such property, and that the variance granted by the Board of Appeals is the minimum variance that will accomplish this purpose; and
 - (2) That the granting of the variance will be in harmony with the general purpose of this chapter, will not be injurious to the neighborhood, and will not alter the essential character of the locality. In granting a variance the Board of Appeals may prescribe appropriate conditions or safeguards that are necessary or desirable to carry out the requirements of this subsection.
 - (3) Use variances.¹⁵
 - (a) The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of this chapter, shall have the power to grant use variances, as defined herein.
 - (b) No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - [1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - [2] The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - [3] The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - [4] The alleged hardship has not been self-created.

15. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (c) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (4) Area variances.¹⁶
- (a) The zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of this chapter, to grant area variances as defined herein.
 - (b) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:
 - [1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - [2] Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - [3] Whether the requested area variance is substantial;
 - [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

16. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE XI
Amendments and Penalties

§ 190-50. Penalties for offenses.

- A. Any person, firm or corporation who violates, disobeys, neglects or refuses to comply with or who unlawfully interferes with the enforcement of any of the provisions of this chapter shall be guilty of a violation and upon conviction thereof, shall be subject to a fine of not more than \$250, or imprisonment for a period of not more than 15 days, or both such fine and imprisonment for each offense. Each day a violation is continued shall be deemed a separate offense. Proof of ownership of premises, during the period of time in which a violation took place, is prima facie evidence of knowledge and consent to the violation taking place.
- B. In addition to other remedies, the City of Batavia may institute and prosecute any appropriate action or proceeding to prevent any unlawful erection, alteration, conversion, maintenance or use to correct or abate such violation, to prevent the occupancy of a building, structure or land, or to prevent an illegal act, conduct, business or use.

§ 190-51. Amendments. [Amended 3-13-1995¹⁷]

This chapter may be amended by the City Council from time to time as provided by § 83 of the General City Law and after a report concerning such proposed amendment by the Planning Board. In case the City Planning Board shall fail to file a report within 30 days after referral, the proposed amendment shall be deemed approved, and the City Council may proceed thereon. A petition requesting a change in regulations, provisions or district boundaries, as set forth in this chapter, shall be typewritten and signed and acknowledged by the person presenting it, in the same manner as required for the recording of a deed to real property, and shall be filed with the Clerk-Treasurer in triplicate. Each petition for a change of zoning district classification shall be accompanied by a fee of as set by resolution of the City Council payable to the general fund of the City and presented to the Clerk-Treasurer. The City Planning Board or the City Council may require a plan of the proposed development and use of any area for which a change of zoning district classification is sought in order to assist them in their understanding of any proposed change.

§ 190-52. Performance bond.

In the case of a petition for a change in zoning district classification filed in accordance with the provisions of § 190-23 with respect to a Planned Development District, or an application for a special use permit pursuant to § 190-47B, where a plan of the proposed development or use may be required, and where the Council approves such a change, the Council may

17.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

provide that such change or permit shall not become effective until the applicant has filed a performance bond in such amount and under such conditions as the Council may deem to be in the best interest of the public, and so as to insure the City that the proposed development of the area will be in compliance with the provisions of the accepted development or use plan.

§ 190-53. Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of public health, safety, morals, or general welfare.

Local Law Filing

(Please Use this Form for Filing your Local Law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underline to indicate new matter.

County
City
Town of
Village

CLARENDON, ORLEANS COUNTY, NEW YORK

RECEIVED
STATE RECORDS

APR 02 2015

Local Law No. 1 of the year 2015

DEPARTMENT OF STATE

A local law Amending Local Law No. 3 of the Year 2014,
Regulating the Outside Storage of Junk Materials in the Town of Clarendon

Be it enacted by the _____ Town Board _____ of the

County
City

Town of Clarendon, Orleans County, New York as follows:
Village

SECTION 1: PURPOSE

1. The accumulation, storage and placement of personal property and materials on and about public and private real property outside of buildings and structures, when such property and materials are not normally incidental to the use and enjoyment of the property on which it is stored, accumulated, or placed, for unreasonable periods of time similarly is aesthetically objectionable and can adversely affect the value of the neighborhood properties and can be detrimental to the use, enjoyment and occupation of such properties.
2. The further purpose of this local law is to prohibit the placement, accumulation, or storage of any property or items which remain out of doors on private or public real property and in customary usage, and not utilized in conjunction with the out of doors enjoyment of the property on which it is situate. The outdoor storage of such items for more than fourteen (14) days is deemed to be an unreasonable period of time. The prohibition applies to all material, as defined herein, whether or not such material is deemed to be junk, litter, waste, refuse or garbage.

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APR 09 2015

CLARENDON TOWN CLERK

3. Certain materials which are normally used in conjunction with out-of-doors activities, are exempted from the prohibition.

SECTION 2: DEFINITIONS - As used in this local law, the following terms shall have the meanings indicated:

1. **MATERIAL** - Any property (other than real property and buildings thereon), items and articles, organic or inorganic, composed of glass, wood, metal, plastic, paper, fabric, leather, rubber or any combination thereof, whether manufactured or not.
2. **PERSON** - One (1) or more individuals, a partnership, corporation, association or any other legal entity.
3. **STRUCTURE** - Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground.

SECTION 3: DEPOSIT OF MATERIAL

1. Subject to the exceptions contained in Section 3(2) hereof, no person shall store, place, accumulate or abandon upon any real property, no cause, consent or permit to be deposited, stored, accumulated, placed or abandoned upon any real property owned or occupied as a tenant by such person, outside of an enclosed structure, building or container, any material for a period longer than ten (10) days after receipt by such person of the Notice described by Section 4(1).
2. **EXCEPTIONS** – The following shall not apply to the storage or placement on premises of the following materials:
 - A. Wood intended for consumption in a wood burning stove, furnace or fireplace located on the premises shall be cut to length for use and stacked behind the front line of the building;
 - B. Lawn or yard or garden ornaments and implements;
 - C. Lawn and patio furniture;
 - D. Operable farm, garden and yard machinery and apparatus used on the premises;
 - E. Standing fences;
 - F. Hoses and sprinklers used for watering lawns or gardens;
 - G. Storage, placement and accumulation of materials in connection with a commercial operation duly conducted on the premises where such storage, placement and re-accumulation is expressly permitted by the laws of the Town of Clarendon and the State of New York;
 - H. Construction materials and equipment used for the construction or renovation of a building on the premises.

SECTION 4: ENFORCEMENT

1. NOTICE - After the Zoning Enforcement Officer has determined that junk materials are stored, deposited, placed or abandoned on a parcel of property, (s)he shall send written notice thereof to the occupant or owner of the property, or to both such persons, as the case may be, directing the removal of such material within ten (10) days, after receipt of such Notice. The Notice shall be served on the owner or on one of the owner's executors, legal representatives, agents, lessees, any tenant or other person occupying the premises or other persons having a vested or contingent interest in the premises, either personally or by certified mail, return receipt requested, addressed to the last known address, if any, of the owner or one of the owner's executors, legal representatives, agents, lessees or other persons having a vested or contingent interest in the same, as shown by the last preceding completed record of the Receiver of Taxes or in the office of the County Clerk. Possession of the United States Postal receipt by the Zoning Enforcement Officer, indicating delivery of the notice of the addressee whether the receipt is signed by the addressee or by a third party, shall constitute conclusive proof of the receipt by addressee of said Notice. The ten (10) day period shall commence on the date of the delivery of the Notice as indicated on the postal receipt. The Notice may also be personally served on the addressee, in which event the respective ten (10) day period shall commence on the date of the personal service of the Notice.
2. PRESUMPTION - There shall be a presumption that a person who has received the Notice prescribed in Section 4 has consented to or permitted the deposit, storage, abandonment or placement of the junk material described in said Notice.
3. REMOVAL BY TOWN -
 - A. The Notice referred to in Section 4 (1) served upon the owner of the subject property, shall advise the owner that if the junk materials are not removed within the said ten (10) day period, the Town may issue an appearance ticket to appear in the Clarendon Justice Court. Removal and disposition of said junk materials shall be at the discretion of the Town Court. Liability for the cost of the removal and disposition of the junk materials shall also be determined by the Town Court.

Materials removed by the town may be placed in storage or disposed of (scrapped). Any monies received pursuant to the disposal of materials will be applied to the cost of removal. If items are placed in storage, the property owner will be responsible for all associated costs. Any costs unpaid will be added to the property owner's tax bill. Liability for the cost of the removal and disposition of the junk materials shall also be determined by the Town Court.
 - B. In addition thereto or in lieu thereof, such costs may be assessed against the subject property of the owner and collected in the same manner and at the same time as Town real property taxes as determined by the Town Court.

4. THIS LOCAL LAW MAY BE ENFORCED BY THE ZONING ENFORCEMENT OFFICER OF THE TOWN OF CLARENDON, OR BY ANY POLICE OFFICER.

SECTION 5: PENALTIES

1. A violator of this local law shall be guilty of a violation and shall be punishable for a fine not exceeding three-hundred fifty dollars (\$350.00) or by imprisonment for not more than six (6) months or both. Each week that the violation shall continue constitutes a separate offense.
2. In addition to the enforcement in a criminal proceeding by fine or imprisonment, this local law may be enforced by instituting a special proceeding as authorized by Article 4 of the Civil Practice Law and Rules to compel compliance with the provisions of this local law or to restrain by injunction any violation thereof, or to obtain any other appropriate relief.
3. A civil penalty of twenty-five dollars (\$25.00) per day is hereby imposed for each day's violation of this local law which penalty may be collected in any judgment rendered in a proceeding under Subsection B or in a separate civil action.

SECTION 6: EFFECTIVE DATE

This local law shall take effect upon filing with the state.

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

10140. (Final adoption by local legislative body only).

I hereby certify that the local law annexed hereto, designated as Local Law No. 1 of 2015 of the ~~(County)~~ ~~(City)~~ (Town) ~~(Village)~~ of Clarendon was duly passed by the Clarendon Town Board On 03/17/2015, in accordance with the applicable provisions of law.

10141. (Passage by local legislative body with approval, no disapproval or re-passage after disapproval by the Elective Chief Executive Officer *).

I hereby certify that the local law annexed hereto, designated as Local Law No. _____ Of the (County) (City) (Town) (Village) of _____ Was duly passed by the _____ On _____ And was (approved) (Not approved) (repassed after disapproval) by the _____ And was (Elective Chief Executive Officer *) deemed duly adopted on _____ In accordance with the applicable provisions of law.

10142. (Final adoption by referendum).

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

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

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

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

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

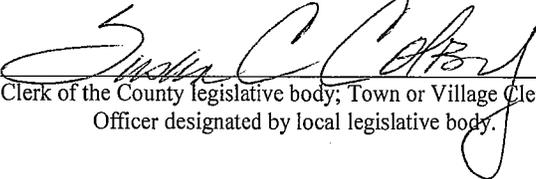
I hereby certify that the local law annexed hereto, designated as Local Law No. ____ Of of then City of _____ having been submitted to referendum pursuant to the provisions of Section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors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

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

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

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

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


Clerk of the County legislative body; Town or Village Clerk or
Officer designated by local legislative body.

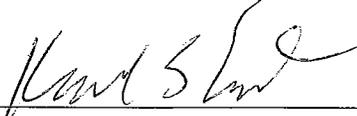
(SEAL)

Dated: 3-17-2015

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

STATE OF NEW YORK:
COUNTY OF ORLEANS: ss

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



Karl S. Essler

Attorney for the Town of Clarendon
Title

(Please Use this Form for Filing your Local Law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underline to indicate new matter.

County
City
Town of Clarendon
Village

Proposed Local Law No. 3 of the year 2007

**A local law Amending Local Law No. 3 of the Year 1997
REGULATING THE OUTSIDE STORAGE OF UNLICENSED VEHICLES
IN THE TOWN OF CLARENDON**

Be it enacted by the Town Board of the

County
City
Town of Clarendon
Village

as follows:

SECTION 1 – Title

This Local Law shall be known as a Local Law Amending Local Law No. 3 of the Year 1997.

SECTION 2 – Purpose

Purpose of this Local Law will be to amend Section 3 of Local Law No. 3 of the Year 1997; which is hereby amended by replacing the provisions of Section 3 with the following provisions; to read as follows:

SECTION 3: STORAGE OF UNLICENSED VEHICLES

1. No person shall deposit, place, store or abandon on any real property, or permit, cause or consent to be deposited, placed, stored or abandoned on real property owned or occupied as a tenant by such persons, more than one (1) unlicensed vehicle unless such vehicle is stored in a completely enclosed structure.
2. Such unlicensed vehicle shall be stored or placed behind the front line of the house or

residence on the property. In the event the unlicensed vehicle is offered for sale, it may be placed in front of the house or residence for a period of no more than ninety (90) days in one calendar year.

3. No unlicensed vehicle may be stored on real property that does not contain at least one residence, unless such vehicle is stored in a completely enclosed structure.

SECTION 3 - Authority and Territorial Application

All local laws, ordinances, rules or regulations, or parts and portions thereof in the Town of Clarendon, that conflict or are contrary to any portion of this local law, are hereby repealed.

SECTION 4 - Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State.

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

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

I hereby certify that the local law annexed hereto, designated as Local Law No. 3 of 2007 of the ~~(County)~~ ~~(City)~~ (Town) ~~(Village)~~ of Clarendon Was duly passed by the Clarendon Town Board On May 15, 2007, and pursuant to an error in publication of the public hearing, was re-adopted on June 19, 2007 in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as Local Law No. ____ Of of the (County) (City) (Town) (Village) of _____ Was duly passed by the _____ On _____ And was (approved) (Not approved) (repassed after disapproval) by the _____ And was
(Elective Chief Executive Officer *)
deemed duly adopted on _____ In accordance with the applicable provisions of law.

3. (Final adoption by referendum).

I hereby certify that the local law annexed hereto, designated as Local Law No. ____ Of
of the (County) (City) (Town) (Village) of _____ Was duly passed by
the _____ On _____ And was (approved)
(Not approved) (re-passed after disapproval) by the _____ . Such local
(Elective Chief Executive Officer*)
law was submitted to the people by reason of a (mandatory) (permissive) referendum, and
received the affirmative vote of a majority of the qualified electors voting thereon the (general)
(special) (annual) election held on _____ in accordance with the applicable
provisions of law.

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

I hereby certify that the local law annexed hereto, designated as Local Law No. ____ Of
of the (County) (City) (Town) (Village) of _____ Was duly passed by
the _____ On _____ And was (approved)
(Not approved) (repassed after disapproval) by the _____ . Such local
(Elective Chief Executive Officer*)
law was subject to permissive referendum, and no valid petition requesting such referendum was
filed as of _____ in accordance with the applicable provisions of law.

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

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

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

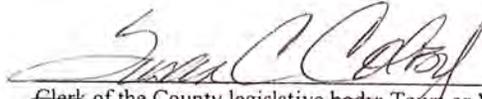
6. **(County local law concerning adoption of Charter).**

I hereby certify that the local law annexed hereto, designated as Local Law No. ____ Of
of the County of _____ State of New York, having been submitted to
the electors at the General Election of November _____, pursuant to subdivisions 5 and 7
of Section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a

majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

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

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



~~Clerk of the County legislative body; Town or Village Clerk or
Officer designated by local legislative body.~~

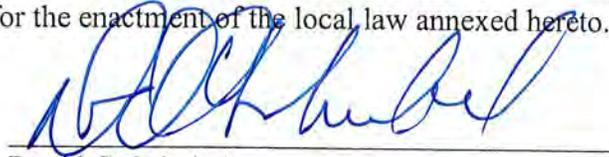
(SEAL)

Dated: June 19, 2007

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

STATE OF NEW YORK:
COUNTY OF ORLEANS: ss

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



David C. Schubel

Attorney for the Town of Clarendon
Title

Local Law Filing

(Please Use this Form for Filing your Local Law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underline to indicate new matter.

County
City
Town of CLARENDON, ORLEANS COUNTY, NEW YORK
Village

Local Law No. 3 of the year 19 97

A local law Regulating the Outside Storage of Unlicensed Vehicles in the Town of Clarendon

Be it enacted by the Town Board of the

County
City
Town of Clarendon, Orleans County, New York as follows:
Village

SECTION 1: PURPOSE

1. The purpose of this local law is to prohibit the placement, storage or abandonment of unlicensed vehicles on private and public property. This prohibition does not apply until the vehicle has been situate on the property for in excess of thirty (30) days, in accordance with this local law.
2. The accumulation, storage or abandonment of unlicensed motor vehicles on private and public property in the Town of Clarendon is hereby declared to be detrimental to the public welfare of the residents of the Town of Clarendon. This is aesthetically unattractive and tends to detract from the enjoyment of the environment by said residents and to depreciate neighborhood property values and is an infringement on the enjoyment of their properties and homes by neighboring residents.

SECTION 2: DEFINITIONS

1. As used in this local law, the following terms shall have the meanings indicated:
 - A. UNLICENSED MOTOR VEHICLE - Any means of transport or conveyance originally designed and manufactured to be moved or propelled by any other than muscular power; shall include but not be limited to automobiles, trucks, motorcycles, motorbikes, buses and the like and which does not have a valid legal license to operate in the State of New York.

- B. PERSON - One (1) or more individuals, a partnership, corporation, association or any other legal entity.

SECTION 3: STORAGE OF UNLICENSED VEHICLES

1. No person shall deposit, place, store or abandon on any real property, or permit, cause or consent to be deposited, placed, stored or abandoned on real property owned or occupied as a tenant by such persons, more than two (2) unlicensed vehicles unless such vehicle is stored in a completely enclosed structure.
2. Such unlicensed vehicles shall be stored or placed behind the front line of the house or residence on the property. In the event either of the unlicensed vehicles is offered for sale, it may be placed in front of the house or residence for a period of no more than ninety (90) days in one calendar year.
3. No unlicensed vehicles may be stored on real property that does not contain at least one residence.

SECTION 4: EXCEPTIONS

1. This law shall not apply to the following:
 - A. Operable farm, garden and yard machinery and associated apparatus used on the premises.
 - B. Storage, placement and accumulation of unlicensed motor vehicles in connection with a commercial operation duly conducted on the premises where such storage, placement and reaccumulation is expressly permitted by the laws of the Town of Clarendon and the State of New York.

SECTION 5: COMPLAINT PROCEDURE

1. If a violation of this Code is believed to exist, a complaint form may be obtained from the Code Enforcement Office. The form must be completed, signed and dated, and submitted to the Code Enforcement Office. A copy of the completed form, signed and dated by the Code Enforcement Officer verifying receipt of the complaint, shall be returned to the individual submitting the complaint. The complaint shall be investigated by the Code Enforcement Officer and appropriate action will be taken. The Code Enforcement Officer shall notify the individual of the action taken, no later than forty-five (45) days following submission of the complaint.

SECTION 6: ENFORCEMENT

1. NOTICE - After the Code Enforcement Officer has determined that a violation of this law has occurred, written Notice shall be sent by both regular and certified mail to the occupant and owner of the property; or to the owner of the vehicles; or to both persons as the case may be, directing the removal of such vehicle within fourteen (14) days after receipt of such Notice. If either of these notices is not returned as undeliverable by the U.S. Postal Service, the party or parties shall be deemed served.

2. PRESUMPTION - There shall be a presumption that a person who has received the Notice prescribed in Section 6 has stored, deposited, placed, abandoned or caused, consented to or permitted the deposit, storage, abandonment or placement of the unlicensed vehicles described in said Notice.

3. RIGHT TO APPEALS -
 - A. The Notice referenced in Section 6-1, shall also advise the owner of the subject property that the owner shall be entitled to a hearing before a Review Board comprised of three (3) members of the Town; (1) a member of the Town Board; (2) a member of the Planning Board; (3) a member of the Zoning Board of Appeals; on any matter the owner wishes to address relating to the existence of unlicensed vehicles and the removal thereof from the subject property. The request for a hearing before the Review Board must be made in writing by the owner of the subject property within seven (7) days of receipt of Notice of Violation. The request must be in writing, directed to the Code Enforcement Officer. If a hearing is not requested, the Town shall be entitled to go upon the property upon the expiration of the respective Notice periods, as the case may be, and utilizing either Town personnel or independent contractors, remove and dispose of the unlicensed vehicles. If a hearing is requested by the owner of the subject property, it shall be held within ten (10) working days of the date on which the request is received by the Town. At the hearing, the owner shall be advised of the amount of money which it is estimated to be expended by the Town for the removal of the unlicensed vehicles and that the owner of the subject property will be responsible for the payment of that amount or, in lieu thereof, that it will be assessed against the subject real property of the owner and collected at the same time and in the same manner as property taxes which are levied against the subject property. At the conclusion of the hearing, the Review Board shall determine whether removal thereof by the Town should proceed at the expiration of the respective notice periods, as the case may be, and the cost thereof shall be collected from the owner of the subject property or charged against the subject property as hereinbefore mentioned.
 - B. The owner shall have five (5) additional days to remove the unlicensed vehicles beyond the original Notice periods, as the case may be, in the event that a hearing is held at the request of the owner of the subject property and the owner receives the written decision of the Review Board. If the owner of the subject property defaults in the removal of unlicensed vehicles, the Town shall be entitled to go upon the subject property and utilizing either Town personnel or independent contractors, remove and dispose of the unlicensed vehicles.
 - C. The determination of the Review Board of the Town shall be subject to review in an Article 78 proceeding.
 - D. The cost of the removal and disposition of the unlicensed vehicles by the Town shall be collected from the owner of the subject property in a civil action therefore by the Town. In addition thereto or in lieu thereof, such costs may be assessed against the subject property of the owner and collected in the same manner and at the same time as Town real property taxes; as described in Section 6-3(A) hereinabove mentioned.

4. THIS LOCAL LAW MAY BE ENFORCED BY THE CODE ENFORCEMENT OFFICER OF THE TOWN OF CLARENDON, OR BY ANY POLICE OFFICER.

SECTION 7: PENALTIES

1. A person who has been found in violation of this local law shall be punishable for a fine not exceeding three-hundred fifty (350) dollars. Each week that the violation shall continue shall constitute a separate offense.
2. In addition to the enforcement in a civil proceeding by fine, this local law may be enforced by instituting a special proceeding as authorized by Article 4 of the Civil Practice Law and Rules to compel compliance with the provisions of this local law or to restrain by injunction any violation thereof, or to obtain any other appropriate relief.
3. A civil penalty of twenty-five (25) dollars per day is hereby imposed for each day's violation of this local law which penalty may be collected in any judgement rendered in a proceeding under Subsection B or in a separate civil action.

SECTION 8: EFFECTIVE DATE

1. This local law shall take effect upon filing with the state.

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

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

I hereby certify that the local law annexed hereto, designated as Local Law No. 3 of 1997 of the ~~County~~(City)(Town)(Village) of Clarendon was duly passed by the Clarendon Town Board on June 10, 1997, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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

I hereby certify that the local law annexed hereto, designated as Local Law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 19____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____, 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as Local Law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 19____, and was (approved)(not approved)(repassed after disapproval) by the _____ Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

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

I hereby certify that the local law annexed hereto, designated as Local Law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 19____, and was (approved)(not approved)(repassed after disapproval) by the _____ Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____, 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

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

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

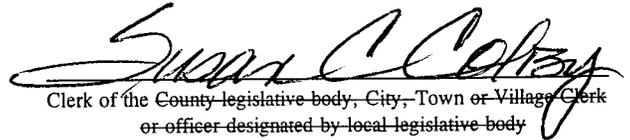
I hereby certify that the local law annexed hereto, designated as Local Law No. _____ of 19____ of the City of _____ having been submitted to referendum pursuant to the provisions of Section 36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors such city voting thereon at the (special)(general) election held on _____ 19____, became operative.

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

I hereby certify that the local law annexed hereto, designated as Local Law No. _____ of 19____ of the County of _____, State of New York, having been submitted to the electors at the General Election of November ____, 19____, pursuant to subdivisions 5 and 7 of Section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

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

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph ____1____, above.


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

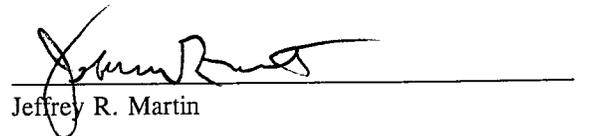
(SEAL)

Dated: _____ June 10, 1997 _____

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

STATE OF NEW YORK:
COUNTY OF ORLEANS: ss.

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


Jeffrey R. Martin

Heath & Martin, Attorneys for the Town of Clarendon
Title

County
City
Town of Clarendon
Village
Date: June 10, 1997

Local Law Filing

New York State Department of State
99 Washington Avenue, Albany, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City of Clarendon, New York
Town
Village

Local Law No. 5 of the year 2020.

A local law Adding Chapter 169 to the Clarendon Town Code
Concerning Vacant Building Registry
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

County
City of Clarendon, Orleans County, New York as follows:
Town
Village

**A Local Law Adding Chapter 169 to the Clarendon Town Code
Concerning Vacant Building Registry**

Be it enacted by the Clarendon Town Board, County of Orleans, and State of New York (hereinafter referred to as the Board), as follows:

SECTION 1. - TITLE (§169-1)

This Local law shall be referred to as "Local Law No. 5 of 2020 adding Chapter 169 to the Clarendon Town Code concerning Vacant Building Registry".

SECTION 2. AUTHORIZATION (§169-2)

This Local Law is adopted pursuant to the legislative authority in Municipal Home Rule Law §10 and Town Law §261-§264.

SECTION 3. PURPOSE AND INTENT (§169-3)

The Town of Clarendon (sometimes hereinafter referred to as Clarendon) finds that vacant buildings are unsightly, unsafe and have a negative effect on the community. Unfortunately, many buildings once vacant remain that way for years. The purpose of this Chapter is to establish rules for identifying and registering vacant buildings, to set forth the

various responsibilities of vacant building title holders and to enhance the rehabilitation of said vacant buildings.

SECTION 4. DEFINITIONS (§169-4)

As used in this Chapter, the following terms shall have the meanings indicated herein below:

1. EMERGENCY SITUATION: The condition of a building, structure, or any part thereof that is an imminent, immediate and/or substantial danger to the health, safety or welfare of occupants, emergency responders and/or the general public, said conditions to include, but not be limited to, fire hazards, structural deficiencies, falling or dilapidated buildings, lack of sanitary conditions and/or loss of significant water, heat and/or ventilation.

2. ENFORCEMENT OFFICER: The Clarendon Town Ordinance Inspection Officer or other designated individual(s) from the Clarendon Town Building Department.

3. OWNER: The person or entity identified as the record title holder in the Orleans County Clerk's Office and/or the Clarendon Town Assessor's Office, the person or entity shown to be the owner on a vacant building registration form, a mortgagee in possession, a mortgagor of record and/or in possession, an assignee of rents, a receiver, an executor, an administrator, a trustee, a lessee, or any other person or entity in control or possession of the subject premises, such person or entity having joint and several obligation for compliance with the provisions of this Chapter.

4. SECURED BY OTHER THAN NORMAL MEANS: A building, structure or property secured by means other than those used in the designed and approved plans for same.

5. UNOCCUPIED: Any building, structure (or portion thereof) lacking the habitual presence of a human being having legal authority to occupy or possess said building or structure, including a building or structure ordered vacated by the Clarendon Town Building Department. The Clarendon Ordinance Inspection Officer may consider, among other things, the following facts and circumstances in making a determination that a building or structure is unoccupied:

A) If lawful residential or business activity has ceased;
B) Comparison of the percentage of the overall square footage of occupied to unoccupied space or comparison of the overall number of occupied to unoccupied units;

C) If the building or structure is substantially devoid of contents and/or the minimal value of fixtures and/or personal property in said building or structure;

D) If the building or structure lacks utility services;

E) If the building or structure is subject to a foreclosure action;

F) If the building or structure is subject to a bankruptcy action;

G) The duration of the vacancy;

H) The presence or reoccurrence of code violations.

6. UNSECURED: A building or structure or portion thereof, open to entry by any unauthorized person without the use of tools or ladders.

7. VACANT BUILDING: A building or structure, or portion thereof, which any one or more of the following apply:

- A) Unoccupied and/or unsecured;
- B) Unoccupied and/or unsecured by other than normal means;
- C) Unoccupied and unsafe as determined by the Clarendon Ordinance

Inspection Officer;

D) Unoccupied subject to a prior Court Order(s) and/or an Order (s) from the Clarendon Ordinance Inspection Officer;

E) Illegally occupied;

F) Unoccupied for a period of time of over ninety (90) days, except where an owner maintains residency in another location during winter months or otherwise is absent for an extended period of time due to travel, illness or other exigent circumstances.

SECTION 5. VACANT BUILDING REGISTRATION (§169-5)

1. The owner of a vacant building or structure will register with the Clarendon Building Department no later than thirty (30) days after any building or structure becomes a "vacant building" as defined herein and/or not later than thirty (30) days after being notified by a the Clarendon Ordinance Inspection Officer of the requirement to do so. The Clarendon Ordinance Inspection Officer may identify vacant buildings or structures through any routine inspection process or through notification by residents, neighborhood associations and other community groups that same may be eligible for inclusion on the registry. Notice will be deemed received by the owner, property manager, or any occupant three (3) days after personal delivery or five (5) days by first class mail. Clarendon may also post notices on Clarendon's website to provide additional notice to the public. However, Clarendon's failure to post such violations on Clarendon's website will not constitute a defense to any enforcement proceeding or collection of fines.

2. The registration will be submitted on forms provided by the Clarendon Ordinance Inspection Officer and will include the following information:

A) A description of the premises, including square footage, number of stories, age of the building or structure, and most recent use of the building or structure;

B) The names, addresses and telephone numbers of all owners. If the owner is a corporation, limited liability company or partnership, the address for each director, manager and/or partner. The address of the owners must include a street address and mailing address, if different;

C) If the owner does not reside in the County of Orleans or any adjoining county, the name and address of a property manager who does reside in Orleans Country or any adjoining county. The address must include a street address and mailing address, if different;

D) The names and address of all known lienholders and anyone with an ownership interest in the building or structure. The address must include a street address and mailing address, if different;

E) A name, address and telephone number of a responsible natural person (not a corporation, partnership or limited liability company) who can be reached at all times during business and nonbusiness hours. The address must include a street address and mailing address, if different;

F) A vacant building plan or structure plan as described in Subsection 3 below.

3. The owner will submit a vacant building or structure plan subject to the approval of the Clarendon Ordinance Inspection Officer. The plan must contain information from one of the following:

A) If the building or structure is to be demolished, demolition plans indicating the proposed time frame for demolition;

B) If the building or structure is to remain vacant, a plan for the securing of the building or structure in accordance with standards provided below, with the procedure to be used to maintain the property and a statement of the reason(s) why the building or structure will be left vacant;

C) If the building or structure is to be returned to appropriate occupancy or use, rehabilitation plans for the building or structure must be submitted to the Clarendon Ordinance Inspection Officer. The time frame for rehabilitation plans will not exceed three hundred sixty five (365) days from the date of submission and will include progress benchmarks at least every four (4) months, unless the Clarendon Ordinance Inspection Officer grants an extension for good cause shown upon receipt of a written statement from the owner detailing the reasons for the extension. Any repairs, improvements or alterations to the property must comply with applicable zoning, housing, historic preservation and/or building codes. The building or structure must be secured in accordance with this Chapter. Any building or structure that is vacant longer than three hundred sixty five (365) days will lose its current Certificate of Occupancy and must have a new Certificate of Occupancy issued before the building or structure can be occupied.

4. The owner will comply with all applicable laws and codes. The owner will notify the Clarendon Ordinance Inspection Officer of any change in information supplied as part of the vacant building or structure registration within thirty (30) days of said change. If the plan or timetable for the vacant building or structure is revised, the said revision must be in writing and must meet the approval of the Clarendon Ordinance Inspection Officer.

5. The owner will keep the building or structure secured, safe and properly maintained as provided by both the New York State Property Maintenance Code and this Chapter.

6. Failure of the owner to maintain the building, structure and/or premises as required herein will constitute the basis for Clarendon to remediate the building, structure or premises with the cost of same to be incurred by said owner, and/or all rehabilitation plans and/or fees and penalties as provided herein.

7. The owner will notify the Clarendon Ordinance Inspection Officer of any transfer of ownership within fifteen (15) days of such a transfer. The new owner will comply with the approved plan and timetable submitted by the previous owner until any proposed changes are submitted and approved by the Clarendon Ordinance Inspection Officer.

8. Vacant building or structure registration fees.

A) The owner of a vacant building or structure will pay a registration fee as determined by the fee schedule adopted by Clarendon at any time during the course of a fiscal year. The registration fee is due and payable upon registration no later than thirty (30) days after any building or structure becomes vacant as defined above, or no later than thirty (30) days after being notified by the Clarendon Ordinance Inspection Officer of the requirement to register;

B) If the building or structure is to remain vacant, then the owner will also pay an annual vacant building fee, amount to be determined by the fee schedule adopted by

Clarendon. The fee schedule shall provide for differing amounts dependent upon the number of years that the building or structure is vacant;

C) If the building or structure is to be returned to appropriate occupancy or use, rehabilitation plans for the building or structure must be submitted to the Clarendon Ordinance Inspection Officer. The time frame for rehabilitation plans will not exceed three hundred sixty five (365) days from the date of submission and will include progress benchmarks at least every four (4) months, unless the Clarendon Ordinance Inspection Officer grants an extension for good cause shown upon receipt of a written statement from the owner detailing the reasons for the extension. Any repairs, improvements or alterations to the property must comply with applicable zoning, housing, historic preservation and/or building codes. The building or structure must be secured in accordance with this Chapter. Any building or structure that is vacant longer than three hundred sixty five (365) days will lose its current Certificate of Occupancy and must have a new Certificate of Occupancy issued before the building or structure can be occupied;

D) If the owner of a vacant building or structure fails to register and pay the fees in a timely manner said owner will be subject to penalty set forth in the fee schedule adopted by Clarendon;

E) All delinquent fees will be paid by the owner prior to any transfer ownership interest in any vacant building or structure. The current owner will give any new written notice that the building or structure in question is a vacant building or structure under this Chapter;

F) Fees are to be delivered, by mail or in person, to the Clarendon Town Clerk's Office located at 16385 Church Street in Clarendon, NY or mailed to PO Box 145, Clarendon, NY 14429. A late charge of two percent (2%) per month, or any part thereof, will be assessed on any invoice which is unpaid after thirty (30) days from the date of either payment demand or invoice. A processing fee will be charged for each check returned by the bank. A replacement payment must be made in cash, money order, bank check or certified check and must include the processing fee and any applicable late charges. All invoices and/or any additional fees remaining unpaid will be added to the property owner's tax bill including all necessary additional fees.

9. The Clarendon Ordinance Inspection Officer will include in the property file written statements from community organizations, interested parties and/or citizens regarding the history, problems, status or blighting influence of a vacant building.

SECTION 6. MAINTENANCE (§169-6)

1. The owner of a vacant building or structure will take such steps and perform such acts as may be required to ensure that same remains safe, secure and does not present a hazard to any adjoining property. The owner will be responsible for maintaining the building and structure so it does not become an unoccupied hazard. In any building, structure or floor area that is vacant, or about to become vacant, there will be at least one (1) access which meets the approval of the Clarendon Ordinance Inspection Officer.

2. The owner will protect and maintain the exterior of the building or structure as follows:

A) All exterior walls, including foundations, will be maintained so that water does not penetrate into basements, cellars or other interior areas. All exterior walls and foundations must be free of holes and crevices;

B) All exterior doors, windows, skylights and similar openings will be maintained weather-tight;

C) All exterior stairs, porches, entrance platforms, fire escapes and railings thereon shall be maintained in good repair and in safe condition;

D) Roofs shall be maintained in a weather-tight condition;

E) All exterior surfaces shall be maintained in good condition. Surfaces not inherently resistant to deterioration shall be treated with a protective coating of paint or other suitable preservative;

F) All coverings for windows, doors and enclosures shall be properly fitted and of such material surface so that they are not unsightly and/or will not detract from the general appearance of the building, structure or neighborhood;

G) All coverings for broken doors and cracked or broken windows may consist of replacement glass, Plexiglas, boards, plywood or similar materials finished and maintained in a manner recommended and approved by the Clarendon Ordinance Inspection Officer. The materials will be of such design and color so as to blend in with the finish of the building or structure;

H) All windows that are not cracked or broken may be covered with interior blinds, curtains, shades or decorative paper;

I) Building or structure will be kept free of insects, vermin and/or rodent harborage and will be treated;

J) All excavations, swimming pools, or other nuisances must be filled in or properly closed.

3. In addition to the standards prescribed hereinabove, vacant commercial and retail buildings or structures shall comply with the following standards:

A) All damaged first floor windows will be replaced by glass, Plexiglas, or an approved material;

B) All exterior signs, awnings and lighting systems, if not removed, shall be maintained in a non-deteriorated and safe condition.

4. The owner will protect and maintain the exterior of the building or structure as follows:

A) The structure will be maintained to resist and prevent deterioration;

B) Unheated attics, spaces below flat roofs, and crawl spaces will be ventilated to minimize deterioration;

C) Ceiling, walls, floors and stairways will be maintained in a safe and sound condition.

5. The owner will maintain the premises as follows:

A) The owner will not permit garbage and refuse to accumulate;

B) Same will be maintained free of insects, vermin and rodent harborage and infestation;

C) Refrigerators and similar equipment with locking mechanisms will not be discarded, abandoned or stored without first removing the locking devices or the hinges of all doors to same;

D) No unregistered vehicles will be stored on the premises;

E) Chimneys, smokestacks, flues, gas vents, smoke pipes and connectors will be maintained structurally safe and smoke tight;

F) If the building or structure is to be demolished or remain vacant, then, within fifteen (15) days of registering the building as a vacant building, all fuel gas, water and utilities must be disconnected at the mains and water pipes drained. If the building or structure is going to be rehabilitated, then same must be heated to avoid freezing pipes, fuel gas pipe systems must be maintained gastight, in a safe and operative condition, and water pipes must be maintained to avoid leaks and/or breakage;

G) Fuel tanks will be maintained so as not to be a hazard or will be discontinued in a manner consistent with Chapter C of the New York State Uniform Fire Prevention and Building Code (NYCRR);

H) The domestic water supply system of any building or structure will be connected to an approved source, will not be subject to contamination and will not be connected to unsafe water supplies, or the system will be disconnected at the main and completely drained;

I) Storm-water drainage systems will be maintained so as to function properly and kept free from obstructions, leaks and defects. Sewage systems will be similarly maintained or will be sealed so as to prevent accumulations of sewage gases in buildings or structures;

J) Electrical fixtures, devices, wiring and systems will be maintained in safe working condition in a manner which will avoid a potential ignition or shock, or service will be disconnected at the supply;

K) Elevators, dumbwaiters and escalators will be maintained or taken out of service;

L) The owner will provide for snow removal;

M) The owner will maintain yards and vacant lots trimmed and mowed, with the height of grass and weeds being no more than ten (10) inches and clean and free from physical hazards, rodents harborage and infestation.

6. Whenever the owner of a vacant building or structure fails to comply with a notice from the Clarendon Ordinance Inspection Officer to take steps and perform acts as are required of him or her to ensure that a building or structure and its adjoining yards remain safe and secure and do not present a hazard to adjoining property in violation of this Chapter, Clarendon may enter onto the building or structure and take steps and perform acts to render the building or structure and its adjoining yards safe, secure and free from hazards to adjoining property and the public. These acts will include but not limited to removal of dangerous conditions, properly replacing or boarding up windows and doors, shutting off utilities, capping plumbing to prevent leakage of water or sewer gas, or removing flammable or otherwise hazardous material and debris. All expenses incurred above will be the responsibility of the owner to pay (or reimburse Clarendon) in a timely fashion.

SECTION 7. EXEMPTIONS (§169-7)

1. A building or structure which has suffered fire damage or damage caused by extreme weather conditions will be exempt from the registration requirements for a period of sixty (60) days after the date of said fire or weather event if the property owner submits a request for exemption in writing to the Clarendon Ordinance Inspection Officer. This request will include the following supplied by the owner:

A) A description of the building or structure;

B) The reason for exemption;

C) The name and street address of the owner and mailing address, if different;

D) A statement of intent to either repair and/or reoccupy same in an expedient manner or any intent to demolish same.

SECTION 8. INSPECTIONS (§169-8)

By registering a vacant building or structure, an owner is deemed to have consented to the Clarendon Ordinance Inspection Officer inspecting the premises for purposes of enforcing and assuring compliance with the provisions of this Chapter. Upon the request of the Clarendon Ordinance Inspection Officer an owner will provide access to all interior portions of a vacant building in order to permit the inspection. Nothing contained herein will diminish the owner's right to insist upon the procurement of a search warrant from a Court of competent jurisdiction by the Clarendon Ordinance Inspection Officer, or his or her designee, in order to enable such inspection. The Clarendon Ordinance Inspection Officer will be required to obtain a search warrant whenever an owner refuses to permit a warrantless inspection of the premises after having been advised of his or her constitutional right to refuse entry without same. In the case of an emergency, this Section will not apply.

SECTION 9. PENALTIES FOR OFFENSES (§169-9)

1. Any owner violating any provision of this Chapter, or providing false information to the Clarendon Ordinance Inspection Officer, will be subject to the following fines:

A) One Thousand Dollars (\$1,000.00) or imprisonment not exceeding six (6) months, or both such fine and imprisonment;

B) Each day of violation will be deemed to constitute a separate offense without the necessity of the issuance of a new ticket or accusatory instrument;

C) Fines levied will constitute civil forfeitures to Clarendon.

SECTION 10. SEVERABILITY AND/OR VALIDITY (§169-10)

If any clause, sentence, paragraph, subdivision, section or part of this Local Law, or the application thereof to any person, individual, firm or corporation, or circumstance, shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Local law, or in its application to the person, individual, firm or corporation, or circumstance, directly involved in the controversy in which said order or judgment shall be rendered.

SECTION 11. EFFECTIVE DATE (§169-11)

This Local Law shall take effect upon the date it is filed in the Office of the New York State Secretary of State in accordance with the Municipal Home Rule Law §27.

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

10140. (Final adoption by local legislative body only).

I hereby certify that the local law annexed hereto, designated as Local Law No. 5 of 2020 of the ~~(County)~~ ~~(City)~~ (Town) ~~(Village)~~ of Clarendon was duly passed by the Clarendon Town Board On October 20, 2020, in accordance with the applicable provisions of law.

10141. (Passage by local legislative body with approval, no disapproval or re-passage after disapproval by the Elective Chief Executive Officer *).

I hereby certify that the local law annexed hereto, designated as Local Law No. _____ Of the (County) (City) (Town) (Village) of _____ Was duly passed by the _____ On _____ And was (approved) (Not approved) (repassed after disapproval) by the _____ And was (Elective Chief Executive Officer *) deemed duly adopted on _____ In accordance with the applicable provisions of law.

10142. (Final adoption by referendum).

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

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

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

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

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

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

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

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

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

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



Clerk of the County legislative body; Town or Village Clerk or
Officer designated by local legislative body.

(SEAL)

Dated: 10-26-2020

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~
~~City~~ of Clarendon, New York
~~Town~~
~~Village~~

Local Law No. 7 of the year 2020.

A local law Amending Local Law No. 3 of the Year 1988
Concerning Restricting Use of Town Highways by Commercial Vehicles with a Gross
Vehicle Weight in Excess of Six Tons.
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~County~~
~~City~~ of Clarendon, Orleans County, New York as follows:
~~Town~~
~~Village~~

A Local Law Amending Local Law No. 3 of the Year 1988
Restricting Use of Town Highways by Commercial Vehicles with a
Gross Vehicle Weight in Excess of Six Tons

Section 1. Purpose

The purpose of this Local Law shall be to amend Town of Clarendon Local Law No. 3 of 1988, entitled a Local Law Restricting the Use of Town Highways by Commercial Vehicles with a Gross Vehicle Weight in Excess of Six Tons, in order to grant restriction to an additional town highway, pursuant to the provisions of Section 1660 of the Vehicle and Traffic Law of the State of New York.

Section 2. Title

This Local Law may be referred to as A Local Law Amending Town of Clarendon Local Law No. 3 of 1988, Restricting Use of Town Highways by commercial Vehicles with a Gross Vehicle Weight in Excess of Six Tons.

Section 3. Text

The Text of this Local Law shall amend Town of Clarendon Local Law No. 3 of the Year 1988 to read as follows:

SECTION 1: STATUTORY AUTHORITY:

This Local Law is adopted pursuant to the provisions of Section 1660 of the Vehicle and Traffic Law of the State of New York.

SECTION 2: FINDINGS BY TOWN BOARD:

The Town Board, after consultation with the town Superintendent of Highways, hereby determines that the use of various town highways by tractor trailer trucks, dump trucks, garbage trucks and other vehicles of a commercial nature with gross vehicle weights in excess of six ton [twelve thousand (12,000 pounds)] has resulted in severe damage to the pavement and underlying base of such highways, including cracking, crumbling, settling and sinking of the highway surface. The Town Board further determines that such highways were not originally designed or constructed to accommodate use by commercial vehicles and that continued use by such vehicles will likely result in further destruction and deterioration of the highways.

SECTION 3: DEFINITIONS:

For the purposes of this Local Law, 'commercial vehicle' shall include any motor vehicle, including but not limited to automobiles, trucks, buses and the like, utilized in conducting business for a profit. 'Gross vehicle weight' shall mean the combined weight of the vehicle and its load.

SECTION 4: RESTRICTIONS IMPOSED:

Effective immediately, the following described highways within the geographical limits of the Town of Clarendon are permanently closed to commercial vehicles with a gross vehicle weight in excess of six (6) ton [twelve thousand (12,000) pounds]:

1. LAKE ROAD between NYS Route 237 and the division line between the Towns of Clarendon and Murray;
2. POWERLINE ROAD between NYS Route 31A and the division line between the Towns of Clarendon and Murray;
3. HULBERTON ROAD between NYS Route 31A and the division line between the Towns of Clarendon and Murray;
4. BENNETTS CORNERS ROAD between Jackson Toad and the division line between the Towns of Clarendon and Murray; and
5. BROWN SCHOOLHOUSE ROAD between NYS Route 237 and Upper Holley Road.

SECTION 5: EXCEPTIONS:

This Local Law shall not be construed to prevent the delivery or pick-up of merchandise or other property by commercial vehicles along the town highways from which such vehicles would otherwise be excluded by this Local Law.

SECTION 6: POSTING OF NOTICE:

The Town Superintendent of Highways shall post notices in conspicuous places along those town highways for which weight restrictions have been imposed by this Local Law in order to apprise the public of such weight restrictions.

SECTION 7: VIOLATIONS:

Any violation of the provisions of this Local Law shall subject the violator to a fine of not more than two hundred-fifty dollars (\$250) or imprisonment for a period not to exceed fifteen (15) days, or both such fine and imprisonment.

SECTION 8: SEPARABILITY:

Each separate provision of this Local Law shall be deemed independent of all other provisions hereof, and if any such provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

SECTION 9: EFFECTIVE DATE:

The within amended Local Law shall be effective immediately upon proper filing with the Office of the Secretary of State.

ARTICLE II
WORD TERMS AND DEFINITIONS

SECTION

200 **Word Terms**

201 **Word Definitions**

SECTION 200 - WORD TERMS

- A. For the purposes of this Ordinance, certain terms or words used herein shall be interpreted or defined as follows:
1. The word (person) includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
 2. Words used in the present tense include the future tense. The singular includes the plural.
 3. The words (shall) and (must) are mandatory, not discretionary.
 4. The words (used) or (occupied) as applied to land and/or buildings shall be construed to include the words (intended, designed, or arranged to be used or occupied).
 5. The word (lot) includes the words (plot) or (parcel).

SECTION 201 - WORD DEFINITIONS

- A. For the purposes of this Ordinance, the following word definitions shall apply. Definitions are listed in alphabetical order.
1. **ACCESS** - A way or means of approach to provide physical entrance to a property.
 2. **ACCESSORY BUILDING OR STRUCTURE** - A subordinate building or structure on the same lot as the principle building or structure which is operated and maintained primarily for the benefit or convenience of the occupants of the principle building or structure. *(Rev. 10/21/2014)*
 3. **ACCESSORY USE** - A subordinate use on the same lot as the principle use.
 4. **ADULT BOOK STORE, ADULT VIDEO STORE AND ADULT NOVELTY STORE** - A public or private establishment having a substantial or significant portion of its stock-in-trade books, magazines, marital aids or novelties, films for sale/rent or viewing on premises by use of motion picture devices or any other coin-operated means, and other periodicals or materials which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specific sexual activities or specific anatomical areas; or an establishment with a segment or section devoted to the sale, rental or display of such material.
 5. **ADULT ENTERTAINMENT CABARET** - A public or private establishment which is licensed to serve food and/or alcoholic and/or nonalcoholic beverages, and which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers.

ARTICLE II WORD TERMS AND DEFINITIONS

6. ADULT MINI-MOTION PICTURE THEATER - A public or private establishment in an enclosed building with a capacity of less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas for observation by patrons therein.
7. ADULT MOTION PICTURE THEATER - A public or private establishment in an enclosed building with a capacity of fifty (50) or more persons used regularly and routinely for presenting material having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas for observation by patrons therein.
8. ADULT BUSINESS - For the purposes of this Ordinance, this term shall include, but shall not be limited to, Adult Bookstore, Adult Video Store, Adult Novelty Store, Adult Entertainment Cabaret, Adult Mini-Motion Picture Theater, Adult Motion Picture Theater, and other similar sexually-oriented public or private establishments.
9. AGRICULTURE - The use of land for farming purposes including tilling of the soil, dairying, pasture, arboriculture, horticulture, floriculture, viticulture, forestry, animal and poultry husbandry, and the necessary accessory uses for packing and storing of produce, provided that the operation of such accessory uses shall be secondary to that of normal farming activities.
10. AGRI-BUSINESS - A business engaged in performing agriculture, animal husbandry, or horticultural services on a fee or contract basis, including corn shelling, hay baling and thrashing, sorting, grading and packing fruits and vegetables for the grower, agricultural produce, milling and processing, horticultural services, crop spraying, fruit picking, grain cleaning, land grading, harvesting and plowing.
11. AGRICULTURAL STRUCTURE - For the purposes of this Ordinance, this term shall mean any building or structure used or intended to be used to house customary farm animals or uses associated with customary farm operations. This term shall not include structures housing domestic pets or structures associated with riding stables, arenas or tracks.
12. AIR SUPPORTED STRUCTURE – A structure wherein the shape of the structure is attained by air pressure, and occupants of the structure are within the elevated pressure area. *(Rev. 6/19/2007)*
13. AIRPORT - Any area of land designed and set aside for the landing and take-off of aircraft, including all necessary facilities for the housing and maintenance of aircraft.
14. ALTERATION - Any change, addition, rearrangement or modification in construction or occupancy of an existing building or structure.
15. ALTERNATIVE ENERGY SYSTEM (SOLAR POWERED) - PRIVATE - Structures, equipment, devices or construction techniques that use solar energy to produce electricity, heat, light, cooling, or other forms of energy primarily for use on site. Solar powered systems may be attached to or separate from the principal structure. This term shall include solar panels, solar collectors, solar heat pumps, and other similar devices. *(Rev 11/16/2010; Rev 11/20/2012)*

ARTICLE II WORD TERMS AND DEFINITIONS

16. ALTERNATIVE ENERGY SYSTEM (SOLAR POWERED) - UTILITY SCALE - A commercial electricity-generating facility (PV or CSP) whose primary purpose is to produce electrical energy for off-site usage. This consists of one or more solar arrays and other accessory structures and buildings including substations, electric infrastructure, generators, transmission lines, and other additional structures and/or facilities. Also referred to as a large scale industrial Solar Energy Facility. *(New 2020)*
17. ALTERNATIVE ENERGY SYSTEM (WIND ENERGY CONVERSION SYSTEM, WECS) – Private - Structures, equipment, devices or construction techniques that use naturally-occurring wind to produce electricity, heat, light, cooling, or other forms of energy primarily for use on site. Wind powered systems shall not be attached to principal or accessory structures. This term shall include windmills, turbines, and other similar devices. *(rev 06/19/2007; rev 11/16/2010; Rev 11/20/2012)*
18. ANIMAL HOSPITAL - A business which provides medical services and care to sick or disabled animals and houses them on the premises overnight or for extended periods of time for treatment.
19. APPLICANT – The owner of record of the property or his legally appointed representative.
20. APPURTENANT ACTIVITIES - All on-site operations, except excavation, involved in the treatment, processing or further fabrication of soil, sand, gravel, rock, consolidated or unconsolidated materials, or natural deposits, including washing, sedimentation ponds, grading, sorting, grinding, crushing, batching plants and aggregate.
21. BENCHMARK - A surveyors mark on a fixed and enduring object (as on an outcropping of rock or a concrete post set in the ground) indicating a particular elevation and used as a point of reference from which measurements of any sort may be made.
22. BERM - Earth materials that are placed so as to create an elevated area on any parcel of land for the purpose of providing a visual or sound barrier.
23. BLAST AREA - The area in which explosives, loading and blasting operations are being conducted.
24. BLASTER - The person or persons authorized and licensed by the State of New York to use explosives for blasting purposes.
25. BLASTING OPERATIONS - Any activity or conduct carried on or conducted within the Town of Clarendon in which explosives are used.
26. BUFFER – A physical separation established to protect one type of land use from another land use that is incompatible. A buffer shall also serve to reduce the negative effects of noise, glare, dust, unsightliness and other factors. *(Rev. 6/19/2007)*
27. BUILDING - Any structure or accessory structure whether permanently affixed to the land or not, with walls and a roof that is intended for the shelter, housing or enclosure of persons, property and/or animals.

ARTICLE II
WORD TERMS AND DEFINITIONS

28. BUILDING CODE OF NEW YORK STATE - For the purposes of this Ordinance, this term shall denote the International Building Code as adopted by the State of New York and the Town of Clarendon.
29. BUILDING HEIGHT - A vertical distance measured from the main level of the ground surrounding the building to the highest point of the roof, but not including chimneys, spires, mechanical penthouse, towers, tanks and similar projections.
30. BUSINESS, RETAIL - A commercial enterprise which primarily sells products to the general public, but also provides occasional service incidental to the products sold.
31. BUSINESS, SERVICE - A commercial enterprise which primarily provides service(s) to the general public, rather than selling products.
32. CAMPGROUND - A parcel of land intended to be used, let or rented for occupancy by campers, travel trailers, tents, moveable or temporary dwellings, rooms, or sleeping quarters of any kind.
33. CANOPY – A structure, enclosure or shelter constructed of fabric or pliable materials supported by any manner, except by air or the contents it protects, and is open without sidewalls or drops on 75 percent or more of the perimeter. *(Rev. 6/19/2007)*
34. CARPORT - A roofed structure, without enclosing walls, used for the storage of one or more motor vehicles.
35. CERTIFICATE - A written authorization issued by the Code Enforcement Officer which certifies that construction has been completed, the building or structure is in compliance with all requirements of the International Building Code, and that no violations of the applicable code provisions have been observed during the course of construction.
36. CERTIFICATE OF COMPLIANCE - A written authorization that must be issued by the Code Enforcement Officer before use of a non-habitable structure can occur.
37. CERTIFICATE OF NON-CONFORMANCE - A written certificate or document issued by the Code Enforcement Officer detailing conditions that exist prior to adoption of any Town of Clarendon ordinance, regulation or law affecting such properties or uses.
38. CERTIFICATE OF OCCUPANCY - A written authorization that must be issued by the Code Enforcement Officer before use and occupancy of a habitable structure can occur.
39. CHURCH – SEE PLACE OF WORSHIP. *(Rev. 10/21/2014)*
40. CLUB - An organization of persons for social, educational or recreational purposes but not primarily for profit or to render a service that is primarily carried on as a business.
41. CODE ENFORCEMENT OFFICER - The administrative official charged with enforcement of this Ordinance, the International Building Code, and all other pertinent local laws and regulations.

ARTICLE II
WORD TERMS AND DEFINITIONS

42. COLD STORAGE FACILITY - A building or group of buildings used for the storage of food products in a refrigerated or frozen state and sold off premises.
43. COMMUNICATION STRUCTURE - Any structure, other than an amateur radio support structure, which has a primary purpose of housing or supporting any portion of a communication system.
44. CONDOMINIUM - An ownership arrangement in which the interior of a housing unit is individually owned, while the exterior, including land and facilities (common elements), is owned in common by all homeowners in the development. The owner has title to the interior individual dwelling and a shared interest in the common elements.
45. CONSOLIDATED MATERIALS - This term shall include, but shall not be limited to, minerals such as limestone, dolostone, sandstone, marble, slate, flagstone, curbing, dimension stone, riprap, abrasives, gypsum, iron, talc, titanium or other metallic or non-metallic minerals.
46. CONSTRUCTION EQUIPMENT – This term shall include, but is not limited to, dozers, excavators, loaders, graders, ditchers, trenchers, compactors, rollers, skid steer loaders forklifts or backhoes. *(rev 11/16/2010)*
47. COSMETIC PRODUCTION FACILITY - A building or group of buildings used in the making of cosmetic products to be sold off premises.
48. COTTAGE INDUSTRY - Any occupation, profession, business, industry, activity or use performed in a residential dwelling unit or accessory building, which is clearly an incidental and secondary use of the dwelling unit as a residence, and whose labor force consists primarily of a family unit working at home with their own equipment.
49. DAY CARE - Care, supervision and guidance provided for children or adults/elderly persons away from their homes or places of residence for less than 24 hours per day. For the purposes of this Ordinance, day care facilities for children shall comply with all requirements of New York State Social Services Law and shall be appropriately regulated as either a Child Day Care Center or In-Home Day Care Center.
50. DAY CARE CENTER (ADULT) - Any facility where day care is provided for three or more adults/elderly persons. Adult Day Care Centers shall be subject to all applicable New York State licensing requirements and any other applicable local, state and federal rules and regulations.
51. DAY CARE CENTER (CHILD) - This term shall mean (a) Any facility, other than an In-Home Day Care Center, where day care is provided for three or more children; or (b) Any facility, including an occupied residence, where day care is provided for seven or more children. Child Day Care Centers shall be subject to the licensing requirements set forth in New York State Social Services Law (Section 390) and any other applicable local, state and federal rules and regulations.
52. DAY CARE CENTER (IN-HOME) - An occupied residence in which the owner or a member of the owner's immediate family provides care for six or fewer children other than his/her own children or the children of relatives within the second degree.

ARTICLE II
WORD TERMS AND DEFINITIONS

53. DOMESTIC HOUSEHOLD PET - An animal that is customarily kept for personal use and enjoyment within a dwelling unit. This term includes, but shall not be limited to, dogs, cats, birds, fish, rodents, amphibians and reptiles.
54. DEVELOPMENT - Any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations, excluding normal maintenance to farm roads.
55. DRIVEWAY - A pathway or road intended for the passage of personal motor vehicles between a garage, house, or turn-a-round area and the street.
56. DWELLING - A building or any portion thereof, including a mobile/manufactured home, which is used or intended to be used as a residence or sleeping place for one or more persons.
57. DWELLING (MULTI-FAMILY) - A building containing three (3) or more dwelling units, with the number of families in residence not exceeding the number of dwelling units provided. This term shall also include those uses commonly referred to as apartments, condominiums and townhouses.
58. DWELLING (ONE FAMILY) - A building containing one (1) dwelling unit which is designed for occupancy by one (1) family.
59. DWELLING (TWO FAMILY) - A building containing two (2) dwelling units which is designed for occupancy by not more than two (2) families.
60. DWELLING UNIT - One or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one family.
61. EXCAVATION - A parcel of land or part thereof used for the extraction of stone, sand, gravel, soil, topsoil, rock or other natural deposits on an industrial or commercial basis by stripping, grading, digging or other means but not including the process of grading a lot preparatory to the construction of building for which an approved building permit has been issued.
62. EXCAVATION, ACTIVE AREA - Only that area within the permit term limits imposed by the New York State Department of Environmental Conservation that is required for mining during such term.
63. EXCAVATION OPERATION - Any excavation which is conducted for commercial or industrial purposes.
64. EXCAVATION (REGULATED) - An excavation which is subject to a permit under the New York State Mined Land Reclamation Act (Subchapter D of Title 27, Article 23 of Environmental Conservation Law) and/or under the Town of Clarendon special permit requirements.
65. EXCAVATION SITE - A parcel of land used for the purpose of extracting stone, sand, gravel or topsoil for sale as an industrial or commercial operation.

ARTICLE II WORD TERMS AND DEFINITIONS

66. EXPLOSIVES - This term shall include black powder, guncotton, giant powder, dynamite, nitroglycerin, fulminate of mercury or any other substance, compound, mixture or article having properties of such a character that alone or in combination or contiguity with other substances or compounds may decompose suddenly and generate sufficient heat, gas or pressure to produce rapid flaming, combustion or administer a destructive blow to persons or property.
67. EXTERIOR SOLID FUEL HEATING DEVICE(s) – Any contrivance, apparatus or part thereof, including a boiler, fire box, exchanger, grate fuel gun, fuel nozzle, chimney, smoke pipe, exhaust conduit and like devices used for the burning of combustible fuels for the creation of heat or energy from an exterior location into an interior location. *(Rev. 8/19/2008)*
68. FAMILY - One or more persons related to each other by blood, marriage, or adoption, and living together as a single housekeeping unit. For the purposes of this Ordinance, this term shall also include up to three (3) unrelated individuals living together as a single housekeeping unit.
69. FARM - Any parcel of land that is used on a commercial basis for the production of agricultural crops and/or the raising of livestock and poultry and their related byproducts (meat, milk, eggs, etc).
70. FARM ANIMAL - An animal that is generally kept, bred or raised on a farm. This term includes, but shall not be limited to, horses, cattle, sheep, goats, swine, mules and miniature horses.
71. FARM FOOD PRODUCT – Any agricultural, horticultural, forest, or other product of the soil or water, including but not limited to, fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, preserves, maple sap products, apple cider, fruit juice, wine, ornamental or vegetable plants, nursery products, flowers, firewood and Christmas trees. *(New 2020)*
72. FARM & GARDEN IMPLEMENT STORE - A commercial establishment which displays and sells equipment and products primarily used in the agricultural trade (such as tractors, combines, plows), but also provides occasional service incidental to the products and equipment sold.
73. FARM/MARKET – Any building, structure or place, used by farm producers for the direct sale of a diversity of farm and food products to consumers. Such markets may also include other businesses which reasonably serve the public or make the market more convenient, efficient, profitable or successful, including, but not limited to, food service, baking and non-food retailing. *(New 2020)*
74. FARM STAND – A privately owned permanent or semi-permanent structure located on or near a farm designed to sell fruits and vegetables directly produced by the farm. *(New 2020)*
75. FARM WORKER HOUSING - Dwelling units located on an active farm located in a State Certified Agricultural District which are accessory to the agricultural use and are occupied by employees of the farm or members of the farm household and their guests. Farm worker housing may consist of single or two family dwellings or buildings, including single or double-wide trailers and mobile homes, and/or apartments. *(Rev. 8/19/2008)*

ARTICLE II WORD TERMS AND DEFINITIONS

76. FENCE - A vertical barrier of sufficient height, depth, and construction to deter the passage of humans or animals from one area to another.
77. FILL MATERIAL – Rock, Gravel, Sand, Concrete, Asphalt, Brick, Uncontaminated Soil. *(Rev. 4/19/2011)*
78. FIREWOOD – Trunks and branches of trees and bushes, but does not include leaves, needles, vines or brush smaller than three inches in diameter.
(Rev. 8/19/2008)
79. FLOOR AREA (GROSS) - This term shall mean the total floor area used or intended to be used by tenants, or for service to the public as customers, patrons, clients or patients, including areas occupied by fixtures and equipment used for displays or sale merchandising. It shall not include areas used principally for non-public purposes such as storage, incidental repair, restrooms, fitting rooms, alteration rooms, general maintenance areas or enclosed pedestrian malls or corridors.
80. FLOOR AREA (HABITABLE) - The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business.
81. FOOD PROCESSING/BOTTLING FACILITY - A building or group of buildings used in the processing, bottling or packaging of liquid or solid food products to be sold off premises.
82. GARAGE (PRIVATE) B Any attached structure or unattached accessory structure used in conjunction with a principal building, primarily intended for the storage of personal motor vehicles and/or other household items.
83. GERATRIC CARE FACILITY – A building or group of buildings that is arranged, intended or designed to provide people with a transition from the home environment to a residential care setting. These facilities provide an array of care services such as adult day service, assisted living facilities, hospice care, skilled nursing facilities, home health care and specialized care services such as geriatric care management. This term shall also include those uses commonly referred to as group homes, managed care facilities, assisted living facilities, congregate housing facilities and life care facilities. *(rev 11/16/2010)*
84. GROUP HOME - A building, or group of buildings, that is arranged, intended or designed for the housing of elderly persons. This term shall also include those uses commonly referred to as elderly housing, geriatric care facilities, managed care facilities, assisted living facilities, independent living facilities, congregate housing facilities and life care facilities.
85. HOME OCCUPATION - An occupation, profession, activity or use performed in a residential dwelling unit or accessory building, which is clearly an incidental and secondary use of the dwelling unit as a residence, undertaken by one or more persons for supplemental income purposes and whose labor force consists primarily of a family unit working at home with their own equipment.

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86. HOTEL - A building or group of buildings, whether detached or in connected units, containing transient and/or permanent lodging facilities for the general public. This term shall include auto courts, motor lodges, tourist courts, motels and similar terms.
87. INCENTIVE ZONING – New York Consolidated Laws, Municipal Home Rule Law – MHR Section 10 grants local government the power to adopt or amend zoning regulations if they feel that the end result provides a public benefit to the community as a whole. *(New 2020)*
88. JUNK - This term shall include all items ordinarily and generally associated with said term whether animal, vegetable or mineral, including but not limited to scrap metal and iron, whether broken down or a component part such as a discarded automobile, machine, etc.; papers of any kind and in any form; cloth material of any kind; and any other item which has ceased to be used for the purpose for which it was intended, and all discarded substances of a solid and combustible nature.
89. KENNEL COMMERCIAL - A facility housing dogs, cats or other household animals and where grooming, breeding, boarding, training or selling of animals is conducted as a business. *(Rev. 10/11/2005; 6/19/2007)*
90. LIGHT INDUSTRY - An establishment primarily engaged in the storage, assembly or fabrication of finished products or parts, including the packaging and distribution of such products.
91. LOT - A parcel or area of land, the dimensions and extent of which are determined by the latest official records or recordings.
92. LOT (CORNER) - A lot at the junction of and fronting on two or more intersecting streets, roads or highways. The sides of the lot that face the streets shall be considered front yards. One of the remaining sides shall be considered a rear yard, and the other a side yard.
93. LOT (THROUGH) - An interior lot having frontage on two parallel or approximately parallel streets, roads or highways.
94. LOT (DEPTH) - The mean distance from the center of the road to its opposite rear line, measured in the general direction of the side lines of the lot.
95. LOT (FRONTAGE) - That portion of a lot which abuts a road, street or highway. Frontage measurement shall be the distance between the side lot lines as measured at the centerline of the road. For the purposes of determining frontage requirements on corner lots and through lots, any side of a lot abutting a road shall be considered frontage.
96. LOT (LINE) - A boundary line of a lot.
97. LOT (FLAG) - An approved lot having less lot frontage on the access road or private drive than otherwise normally required for the zoning district. The portion of the lot that provides access to the interior portion of the lot shall not be less than thirty (30) feet in width, shall not be built upon, and shall not be used in the calculation of the minimum lot area requirements for the zoning district. The interior portion of the lot shall meet the minimum lot area requirements for the zoning district.

ARTICLE II WORD TERMS AND DEFINITIONS

98. LOT (NON-RESIDENTIAL) - Any lot that does not contain a residence.
99. LOT (RESIDENTIAL) - Any lot that contains a residence.
100. MINE - Any pits, depressions or underground workings from which any mineral is produced for sale, exchange or commercial, industrial or municipal use and all slopes or inclines leading thereto, including all equipment above, on or below the surface of the ground used in connection with such pits, depressions or workings.
101. MINED LAND USE PLAN - The applicant's proposal for the mining and reclamation of the affected land. The mined land use plan shall consist of a mining plan and reclamation plan which shall include maps and other documents as required to describe and illustrate environmental, physiographic, cultural and surface conditions at and surrounding the mine as well as the applicant's proposed mining and reclamation methods.
102. MINING - The use of an area of land to remove minerals, metals or other items of value from the ground for a profit, including gas and oil wells.
103. MIXED USE OCCUPANCY – A building or site that contains a combination of two or more different land uses, which may include residential, office, commercial/retail, restaurant, institutional or other uses as permitted within the underlying zoning district. *(New 2020)*
104. MOBILE/MANUFACTURED HOME - A portable structure having linear steel frame construction, designed to be transported on its own wheels which is used, designed to be used and capable of being used as a detached single family residence and which is intended to be occupied as a permanent living quarters containing sleeping accommodations, a flush toilet, a tub or shower, kitchen facilities and plumbing and electrical connections for attachment of outside systems. The definition of a mobile/manufactured home includes all additions made subsequent to the installation of the principal structure. This definition does not include modular housing placed on a steel foundation for travel.
105. MOBILE/MANUFACTURED HOME PARK - Any site, lot, field, plot, parcel or tract of land upon which two (2) or more mobile/manufactured homes are located and for which said premises and/or the mobile/manufactured homes thereon are offered to the public or any person for a fee.
106. MODULAR HOME - A housing unit constructed off site, consisting of one or more segments and designed to be permanently anchored or affixed to a foundation. A modular house shall be designed to become a fixed part of the real estate, and shall meet all applicable requirements of the International Building Code. For the purposes of this Ordinance, Modular Homes shall be regulated as a Dwelling.
107. MOTEL - A building or group of buildings, whether detached or in connected units, containing transient and/or permanent lodging facilities for the general public. This term shall include auto courts, motor lodges, tourist courts, hotels and similar terms.
108. MOTOR VEHICLE - Any vehicle designed to be propelled or drawn by power other than muscle power. This term shall include, but shall not be limited to, automobiles, trucks, buses, motorcycles, tractor trailers, motor homes, snowmobiles and all-terrain vehicles.

ARTICLE II WORD TERMS AND DEFINITIONS

109. **MOTOR VEHICLE REPAIR SHOP** - A building or portion of a building, arranged, intended, or designed to be used for repairing and/or maintaining motor vehicles. This term shall include body shops, collision shops, paint shops, customizing shops, detailing shops, restoration shops, motor vehicle inspection stations, and uses similar in nature.
110. **MOTOR VEHICLE SALES** - A lot, including related buildings, that is arranged, intended, or designed to be used for the display, sale, leasing or rental of new and/or used motor vehicles.
111. **NON-CONFORMING LOT, BUILDING OR STRUCTURE** - A lot, building or structure existing at the time of enactment of this Ordinance, or any amendment thereto, which does not conform to the area regulations of the zoning district in which it is situated. This term is commonly known as grandfathering.
112. **NON-CONFORMING USE** - A use of land existing at the time of enactment of this Ordinance, or any amendment thereto, which does not conform to the regulations of the zoning district in which it is situated. This term is commonly known as grandfathering.
113. **NURSERY/GARDEN CENTER** - A lot, and related buildings, that is arranged, intended or designed to be used for the growing, display and/or sale of trees, shrubs, plants, flowers and related gardening products and materials.
114. **OPEN STORAGE OF A MOTOR VEHICLE** - The maintaining, storage or location of a motor vehicle or vehicles other than in a completely enclosed structure.
115. **OUTDOOR STORAGE** - The keeping of goods, products, materials, equipment or merchandise in an unroofed area and in the same place for more than 14 continuous days. This does not preclude an outdoor area used for the display of merchandise or goods available for purchase from a permitted business located on the same lot or parcel of land. This outdoor display area shall be considered an accessory use to the primary use of the business. *(Rev 2020)*
116. **OVERBURDEN** - Soil and all other natural material other than vegetation and topsoil overlying the material to be excavated.
117. **PARKING SPACE** - A berth for the parking of one motor vehicle which has an area of not less than 200 square feet (10' x 20') exclusive of passageways and driveways giving access thereto.
118. **PEAK PARTICLE VELOCITY** - The rate of movement in inches per second on any single component of motion: longitudinal (horizontal motion along the line between the blast and the seismograph location), transverse (horizontal motion at right angles to the longitudinal) or vertical. For the purposes of this Ordinance, measurements of particle velocity shall be made on the ground adjacent to the nearest public building, school, church, residential building, commercial building or institutional building nearest the blast area and shall be measured with a three-component portable seismograph yielding a direct recording of particle velocity.

ARTICLE II WORD TERMS AND DEFINITIONS

119. PERFORMANCE STANDARDS - Criterion established to control noise, odor, dust, dirt, vibration, noxious gases, glare, smoke, water pollution, explosive hazards, or visual pollution generated by or inherent in the use of land or buildings.
120. PERMIT - A written authorization issued by the Code Enforcement Officer and/or governing body sanctioning a specific use or activity.
121. PERMIT (BUILDING) - A permit which is required for the construction or alteration of any building or part thereof.
122. PERMIT (BLASTING) - A permit which is required for any activity involving the use of explosives.
123. PERMIT (OPERATING) – A permit which is required before conducting specific activities within certain Zoning Districts. *(Rev. 6/19/2007)*
124. PERMIT (SPECIAL) - A special permit which is required before specific land uses may be established within certain zoning districts.
125. PERMIT (ZONING) – A permit which is required for any permitted use or permitted accessory use in their respective zoning districts that is not governed by the issuance of a Building Permit, Special Permit or Operating Permit. *(New 12/19/2017)*
126. PERMIT (STOVE/FIREPLACE) - A permit which is required to install a wood burning stove or fireplace.
127. PERMITTED USE - Those particular land uses which are specifically allowed, authorized and/or permitted in a given zoning district when all of the criteria enumerated in this Ordinance are complied with in full.
128. PLACE OF WORSHIP – Any church, synagogue, temple, mosque or similar structure used for worship or religious instruction including social and administrative rooms accessory thereto. *(Rev. 10/21/2014)*
129. PORTABLE STORAGE CONTAINERS – Any portable container designed for use as a temporary storage facility for materials or household goods. *(Rev. 6/19/2007)*
130. POSITIVE DRAINAGE - Shall refer to the finished elevations of the unconsolidated material excavation sites and require the grading of the site to be such that it conveys all surface water, including water falling on, entering onto and/or running through the site, to points of lower elevation which are part of existing drainage facilities beyond the excavated area. The conveyance specified above shall be by natural means without the aid or use of mechanical or siphoning equipment or machinery.
131. POULTRY - Birds or fowl that are generally kept, bred or raised on a farm. This term includes, but shall not be limited to, chickens, turkeys, geese, ducks, quail, hens and pheasants.
132. PRINCIPAL BUILDING OR STRUCTURE - The main or primary building or structure on a lot.

ARTICLE II WORD TERMS AND DEFINITIONS

133. **PRINCIPAL USE** - The main or primary use on a lot.
134. **PRODUCT ASSEMBLY FACILITY** - A building or group of buildings used in the assembly of previously prepared materials into finished products to be sold off premises.
135. **PRODUCT FABRICATION FACILITY** - A building or group of buildings used in the fabrication of materials or products predominately from extracted or raw materials, and sold off premises.
136. **PROFESSIONAL OFFICE** - A building or portion of a building where services are performed primarily involving administrative, professional or clerical operations. This use shall not involve the on-site sale of goods or the keeping of stock in trade.
137. **PROGRESSIVE RECLAMATION** - Progressive Reclamation involves the development and landscaping of the site simultaneously with the extraction of the resource.
138. **PUBLIC FACILITIES** - Facilities that are open and available for use by the general public. This term shall include, but shall not be limited to, the following public uses: places of worship, cemeteries, parks, playgrounds, nursery schools, elementary schools, high schools, colleges, universities, golf courses, country clubs, libraries, museums, fire/ambulance buildings, public safety buildings, proprietary and not-for-profit hospitals, recreational facilities (whether for profit or not-for-profit) such as swimming pools, tennis courts, bowling alleys, hockey rinks, ice skating rinks, skateboard/in-line skate parks, or other indoor and outdoor sports.
139. **PUBLIC UTILITIES (ESSENTIAL SERVICES)** - Utility services such as natural gas, electricity, telephone, cable television, and similar services that are available to the community and are essential for public health, safety and general welfare. This term shall include telephone/cable equipment centers, telecommunication facilities, utility substations, telecommunication facilities, water and sewer treatment facilities, water and sewer storage facilities, pumping stations, and facilities similar in nature.
140. **RECLAMATION** - The restoration to an acceptable natural state, in accordance with the standards provided herein, of an area which has undergone physical change due to excavation and related activities.
141. **RECLAMATION LAND (Fill)** – Any act in which fill material is deposited or placed from one location to another location by a landowner for the purpose of changing the natural character of land or property. *(Rev 4/19/2011)*
142. **RECLAMATION PLAN** - The applicant=s proposal for reclaiming the affected land, including a graphic and written description of the proposed use of all affected land, the method of reclamation and a schedule for performing reclamation.
143. **RECREATIONAL CENTER** - Any land or structure designed to be used for recreational purposes.
144. **RESIDENCE** - A building or structure used for human habitation.
145. **RESTAURANT** - Any establishment, however designated, where food is sold for consumption to patrons at tables provided in or adjacent to a building, in a vehicle, or elsewhere.

ARTICLE II WORD TERMS AND DEFINITIONS

146. **RETAIL FUEL OUTLET** - Any establishment that sells gasoline, diesel, kerosene, propane, natural gas or similar fuels to the public. This term shall include service stations, convenience stores, car washes and any other establishment that sells these or similar fuels.
147. **RIDING STABLE, TRACK OR ARENA** - A lot, including related buildings, that is arranged, intended or designed to be used for the boarding, feeding, training, riding, racing or showing of horses.
148. **RIGHT OF WAY** - A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees or other special use.
149. **ROADSIDE STAND** - A temporary building or structure utilized for the sale of fruits, vegetables or other agricultural products grown or produced on the premises.
150. **SAND AND GRAVEL EXCAVATIONS** - See EXCAVATIONS.
151. **SCIENTIFIC RESEARCH FACILITY** - A building or group of buildings used for scientific research, investigation, testing, or experimentation of products or materials.
152. **SETBACK (FRONT)** - The required open unoccupied space measured from the center line of the road to the foundation wall or exterior building wall of the principle or accessory structure. Note: Corner lots shall use the front setback dimensional requirement for all sides facing a street.
(Rev 2020)
153. **SETBACK (REAR)** - The required open unoccupied space measured from the rear lot line to the nearest foundation wall or exterior building wall of the principle or accessory structure.
(Rev 2020)
154. **SETBACK (SIDE)** - The required open unoccupied space measured from the side lot lines to the foundation wall or exterior building wall of the principle or accessory structure. *(Rev 2020)*
155. **SIGN** - A structure or device designed or intended to convey information to the public in written or pictorial form.
156. **SIGN AREA** - The area within the confines of all edges of a sign. Where there is no geometric frame edge of a sign, the area shall be defined by a projected, enclosed, four sided (straight sided) geometric shape which most closely resembles the said sign.
157. **SITE PLAN** - A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.
158. **SITE PLAN REVIEW** - A review and an approval process, conducted by the Planning Board, whereby site plans are reviewed utilizing the criteria contained in this Ordinance.

ARTICLE II WORD TERMS AND DEFINITIONS

159. SPECIAL PERMIT - A permit issued by the Planning Board to use a lot and/or building in a manner specifically outlined in Article VII of this Ordinance. All special permits require site plan review and approval, shall be of one (1) year duration, and shall be renewable by the Planning Board provided all conditions of the original permit are complied with in full.
160. SPECIAL PERMIT USE - A particular use which is allowed in a given zoning district only after specific conditions and criteria enumerated in this Ordinance are met in full and a special permit is issued by the Planning Board.
161. SPECIFIC ANATOMICAL AREAS - For the purposes of this Ordinance, this term shall include: less than completely and opaquely covered human genitals, pubic region, or female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered.
162. SPECIFIC SEXUAL ACTIVITIES - For the purposes of this Ordinance, this term shall include: human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, or sodomy; and fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.
163. STACK or CHIMNEY – Any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired heating device or structure, including that part of the structure extending above a roof. (*Rev. 8/19/2008*)
164. STORAGE FACILITY - A building or group of buildings, other than a private garage, which is operated for gain and available on a rental basis for the storage of motor vehicles, recreational vehicles, boats or other tangible personal property. This term shall also include mini-storage or self-storage type facilities.
165. STREET - A public or private thoroughfare which affords access to abutting properties.
166. STRUCTURE - A building or anything constructed or erected which requires temporary or permanent location on, or the support of, the soil or which is attached to any structure. The word structure shall include but is not limited to pools, barns, sheds, decks, porches and garages. (*Rev 10/21/2014*)
167. STRUCTURE DRAWING - A design drawing of any structure to be erected in its entirety. Design drawings pertaining to structures for human occupation shall be affixed with certification by a person licensed as a Professional Engineer or Architect by the State of New York that the design meets the International Building Code for this area.
168. SUBDIVISION – The division of any parcel of land into a number of lots, blocks or sites as specified in a law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development. The term subdivision, may include any alteration of lot lines or dimensions of any lots or sites shown on a plat previously approved and filed in the office of the County Clerk or Register of the County in which such plat is located. Subdivisions have been defined by Local Law (Subdivision Regulations) as either “major”, “minor” or “exempt” with the review procedures and criteria for each set forth in such Local Law.

ARTICLE II WORD TERMS AND DEFINITIONS

169. SURVEYORS MAP - Defines the size and shape of a piece of property and locates it in relations to bench marks, road and other pieces of property.
170. SWIMMING POOL B Any structure, regardless of dimensions or construction, intended for swimming, recreational bathing or wading that contains water over twenty four (24) inches (610mm) deep and/or requires the use of electricity to power a pump, air blower, heater, lights, controls or sanitizer generators. This includes, but is not limited to, in-ground, above-ground and on-ground pools, hot tubs, spas and fixed in place wading pools.
171. TAPE MAP - Defines the size and shape of structures and locates it on a piece of property. The size and shape of the property is also defined.
172. TAVERN - An establishment that is licensed by the State of New York in which the principal business is the sale of alcoholic beverages to the public for consumption on premises.
173. TELECOMMUNICATION FACILITY B Any commercial equipment used in connection with the provisions of wireless communications services, including cellular telephone services, personal communication services, radio and television broadcast communications and private radio communications services and is regulated by the Federal Communications Commission, both in accordance with the Telecommunications Act of 1996 and other Federal Laws. A telecommunication facility shall include monopole, guyed, or latticework tower(s) as well as antenna(s), switching stations, principle and accessory telecommunication equipment and supporting masts, wires, structures and buildings.
174. TELEVISION DISC ANTENNA - A parabolic or hemispherical device (commonly referred to as a satellite dish) or any similar antenna or device, which is arranged, intended or designed to receive television, radio, microwave, or other electrical signals. This term shall not include conventional dipole television and radio antennae.
175. TEMPORARY USE - A use or activity conducted for a limited period of time, generally not exceeding six (6) months.
176. TENT – A structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents that it protects. *(Rev. 6/17/2007)*
177. TOPSOIL - The layer of surface material which is substantially free of rock and is capable of nurturing general vegetation.
178. TOWN - For the purposes of this Ordinance, this term shall denote the Town of Clarendon, Orleans County, New York.
179. TOWN BOARD - For the purposes of this Ordinance, this term shall denote the Town Board of the Town of Clarendon, Orleans County, New York.
180. TOWN CLERK - For the purposes of this Ordinance, this term shall denote the Town Clerk of the Town of Clarendon, Orleans County, New York.

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181. TOWN PLANNING BOARD (PB) - For the purposes of this Ordinance, this term shall denote the Planning Board of the Town of Clarendon, Orleans County, New York.
182. TOWN ZONING BOARD OF APPEALS (ZBA) - For the purposes of this Ordinance, this term shall denote the Zoning Board of Appeals of the Town of Clarendon, Orleans County, New York.
183. TRAILER, TRAVEL/CAMPER/RECREATIONAL VEHICLE - Any portable vehicle designed to be transported on its own wheels by a towing vehicle or any motorized vehicle which is intended for temporary living quarters for travel, recreation, or vacation purposes.
184. TRAILER, SEMI - Any trailer having wheels only in the rear; the front is supported by a towing vehicle and is designed for the storage or transport of materials, parts or goods. This term shall include, but is not limited to, flatbeds, flatbeds designed to transport portable containers, dumps, enclosed, and refrigerated trailers.
185. TRAILER, UTILITY - Any portable vehicle designed to be transported on its own wheels by a towing vehicle and intended for the transport of materials, parts or goods, or for the transport of boats, snowmobiles, ATVs or similar personal vehicles.
186. TRUCK UNIT - A truck, trailer and piece of construction equipment carried on the trailer; a tractor trailer rig; or any large truck that requires a Commercial Driver's License.
187. UNCONSOLIDATED MATERIALS - Shall include but not be limited to such minerals as topsoil, fill, peat, humus, sand or gravel.
188. UNLICENSED MOTOR VEHICLE - Any motor vehicle which does not have a valid legal license to operate in the State of New York.
189. UNTREATED LUMBER – Dry wood which has been milled and dried but which has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substance.*(Rev. 8/19/2008)*
190. USE - The specific purposes for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained.
191. VARIANCE - Permission granted by the Zoning Board of Appeals so that property may be used in a manner not generally allowed by the Zoning Ordinance.
192. VARIANCE (AREA) - An authorization by the Zoning Board of Appeals for the use of land in a manner which is not in strict conformance with the dimensional or physical requirements of the applicable zoning regulations.
193. VARIANCE (USE) - An authorization by the Zoning Board of Appeals for the use of land in a manner which is otherwise not allowed or is prohibited by the applicable zoning regulations.

ARTICLE II
WORD TERMS AND DEFINITIONS

194. WAREHOUSE/DISTRIBUTION FACILITY - A building or group of buildings used for the storage and distribution of parts, products, supplies or equipment, but does not include the bulk storage of hazardous, flammable or explosive materials or chemicals.
195. WIND MEASUREMENT TOWER – Any tower used for the measurement and collection of meteorological data such as temperature, wind speed, wind direction, etc. *(Rev. 6/19/2007)*
196. YARD - An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except otherwise provided herein.
197. YARD (FRONT) - The space within and extending the full width of the lot from the front lot line to the part of the building which is nearest to such front lot line.
198. YARD (REAR) - An open space extending across the entire width of the lot between the rear wall of the building and the rear line of the lot, and unoccupied except for accessory buildings and open porches.
199. YARD (SIDE) - An open space on the same lot extending from the side wall of the building to the side line of the lot, between the front yard and the rear yard.
200. YARD SALE - The temporary displaying of household items and clothing for sale on a yard, porch or in a barn or garage. This term shall include garage sales, barn sales, porch sales and sales similar in nature.
201. ZONING DISTRICT - A fixed section of the Town which has been designated for a specific purpose or purposes.

**ARTICLE III
PERMITS AND PROCEDURES**

SECTION

- 300 Purpose**
- 301 Application Procedures for Building Permits**
- 302 Application Procedures for Special Permits**
- 303 Application Procedures for Blasting Permits**
- 304 Application Procedures for Operating Permits**
- 306 Application Procedures for Land Reclamation (Fill) Permits**
- 307 Application Procedures for Zoning Permit**

SECTION 300 - PURPOSE

No use or structure shall be established or erected, nor land developed (other than for agricultural purposes) until a permit has been issued in accordance with the provisions of this Ordinance. All applications for permits shall be filed with the Code Enforcement Officer.

SECTION 301 - APPLICATION PROCEDURES FOR BUILDING PERMITS

- A. All buildings or structures 64 square feet or greater within the Town of Clarendon require a building permit. (Rev. 2016)
- B. No building permit shall be issued for any buildings, structures, dwellings, their customary accessory structures and common farm related structures unless a site plan has been submitted to and approved by the Planning Board. *Note: The Ordinance Inspection Officer may waive the need for a site plan review for buildings or structures provided such building or structure is single width, is a single story and is not permanently attached to the soil or to any other structure.* (Rev. 6/19/2007; 10/21/2014) (Rev. 2016)
- C. No building or structure shall be constructed, moved or structurally altered, nor shall the use of a building or structure change, without first obtaining a building permit from the Code Enforcement Officer. A building permit shall be issued by the Code Enforcement Officer if the building, structure or use is in conformity with this Ordinance and the Building Code of New York State, unless he receives a written order from either the Zoning Board of Appeals or the New York State Department of State or Regional Board of Review (with respect to the Building Code of New York State) in the form of an administrative review or a variance as provided by Sections 802 and 830 of this Ordinance. (Rev. 6/19/2007)
- D. The Code Enforcement Officer is hereby empowered to issue a building permit for a permitted use for any plans regarding the construction or alteration of any building or part of any building or the change in the use of any land area or part thereof, or for a change in use of any existing building, where it is determined that such plans are not in violation of the provisions of this Ordinance or the Building Code of New York State.
- E. Applications for building permits must be filed with the Code Enforcement Officer. Amendments to any application, plan or specification may be filed at any time prior to the commencement of work. Such amendments shall likewise be subject to the approval of the Code Enforcement Officer.
- F. All information on the application form must be completed and, in addition, the following information must be submitted with the completed application:
 - 1. Four (4) copies of a sketch plan or design plan. The plans shall be drawn to scale and show dimensions and location of the lot, exact size and location of all existing and proposed buildings on the lot, proposed location of water and sewage disposal systems, parking areas and driveway locations, natural water courses, ponds, surface drainage patterns and location of existing and

**ARTICLE III
PERMITS AND PROCEDURES**

- proposed easements, and any proposed signs. Note: The Town of Clarendon is not responsible for the quantity or quality of the well water.
2. One copy of the architectural design drawings for any structures to be erected or structurally changed. Any design drawings pertaining to human residence or to any structure subject to the requirements of the Building Code of New York State shall contain a statement that the proposed design is in compliance with the Building Code of New York State and any applicable statutes, laws, ordinances, or regulations. The design drawings shall bear the signature of the person responsible for the design, and where required by the Education Law of the State of New York, the seal of a licensed architect or a licensed professional engineer.
 3. Evidence of approval of the sewage disposal system plans by the Orleans County Health Department or a duly appointed agent of the Town of Clarendon.
 4. Copies of deeds, titles or purchase contracts.
 5. Any use currently licensed by Federal, State, County or Town agencies and already operating within the Town, shall present evidence of currently held licenses before any expansion permits will be issued.
 6. The appropriate non-refundable fee established by the Town Board.
- G. When all applicable requirements of this Ordinance have been complied with, the Code Enforcement Officer shall issue a Building Permit and provide one (1) copy of the approved design drawings to the applicant within fifteen (15) days after approval. The Code Enforcement Officer shall file one (1) copy of the approved permit in the Town Clerk's Office.
- H. Building permits shall expire as follows:
1. New residential and Non-residential buildings, such as accessory buildings, barns, sheds, decks, etc. shall expire twelve (12) months from the date of issuance. Permits shall become invalid unless the work authorized is commenced within six (6) months following the date of issuance. Building permits may be renewed provided that the work has commenced in such a manner as to be ongoing and upon payment of the appropriate fee. *(Rev. 6/19/2007)*
 2. Other structures, such as swimming pools, chimneys, wood stoves, etc. shall expire six (6) months from the date of issuance. If construction has not commenced within three (3) months from the date of issuance, the permit shall expire. *(Rev. 6/19/2007)*
- I. The applicant shall notify the Code Enforcement Officer when the structure is ready for required inspection. The Code Enforcement Officer shall then perform the required inspection. If satisfied that the applicable rules, codes and regulations pertaining to the structure or use have been complied with and the structure has been completed in accordance with the approved application, the Code Enforcement Officer shall issue a Certificate of Compliance and/or Certificate of Occupancy granting final permission to occupy or use the structure.
- J. Any individual found occupying or using a structure before obtaining a Certificate of Compliance and/or Certificate of Occupancy shall be subject to the penalties noted in Section 105, in addition to any other remedies provided in this Ordinance.
- K. Application for or acceptance of any permit issued or requested pursuant to this Ordinance constitutes agreement and consent by the person making the application or accepting the permit to allow the Code Enforcement Officer to enter the premises at any time to conduct inspections as required by this Ordinance. Refusal to allow the Code Enforcement Officer to conduct said inspections of the premises

**ARTICLE III
PERMITS AND PROCEDURES**

and their records related to such permit or required to be maintained by this Ordinance shall constitute sufficient justification for the immediate revocation or suspension of said permit. In addition, should the Code Enforcement Officer deem it necessary, an application may be made to any court of competent jurisdiction to obtain a warrant authorizing an inspection of the premises in question.

- L. The Code Enforcement Officer shall have the authority to revoke permits that have been issued as follows:
1. Where it is found that there have been false statements or representations as to a material fact in the application, plans or specifications upon which the permit was granted.
 2. Where it is found that the permit was issued in error and should not have been issued in accordance with the applicable laws, codes, rules, regulations or orders.
 3. Where the person to whom the permit has been issued fails or refuses to comply with a stop-work order issued by the Code Enforcement Officer.
 4. In the event of a violation of this Ordinance, the Code Enforcement Officer may, in addition to the other penalties provided for herein, suspend said permit until such time as the violation is corrected. Should the Code Enforcement Officer determine that the violation constitutes a distinct hazard to life or public safety, he may order the premises secured immediately until said violation is abated.

SECTION 302 - APPLICATION PROCEDURES FOR SPECIAL PERMITS

- A. The Planning Board is empowered to issue special permits for those uses described in Article VII of this Ordinance. Site plan review, as fully described in Article IX, shall be conducted by the Planning Board as part of the special permit process. No special permit may be issued until site plan approval has been granted. Refer to Article X of this Ordinance for the policy, administration and interpretation of special permits.
- B. Pre-application Conference - An informal discussion, at the discretion of the Planning Board, may be held between the applicant and the Planning Board regarding the necessary documents and data required for the sketch plan. This meeting may occur at a Planning Board meeting or otherwise at the convenience of the Planning Board.
- C. Permitted Uses - Special permit uses shall be deemed to be permitted uses in their respective zoning districts, subject to the satisfaction of the requirements and standards set forth in Article VII and Article X of this Ordinance, and all other applicable requirements of this Ordinance. All special permit uses are hereby declared to possess unique characteristics and each specific use shall be considered as an individual case.
- D. Authorization - A special permit shall authorize only one particular special use. The special permit shall expire if the use ceases for more than one (1) year for any reason. *(Rev. 8/19/2008)*
- E. Violations and Compliance - No person shall be issued a special permit for a property where there is an existing violation of this Ordinance. Before any special permit is issued, the Planning Board shall make written findings certifying compliance with the specific rules governing individual special permit uses and that satisfactory provision and arrangement has been made concerning the general findings stated in Section 1004 of this Ordinance.
- F. Issuance and Renewal - Special permits shall be issued for a period of one (1) year and shall be subject to periodic site inspections and review. Permits shall be reviewed and renewed by the Planning Board

**ARTICLE III
PERMITS AND PROCEDURES**

annually, based on the Code Enforcement Officer's inspection report and written statement that the permittee is in complete compliance with the terms and conditions of the original special permit.

- G. Fees - Upon filing an application for a special permit, the applicant shall pay the appropriate application fee. There is a non-refundable fee for the renewal of a special permit, plus any direct costs related to verifying conformance to permit conditions. There is a non-refundable fee for Special Use Permits requested to be transferred to a new owner/applicant equal to the annual renewal fee of the special permit plus any direct costs related to verifying conformance to permit conditions. *(Rev. 8/19/2008)*
- H. Modification - Applications for modification to a Special Use Permit shall be made in writing to the Planning Board.
- I. Transfer – A Special Use Permit may be transferred to a new owner/applicant, provided a Site Plan Review is conducted by the Planning Board and they determine that the use covered on the Special Use Permit shall continue as specified on the originally issued permit under the new owner/applicant and there are no other issues identified. *(Rev. 8/19/2008)*

SECTION 303 - APPLICATION PROCEDURES FOR BLASTING PERMITS

- A. It shall be unlawful to engage in blasting operations or any other activity in which explosives are used in the Town of Clarendon without having secured a blasting permit from the Code Enforcement Officer. It is the intention of this provision that explosives not be stored in the Town of Clarendon.
- B. The permit shall be applied for and issued in the name of the owner of the work area upon which such blasting operations shall be conducted, and the application for such permit shall state the purpose, nature, and extent of the proposed blasting operations, as well as the location of the affected area.
- C. The applicant shall state upon such application the period of time for which he wishes such a permit to be issued.
- D. The permit period shall coordinate with the expiration date of any other state, federal or local permit which may be held by the applicant which are relevant to or associated with the applicant's blasting operations. Suspension or revocation of any permit issued hereunder shall not entitle the applicant to a refund of any part of the permit fee paid.
- E. Upon receipt of a complete application for a blasting permit, the Code Enforcement Officer shall refer the application to the Planning Board for review. A public hearing may be held at the discretion of the Planning Board. The Planning Board shall consider all evidence presented for its consideration and shall instruct the Code Enforcement Officer to issue or deny a permit, stating specifically its reasons for approval, disapproval, or modification of the permit.
- F. Permits shall be issued by the Code Enforcement Officer, provided all of the requirements set forth in this Section have been complied with by the applicant.
- G. The applicant shall pay, prior to the issuance of a permit, the appropriate fee as established by the Town Board.
- H. Blasting permits shall be issued for a period of seventy-two (72) hours, six (6) months, one (1) year, or three (3) years. Blasting permits may be renewed by the Code Enforcement Officer after review and approval by the Planning Board.

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PERMITS AND PROCEDURES**

- I. Violation of any provision of this Section during the current permit period may be sufficient reason for denial of a permit renewal application. Any blasting conducted by the applicant within the Town of Clarendon without having previously obtained a permit shall be considered during the application review process. Renewal of the permit upon its termination shall follow the same procedures as those required in this section for the issuance of the original permit.
- J. No permit to blast within the Town of Clarendon shall be issued until the applicant has posted and filed with the Town Clerk an insurance policy issued by an insurance company authorized to do business in the State of New York providing general and comprehensive liability coverage in the principal amount of at least one million (\$1,000,000) dollars, the exact amount to be approved by the Town Engineer or Consulting Engineer, to cover the specific blasting project as stated in the Blasting Permit Application. The insurance policy shall name the Town of Clarendon as additionally insured so as to provide for the payment of any damage arising from the permitted blasting. The Town may also require that the applicant execute and deliver to the Town an indemnity agreement indemnifying the Town of Clarendon from any and all claims arising out of the permitted blasting. The blasting permit shall automatically terminate should the bond or insurance policy be canceled or otherwise terminated.
- K. Prior to issuance of a blasting permit, the applicant shall provide the Code Enforcement Officer with a copy of the current license of the blaster as issued by the State of New York. Such license shall be filed in the office of the Code Enforcement Officer and shall be available for public inspection. The applicant shall also provide the Code Enforcement Officer with any amendments, changes or revisions of such license. Should the blasters license at any time expire or be revoked or suspended, no further blasting shall occur until a current license is filed with the Code Enforcement Officer.
- L. Any person, firm or corporation, whether granted a permit pursuant to the provisions of this section or not, who commits or permits any acts in violation of any of the provisions of this section, shall be deemed to have committed an offense, and shall be liable for any associated penalties. Each week a violation continues or is permitted to exist shall constitute a separate violation as stated in Section 105 of this Ordinance.

SECTION 304 - APPLICATION PROCEDURES FOR OPERATING PERMITS

- A. The Code Enforcement Officer is hereby empowered to issue operating permits. Parties, who propose to undertake the types of activities or operate the types of buildings listed below, shall be required to obtain an operating permit prior to commencing such operation. An application for an Operating Permit shall be provided by the Code Enforcement Officer and shall contain sufficient information to permit determination that quantity, materials, and activities conform to the requirements of the Uniform Code. No permit may be issued until a site plan has been submitted to and approved by the Planning Board. *(Rev 12 19 2017)*
 - 1. Manufacturing, storing or handling hazardous materials in quantities exceeding those listed on tables 2703.1.1(1, 2,3,4) of the Fire Code of New York State (see Title 19 NTCRR Part 1225).
 - 2. Hazardous Processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling.
 - 3. Use of pyrotechnic devices in assembly occupancies.
 - 4. Building containing one or more areas of public assembly with an occupant load of 100 persons or more.
 - 5. Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by the Town Board by resolution.

**ARTICLE III
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6. Carnivals, fairs and other special events excluding one and two family occasions.
- B. Applications for Operating Permits – All applications must be filed with the Code Enforcement Officer prior to commencing such operation. An application shall contain sufficient information to permit a determination that activities conform to the requirements of the Uniform Code. Pre-application Conference – An informal discussion, at the discretion of the Code Enforcement Officer may be held between the applicant and the Planning Board regarding the necessary documents and data required for the sketch plan. This meeting may occur at a Planning Board meeting or otherwise at the convenience of the Planning Board. An inspection shall be conducted by the Code Enforcement Officer prior to the issuance of any Operating Permit. A single operating permit may apply to more than one hazardous activity. *(rev 12/19/2017)*
- C. Violations and Compliance – No Operating Permit shall be issued for a property where there is an existing violation of this ordinance. Where activities fail to comply with the conditions set forth on the permit, or with applicable provisions of the Uniform Code, such permit shall be revoked or suspended.
- D. Issuance and Renewal – Operating permits may be issued for a maximum period of one (1) year and shall be subject to periodic site inspections and review. Permits shall be renewed by the Code Enforcement Officer only upon verification that the permit is in compliance with the terms and conditions of the original Operating Permit.
- E. Fees – Upon filing the application for an Operating Permit, the applicant shall pay the appropriate application fee, as determined by the Town Board. There is a non-refundable fee, as determined by the Town Board, for Operating Permit renewal, plus any direct costs related to verifying conformance to permit conditions.
(Rev. 6/19/2007)

SECTION 306 - APPLICATION PROCEDURES FOR LAND RECLAMATION (FILL) PERMITS

- A. To provide for the proper protection of the land and the community by ensuring that any reclamation of land shall use only clean and uncontaminated materials for the purpose of filling and also to ensure that the filling does not impede the natural flow of surface water in a natural drainage course or cause the diversion of surface water into neighboring properties no Land Reclamation (Fill) Permit shall be issued unless a site plan has been submitted to and approved by the Planning Board.
- B. Items specifically exempt from the provisions of this section: Customary excavation, storage and filling associated in connection with the routine construction of buildings, structures, retaining walls, fences, private drives, parking lots, public improvements and public and private utilities approved by the Town of Clarendon; A cemetery excavating for a grave, headstone or monument and removing or storing the surplus dirt or material resulting from such excavation; Excavation and fill associated with the routine construction of single-family or two family dwellings approved by the Town of Clarendon; Customary excavation, storage and filling associated in connection with an approved farm operation provided all fill material used originates from the farm property.
- C. The Code Enforcement Officer is hereby empowered to issue a Land Reclamation (Fill) Permit provided a reclamation plan has been submitted to and approved by the Planning Board.
- D. The applicant shall file with the Building Department of the Town of Clarendon, an application, in duplicate, including the name of the landowner together with a comprehensive plan drawn to a scale detailing the location of property and the location and extent of the proposed

**ARTICLE III
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reclamation/fill area. In addition the following information shall be included in the reclamation plan:

1. Verification that the location of the Land Reclamation (Fill) project being proposed is not a regulated activity by the U.S. Army Corps of Engineers or the New York State Department of Environmental Conservation (DEC). The Orleans County Soil and Water Conservation District can assist you in this assessment.
 2. The amount of fill material intended to be deposited to the site as well as the amount of time required to complete the fill process.
 3. Exact conditions, profiles and cross sections of property before reclamation/fill and those proposed after reclamation/fill. *Note:* The maximum level of fill above existing grade shall be eight (8) feet unless otherwise approved by the Planning Board as part of the reclamation plan review.
 4. A proposed siltation and erosion control plan designed to ensure proper surface drainage during and after completion of the proposed fill process.
 5. Grades of all creeks or drainage ditches at fifty-foot intervals for a minimum distance of five hundred (500) feet beyond the parcel of land covered by the permit.
 6. The location of all existing buildings on said property.
 7. Elevation contours shall be at two (2) foot intervals shot on a fifty (50) foot grid throughout proposed fill area with a one hundred (100) foot overlap to surrounding property at intervals of fifty (50) feet.
 8. All existing utilities adjacent to and on said property and the proposed protection or treatment thereof.
 9. Such plans must be prepared by an engineer or land surveyor duly licensed to practice in the State of New York.
- E. Corner posts shall be set designating the land area involved. Such posts shall have a sign affixed thereto, twenty-four (24) inches in length by twelve (12) inches in height, containing the name of the person to whom the permit has been issued, the permit number and a statement of the month of issue. The top of such corner posts shall be at least four (4) feet above ground level and placed in position by the licensed engineer or surveyor at the time of the original survey. These posts shall be maintained in their exact positions throughout the entire operation to aid in the inspection of the area to which the permit relates by all interested persons. In the event that such posts are not in place, said permit shall be subject to revocation at the discretion of the Town of Clarendon Ordinance Inspection Officer until such time as they have been replaced in exact position.
- F. Surface texture or ground cover after excavation shall be of not less than six (6) inches of fine topsoil, which shall be stockpiled on the premises in sufficient amount to provide complete ground cover for the excavated area. Topsoil shall be reasonably free from subsoil, stumps, roots, brush, stones, clay lumps or similar objects larger than one inch at its greatest diameter and shall contain no material toxic to plant growth.
- G. Appropriate seeding shall be applied to finished grade. Additionally, where open drainage ditches or swales are constructed, the side slopes and bottom shall be neatly graded and left in a clean condition. Side slopes shall be top soiled and seeded with a minimum of perennial rye grass.
- H. No excavation or stockpiles arising there from shall be made within one hundred (100) feet of the

**ARTICLE III
PERMITS AND PROCEDURES**

right-of-way of any public road, street, highway or public area as measured from the centerline of the road or within fifty (50) feet of any property line of adjoining land unless written consent of the adjoining property owner shall be first obtained and a duplicate or original copy attached to the application. No stockpiling of such materials brought to the site from another location shall be permitted.

- I. The surface of all reclamation/fill shall have a positive slope to existing drainage facilities, and the surface texture of all such areas shall be of such a nature as to prevent erosion of the surface after all excavation has been performed and completed. The proposed grading and slope and the necessary auxiliary appurtenances shall provide adequate drainage to existing town facilities.
- J. The Town of Clarendon reserves the right to impose additional conditions and to require additional safeguards it may deem necessary to protect the public health, safety and general welfare of the area.
- K. During the course of the reclamation (fill) review, the Planning Board may consult with additional resources (Town Engineer, Highway Department, Code Enforcement Officer, Federal, State or County Agencies, etc) as part of the review process. Costs for consultation, review of the plans, and supporting documentation incurred by the Town shall be borne by the applicant as a condition of permit approval or renewal.
- L. Before the issuance of the Land Reclamation (fill) Permit, the applicant or the owner of record of the premises or tract of land shall deliver to the Town Clerk:
 - 1. A bond executed by a surety corporation authorized to do business in the State of New York in a sum equal to ten thousand dollars (\$10,000) for each acre or fractional part thereof covered by the permit, which bond shall be approved by the Town Board and which bond shall guarantee faithful performance of the work in accordance with this and all ordinances of the Town of Clarendon and the plans and specifications filed with the application for the permit. Said bond shall remain in full force and effect until a certificate of completion has been issued by the Code Enforcement Officer certifying that all provisions of this chapter and the conditions of the permit issued thereunder have been fully complied with.
 - 2. A bond executed by a surety corporation authorized to do business in the State of New York in a sum equal to one hundred thousand dollars (\$100,000) per mile of town road traversed to reach the reclamation/fill site, which bond shall be approved by the Town Board and which bond shall guarantee repair of any damage to property of the Town during execution of this permit and in accordance with this and all ordinances of the Town of Clarendon. Said bond shall remain in full force and effect until a certificate of completion has been issued by the Code Enforcement Officer certifying that all provisions of this chapter and the conditions of the permit issued hereunder have been fully complied with.
- M. Test sampling of fill material shall be conducted on all imported material for compliance to permit conditions by a Geotechnical Engineer retained by the applicant during the reclamation (fill) time frame of the permit. All samples shall be sent to an approved independent testing lab for testing. All test results shall be submitted to the Town of Clarendon Ordinance Inspection Officer. One initial sample shall be conducted and one sample for each 100 cu. yards of material imported.

**ARTICLE III
PERMITS AND PROCEDURES**

- N. Land Reclamation (fill) Permits shall be for a period of one hundred eighty (180) days or one (1) year depending upon the location of the site, the extent of the proposed area to be reclaimed and the character of the neighborhood in which the site is located as determined by the Town of Clarendon Planning Board as part of the site plan review. Upon written application and review the Planning Board may extend said permit for an additional specified period.

(Rev. 4/19/2011)

SECTION 307 - APPLICATION PROCEDURES FOR ZONING PERMITS *(new 12/19/2017)*

- A. The Code Enforcement Officer is empowered to issue Zoning permits for any permitted use or permitted accessory use in their respective zoning districts that is not governed by the issuance of a Building permit, Special permit, or Operating permit. Site plan review, as fully described in Article IX, shall be conducted by the Planning Board as part of the Zoning permit process. No permit may be issued until a site plan has been submitted to and approved by the Planning Board.
- B. Pre-application Conference - An informal discussion, at the discretion of the Planning Board, may be held between the applicant and the Planning Board regarding the necessary documents and data required for the sketch plan. This meeting may occur at a Planning Board meeting or otherwise at the convenience of the Planning Board.
- C. Authorization - The Zoning permit shall expire if the use ceases for more than one (1) year for any reason.
- E. Violations and Compliance - No person shall be issued a Zoning permit for a property where there is an existing violation of this Ordinance. Before any Zoning permit is issued, the Planning Board shall make written findings certifying compliance with the specific rules governing individual Zoning permit uses and that satisfactory provision and arrangement has been made concerning the general findings stated in Article IX, Section 904 of this Ordinance.
- F. Issuance and Renewal - Zoning permits shall be issued for a period of one (1) year and shall be subject to periodic site inspections and review. Permits shall be reviewed and renewed by the Planning Board annually, based on the Code Enforcement Officer's inspection report and written statement that the permittee is in complete compliance with the terms and conditions of the original Zoning permit.
- G. Fees - Upon filing an application for a Zoning permit, the applicant shall pay the appropriate application fee. There is a non-refundable fee for the renewal of a zoning permit, plus any direct costs related to verifying conformance to permit conditions. There is a non-refundable fee for Zoning Permits requested to be transferred to a new owner/applicant equal to the annual renewal fee of the Zoning permit plus any direct costs related to verifying conformance to permit conditions.
- H. Modification - Applications for modification to a Zoning Permit shall be made in writing to the Planning Board.
- I. Transfer – A Zoning Permit may be transferred to a new owner/applicant, provided a Site Plan Review is conducted by the Planning Board and they determine that the use covered on the Zoning Permit shall continue as specified on the originally issued permit under the new owner/applicant and there are no other issues identified.

**ARTICLE I
GENERAL PROVISIONS**

SECTION	Title
100	Declaration and Purpose
101	Conflict with Other Laws
102	Validity and Severability
103	Fees
104	Violations and Penalties
105	Actions

SECTION 100 - TITLE

This Ordinance shall be known and cited as the Zoning Ordinance of the Town of Clarendon, Orleans County, New York. All existing Zoning Ordinances are hereby repealed upon the effective date of this Ordinance.

SECTION 101 - DECLARATION AND PURPOSE

- A. This Zoning Ordinance is adopted pursuant to Town Law of the State of New York to promote and protect public health, safety and general welfare and in furtherance of the following specific objectives:
1. To protect the open and natural character of the land.
 2. To guide and regulate the orderly growth, development and redevelopment of the Town of Clarendon in accordance with a well-considered plan and with long range objectives, principles and standards beneficial to the interests and welfare of the people.
 3. To protect the established character of both private and public property.
 4. To encourage, in the public interest, the utilization of land for the purpose for which it is most desirable and best suited.
- B. The requirements in the Article shall be in addition to the provisions specified elsewhere in the Ordinance for Building, Special, Operating or Zoning Permits. *(Rev 08/20/2019)*

SECTION 102 - CONFLICT WITH OTHER LAWS

Where these regulations impose greater restrictions than are imposed by the provisions of any law, ordinance, regulation or agreement, these regulations shall control. Where greater restrictions are imposed by any law, ordinance, regulation or agreement than are imposed by these regulations, such greater restrictions shall control.

SECTION 103 - VALIDITY AND SEVERABILITY

Should any section, subsection, paragraph, sentence, clause or any provision of this Ordinance be declared invalid for any reason, the validity of the remaining portion of these regulations shall not be affected.

**ARTICLE I
GENERAL PROVISIONS**

SECTION 104 - FEES

- A. Fees, charges and expenses for Special Permits, Blasting Permits, Area Variances, Use Variances, Appeals, Building Permits, Operating Permits, Zoning Permits and Zoning Amendments shall be levied and collected in accordance with the fee schedule in effect at the time of application. All application filing fees are non-refundable. In addition, any costs incurred by the Town or by a person(s) or firm(s) representing the Town in the review of any application for the above will be payable by the applicant before any permit is issued or becomes effective. *(Rev 11/16/2010; 12/19/2017)*
- B. At the discretion of the Planning Board, Town Board or Zoning Board a deposit may be required to cover application review costs. Said deposit shall be determined by the Planning Board, Town Board or Zoning Board based on the estimated review costs.
- C. An applicant wishing to withdraw any permit application, including site plan review, during the time said application is being reviewed is required to contact the Code Enforcement Officer in writing. Filing fees are non-refundable.
- D. Withdrawal will be formally accepted by the Town at the time all person(s) or firm(s) involved in the review process have been notified to cease all work pertaining to the application.

SECTION 105 - VIOLATIONS AND PENALTIES

- A. Any person, firm or corporation, who violates, disobeys, neglects or refuses to comply with any provision of this Zoning Ordinance and any failure to comply with a written order of the Ordinance Inspection Officer/Zoning Enforcement Officer within the time fixed for compliance, shall be guilty of a Unclassified Misdemeanor and upon conviction thereof, shall be subject to a fine and/or imprisonment as enumerated in New York State Town Law, Section 268 and New York State Executive Law 382: NY Code-Section 382.Remedies. Each week a violation continues shall be deemed a new and separate offense. *(Rev 11/20/2012)*
- B. The owner or tenant of any building, structure, property or part thereof, who commits, participates in, assists in or maintains a violation may be found guilty of a separate offense and upon conviction thereof, be subject to the penalties herein provided. *(Rev 11/16/2010)*

SECTION 106 – ACTIONS

- A. The Ordinance Inspection Officer/Code Enforcement Officer shall have the authority to issue an appearance ticket (NYS CPL 150) to any violator of this Ordinance. Failure to comply with an appearance ticket shall result in the court issuing a summons or a warrant of arrest. The Town may also obtain a temporary restraining order, temporary injunction, or an injunction to restrain, correct, or abate any violation of this Zoning Ordinance or any failure to comply with the provisions of this Ordinance. *(Rev 11/20/2012)*
- B. In the event that any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land used, or any land divided into lots, blocks or sites in violation of this Ordinance (or the Building Code of New York State), the Town may institute or cause to be instituted any appropriate action or proceeding to compel compliance with or restrain by injunction the violation of any provision of this Ordinance or the Building Code of New York State. *(Rev 11/16/2010)*

ARTICLE I
GENERAL PROVISIONS

- C. In addition to the penalties provided in Section 105 and in addition to the actions set forth in Section 106-A. above, the Ordinance Inspection Officer/Code Enforcement Officer may impose a civil penalty in the amount specified in Section 105. Penalties may be recoverable against the violator in a Small Claims proceeding instituted in the Justice Court of the Town of Clarendon, pursuant to the provisions of Article 18 of the Uniform Justice Court Act, or by action instituted in any other court of competent jurisdiction. *(Rev 11/16/2010)*

- D. Any building or structure constructed without a building permit, or any use or activity conducted without a building permit, special permit, variance, special event permit, operating permit, certificate of occupancy, or certificate of compliance, where required, or not in conformity with the provisions of this Ordinance may be removed, closed or halted by the ordinance Inspection Officer/Code Enforcement Officer with the issuance of a stop work order. *(Rev 11/16/2010)*

**ARTICLE IV
ESTABLISHMENT AND DESIGNATION OF ZONING DISTRICTS**

SECTION

- 400 Establishment of Zoning Districts**
- 401 Zoning Map**
- 402 Interpretation of Zoning District Boundaries**
- 403 Determination of Locations and Boundaries**

SECTION 400 - ESTABLISHMENT OF ZONING DISTRICTS

The Town of Clarendon is hereby divided into the following zoning districts for the purpose of promoting public health, safety and general welfare: *(Rev. 12/19/2017; 08/20/2019)*

- A. Residential/Hamlet District (RH)
- B. Residential/Agricultural District (RA)
- C. Business/Commercial District (BC)
- D. Conservation District (C)
- E. Industrial District (I)
- F. Historic District (H)
- G. Industrial-Mining District (IM)

SECTION 401 - ZONING MAP

The following zoning districts are shown and delineated on a map entitled “Zoning District Boundary Map of the Town of Clarendon”. This map, and all explanatory matter, is hereby incorporated and made a part of this Ordinance. *(Rev 12/19/2017; 08/20/2019)*

- A. Residential/Hamlet District (RH)
- B. Residential/Agricultural District (RA)
- C. Business/Commercial District (BC)
- D. Conservation District (C)
- E. Industrial District (I)
- F. Historic District (H)
- G. Industrial-Mining District (IM)

SECTION 402 - INTERPRETATION OF ZONING DISTRICT BOUNDARIES

Unless otherwise indicated on the zoning map, the district boundary lines are generally intended to follow the center lines of streets, roads and highways, the center lines of railroad rights-of-way, existing lot lines, the mean water levels of streams and other waterways, all as more particularly shown on the zoning map.

SECTION 403 - DETERMINATION OF LOCATIONS AND BOUNDARIES

In the case of uncertainty as to the true location of a zoning district boundary line in a particular instance, the Code Enforcement Officer shall request the Zoning Board of Appeals to render a final determination.

**ARTICLE IX
SITE PLAN REVIEW**

SECTION

900	Site Plan Review Policy
902	Pre-Application Sketch
903	Application for Preliminary Site Plan Approval
904	Factors for Consideration
905	Consultation
906	Modification
907	Action on Preliminary Application
908	Application for Final Detailed Site Plan Approval
909	Action of the Final Detailed Site Plan Application
910	Engineering Standards
911	Fees

SECTION 900 - SITE PLAN REVIEW POLICY

- A. The intent of this Article is to set forth additional standards applying to certain land uses and activities. The nature of these uses and activities requires special consideration of their impacts upon surrounding properties, the environment, community character, and the ability of the Town to accommodate development, consistent with the objectives of this Ordinance.
- B. No building permit shall be issued for any buildings, structures, dwellings, their customary accessory structures, and common farm related structures (such as barns, sheds and silos) unless a site plan has been submitted to and approved by the Planning Board. Site plan review and approval shall also be required prior to the issuance of any special permit, operating permit or zoning permit.
(Rev. 12/19/2017)

SECTION 902 - PRE-APPLICATION SKETCH *(Rev 10/21/2014)*

- A. The applicant should request an informal discussion with the Planning Board prior to submission of a pre-application sketch to determine any or all of the data to be included in the site plan sketch.
- B. The Planning Board shall schedule the informal discussion for the next Planning Board meeting or otherwise at the convenience of the Board.
- C. The pre-application sketch shall include:
 - 1. Title of drawing;
 - 2. Location of site with respect to existing and proposed right-of-ways and intersections;
 - 3. Internal street pattern, if any, of the proposed development;
 - 4. Location of all existing structures on the site and the future use of the same;
 - 5. Existing zoning classification(s) of the property, and all properties within one-fourth (1/4) mile, and any restrictions on land use of the site;
 - 6. Existing natural features on the site and the future use of the same;

**ARTICLE IX
SITE PLAN REVIEW**

7. Contour intervals at five (5) feet or less as determined by the Town Engineer or Planning Board, including two hundred (200) feet of adjacent property;
 8. Names of owner and owners of adjacent properties.
- D. The Planning Board may suggest changes in the pre-application sketch involving the street layout, traffic patterns, lot size or shape, preservation of natural features or other matters which, in its opinion, will improve the layout in keeping with the best interests of the Town.
- E. The Planning Board shall be permitted a reasonable time to review the sketch plan, not to exceed forty-five (45) days. However, this time period may be extended to sixty (60) days if approved by both parties.

SECTION 903 - APPLICATION FOR PRELIMINARY SITE PLAN APPROVAL *(Rev.10/21/2014)*

- A. An application for preliminary site plan approval and a SEQRA Environmental Assessment Form shall be completed by the applicant and shall be accompanied by all of the following information, as required by the Planning Board. Information may be required to be prepared by a licensed engineer, architect, landscape architect or surveyor and certified by the seal and signature of such engineer, architect, landscape architect or surveyor. Note: Need to be determined by the Planning Board.
- B. An area map showing the applicant's entire adjacent holding, that portion of the applicant's property under consideration, and all properties, subdivisions, streets and easements within five hundred (500) feet of the applicant's property.
- C. A tracing overlay showing existing contours (with contours shown at five (5) foot intervals or less as determined by the Town Engineer or Planning Board) shall be provided. Contours shall extend two hundred (200) feet onto adjacent property. Existing contours shall be illustrated as dashed lines.
- D. A tracing overlay showing proposed contours (with contours shown at five (5) foot intervals or less as determined by the Town Engineer or Planning Board) and the direction of drainage with arrows. This information may be shown on the same tracing as required in Subsection C above, provided the proposed contours are illustrated by solid lines.
- E. A preliminary site plan, including the following information:
1. Title of drawing, including name and address of applicant.
 2. North arrow, scale, and date.
 3. Boundaries of the property plotted to scale.
 4. Existing watercourses.
 5. A site plan showing size, location, proposed use and height of all buildings; location and size of all off-street parking and off-street loading facilities; access and egress drives thereto; location and size of outdoor storage areas, if any; location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; a description of the method of sewage disposal and the location of such facilities; details of any proposed changes to existing stream channels; location and size of all signs; location and proposed development of buffer areas; location and design of lighting facilities; the amount of building area to be used for retail sales, if any; any existing and proposed assessments; and the location of waste storage, if any.

ARTICLE IX SITE PLAN REVIEW

- F. A tracing overlay showing all soil types, soil classifications, areas with moderate to high susceptibility to flooding, and areas with moderate to high susceptibility to erosion. The overlay shall also include a detailed description of the vegetation that exists in those areas with moderate to high susceptibility to erosion. Note: Need to be determined by the Planning Board.
- G. Architectural drawings depicting the exterior of all proposed buildings or structures, showing enough detail so that the Planning Board can ascertain the style and visual impact of said structure or structures. Note: Need to be determined by the Planning Board.

SECTION 904 - FACTORS FOR CONSIDERATION *(Rev.10/21/2014)*

- A. The Planning Board's review of a preliminary site plan shall include, but shall not be limited to, the following considerations:
 - 1. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.
 - 2. Adequacy and arrangement of pedestrian traffic access and circulation, including the separation of pedestrian from vehicular traffic, walkway structures, controls at intersections with vehicular traffic, and pedestrian convenience.
 - 3. Location, arrangement, appearance and sufficiency of off-street parking and off-street loading facilities.
 - 4. Location, arrangement, size and design of buildings, lighting and signs.
 - 5. Adequacy, type and arrangement of trees, shrubs and other landscaping, including landscaped buffers between adjoining lands.
 - 6. In the case of a multi-family dwelling, the adequacy of usable open space for playgrounds and recreation. Note: Need to be determined by the Planning Board.
 - 7. Adequacy of stormwater and sanitary waste disposal facilities.
 - 8. Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and/or erosion.
 - 9. Protection of adjacent properties against noise, glare and unsightliness, or other objectionable features.
 - 10. Sufficient harmony and consistency of the proposed construction with the existing neighborhood, both in style and quality, such that any structure will conform reasonably to those existing structures in the area immediately surrounding the parcel in question.

SECTION 905 - CONSULTATION

During the course of site plan review, the Planning Board may consult with the Code Enforcement Officer, Fire Department, Highway Department, Town engineers, Town consultants, and/or appropriate Federal, State and County agencies. Costs for consultant review of plans and supporting documentation incurred by the Town shall be borne by the applicant as a condition of permit approval or renewal.

SECTION 906 - MODIFICATION

The Planning Board may require the applicant to provide additional information or to satisfy additional

ARTICLE IX SITE PLAN REVIEW

conditions (which may not be specifically included in this Ordinance) in the interest of public health, safety and general welfare.

SECTION 907 - ACTION ON PRELIMINARY APPLICATION

Within sixty-two (62) days of the receipt of the application for preliminary site plan approval, the Planning Board may conduct a public hearing. If no hearing is held, a decision must be rendered within sixty-two (62) days of the receipt of the application. If a public hearing is held, a decision must be rendered within sixty-two (62) days of the close of the public hearing date. These times may be extended by mutual consent of the applicant and the Planning Board pursuant to Town Law. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is conditionally approved. A copy of the minutes of the Planning Board meeting shall be a sufficient report. The Planning Board's statement may include recommendations as to desirable revisions to be incorporated into the final site plan, of which conformance with, shall be considered a condition of approval. If the preliminary site plan is disapproved, the Planning Board's statement will contain the reasons for such finding. In such a case, the Planning Board may recommend further study of the site plan and re-submission of the preliminary site plan to the Planning Board after it has been revised or redesigned. No modification of existing stream channels, filling of lands with moderate to high susceptibility to flooding, grading or removal of vegetation in areas with a moderate to high susceptibility to erosion or excavation for and construction of site improvements shall begin until the developer has received preliminary site plan approval. Failure to comply shall be construed as a violation of this Zoning Ordinance and, where necessary, final site plan approval may require the modification or removal of unapproved site improvements.

SECTION 908 - APPLICATION FOR FINAL DETAILED SITE PLAN APPROVAL

After receiving a conditional preliminary site plan approval from the Planning Board, and after receiving approval for all necessary permits and curb cuts from state and county officials, the applicant may prepare a final detailed site plan and submit it to the Planning Board for approval, except that if more than six (6) months have elapsed between the time of the Planning Board's report on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a re-submission of the preliminary site plan for further review and possible revision. The final detailed site plan shall conform substantially to the preliminary site plan that received preliminary approval and shall incorporate any revisions or other features that may have been recommended by the Planning Board during the preliminary review. All such revisions/features shall be clearly indicated by the applicant on the final detailed site plan.

SECTION 909 - ACTION ON THE FINAL DETAILED SITE PLAN APPLICATION

- A. Within sixty-two (62) days of receipt of an application for final site plan approval, the Planning Board shall render a decision. If no decision is made within the sixty-two (62) day period, the final site plan shall be considered approved.
 1. Upon approving an application, the Planning Board shall endorse its approval on two (2) copies of the final site plan. One copy shall be forwarded to the Code Enforcement Officer for issuance of a building permit, and the second copy will be retained in the Planning Board files. Upon approving a site plan in conjunction with a special permit, the Planning Board shall retain one (1) copy of the plan for its file and shall submit one copy to the Town Clerk. The Planning Board copy shall be considered the legally approved plan with which all development on the respective site must conform.
 2. No building permit shall be issued to the applicant until the site plan is approved by the Planning Board. The Planning Board shall also notify the applicant in writing of its decision

**ARTICLE IX
SITE PLAN REVIEW**

and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.

SECTION 910 - ENGINEERING STANDARDS

- A. All maps, tracings and drawings, except the pre-application sketch, shall be on sheets measuring no smaller than 8 1/2 x 11 inches and no larger than 34 x 44 inches in outside dimension. All drawings shall utilize conventional drafting symbols and standards.
- B. Any additional engineering requirements requested by the Town of Clarendon or its engineer or consultants shall be made known to the applicant during the pre-application sketch review period.

SECTION 911 - FEES

A fee shall be charged for site plan review applications in accordance with the fee schedule on file in the Town Clerk's Office.

**ARTICLE V
DISTRICT REGULATIONS**

SECTION

- 500-1 Purpose of the **RESIDENTIAL/HAMLET DISTRICT (RH)**
500-2 Permitted Uses (RH)
500-3 Permitted Accessory Uses (RH)
500-4 Uses Allowed by Special Permit (RH)
500-5 Minimum Specifications (RH)
- 510-1 Purpose of the **RESIDENTIAL/AGRICULTURAL DISTRICT (RA)**
510-2 Permitted Uses (RA)
510-3 Permitted Accessory Uses (RA)
510-4 Uses Allowed by Special Permit (RA)
510-5 Minimum Specifications for Residential Structures (RA)
510-6 Minimum Specifications for Agricultural Structures (RA)
- 520 **RURAL RESIDENTIAL DISTRICT (RR)**
Removed in its entirety with 12/19/2017 amendments.
- 530-1 Purpose of the **BUSINESS/COMMERCIAL DISTRICT (BC)**
530-2 Permitted Uses (BC)
530-3 Permitted Accessory Uses (BC)
530-4 Uses Allowed by Special Permit (BC)
530-5 Minimum Specifications (BC)
- 550-1 Purpose of the **INDUSTRIAL DISTRICT(I)**
550-2 Permitted Uses (I)
550-3 Permitted Accessory Uses (I)
550-4 Uses Allowed by Special Permit (I)
550-5 Additional Provisions and Requirements (I)
550-6 Minimum Specifications (I)
- 560-1 Purpose of the **CONSERVATION DISTRICT (C)**
560-2 Applicability (C)
- 570-1 Purpose of the **HISTORIC DISTRICT (H)**
570-2 Applicability (H)
570-3 Additional Provisions and Requirements (H)
- 580-1 Purpose of the **INDUSTRIAL MINING DISTRICT (IM)**
580-2 Permitted Uses (IM)
580-3 Permitted Accessory Uses (IM)
580-4 Blasting Permits (IM)
580-5 Additional Provisions and Requirements (IM)
580-6 Minimum Specifications (IM)
580-7 Setbacks for Blasting Activities (IM)

SECTION 500-1 – PURPOSE OF THE RESIDENTIAL/HAMLET DISTRICT (RH)

The purpose of the Residential/Hamlet District (RH) is to provide a unique area where residential and commercial uses are intermixed, and to regulate its development so it will not be detrimental to the community.

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DISTRICT REGULATIONS**

SECTION 500-2 – PERMITTED USES (RH) *(rev 11/20/2012; 10/21/2014; 12/19/2017; 08/20/2019)*

The following uses are permitted in the Residential/Hamlet (RH) District:

- A. Agriculture
- B. Mobile/Manufactured Homes – solely on lots presently occupied by a mobile/manufactured home or in an approved mobile/manufactured home park (See Section 630)
- C. One Family Dwelling
- D. Two Family Dwelling
- E. Public Utilities (Essential Services)
- F. Church

SECTION 500-3 – PERMITTED ACCESSORY USES (RH) *(rev 12/19/2017; 08/20/2019)*

The following are permitted accessory uses in the Residential/Hamlet (RH) District:

- A. Accessory Structure
- B. In-Home Day Care Center
- C. Private Garage
- D. Roadside Stand
- E. Swimming Pools (Above and Below Ground)
- F. Alternative Energy Systems (Solar Powered)
- G. Alternative Energy Systems (Wind Powered)

SECTION 500-4 – USES ALLOWED BY SPECIAL PERMIT (RH)

(rev 11/20/2012; 10/21/2014; 12/19/2017)

The following uses are allowed by Special Permit after review and approval by the Planning Board. These uses also require a site plan to be submitted to the Planning Board for review and approval as provided in Article IX of this Ordinance.

- A. Cottage Industry
- B. Home Occupation
- C. Professional Office
- D. Public Facilities
- E. Restaurant
- F. Business, Retail
- G. Business, Service
- H. Retail Fuel Outlet
- I. Tavern

SECTION 500-5 – MINIMUM SPECIFICATIONS (RH)

Unless otherwise specified in this Ordinance, the following dimensional specifications are applicable to all uses in the Residential/Hamlet District (RH):

- A. Minimum Lot Size – Forty Thousand (40,000) Square Feet
- B. Minimum Lot Frontage – Two Hundred (200) Feet
- C. Minimum Lot Depth – Two Hundred (200) Feet
- D. Minimum Front Setback – Seventy-Five (75) Feet
- E. Minimum Side Setback – Fifteen (15) Feet
- F. Minimum Rear Setback – Fifteen (15) Feet

**ARTICLE V
DISTRICT REGULATIONS**

SECTION 510-1 – PURPOSE OF THE RESIDENTIAL/AGRICULTURAL DISTRICT (RA)

The purpose of the Residential/Agricultural District (RA) is to protect agricultural land and uses and to provide a stable environment for residential development.

SECTION 510-2 – PERMITTED USES (RA) *(rev 11/20/2012; 10/21/2014; 12/19/2017; 08/20/2019)*

The following uses are permitted in the Residential/Agricultural District (RA):

- A. Agriculture
- B. Agri-Business
- C. Mobile/Manufactured Homes – solely on lots presently occupied by a mobile/manufactured home or in an approved mobile/manufactured home park (See Section 630)
- D. Nursery/Garden Center
- E. One Family Dwelling
- F. Two Family Dwelling
- G. Public Utilities (Essential Services)
- H. Church

SECTION 510-3 – PERMITTED ACCESSORY USES (RA)

The following are permitted accessory uses in the Residential/Agricultural District (RA): *(rev 8/19/2008; 10/21/2014; 12/19/2017; 08/20/2019)*

- A. Accessory Structure
- B. Farm Worker Housing
- C. Garage, Private
- D. In-Home Day Care Center
- E. Roadside Stand
- F. Swimming Pools (Above and Below Ground)
- G. Alternative Energy Systems (Solar Powered)
- H. Alternative Energy Systems (Wind Powered)

SECTION 510-4 – USES ALLOWED BY SPECIAL PERMIT (RA)

(rev 11/20/2012; 10/21/2014; 12/19/2017; 08/20/2019)

The following uses are allowed by Special Permit after review and approval by the Planning Board. These uses also require a site plan to be submitted to the Planning Board for review and approval as provided in Article IX of this Ordinance.

- A. Cottage Industry
- B. Excavation and Mining
- C. Home Occupation
- D. Kennel
- E. Parking and Storage of Commercial Trucks and Construction Equipment
- F. Riding Stable, Track or Arena
- G. Business, Service *(2012 amendment per 10/21/14 RM2014-188)*
- H. Business, Retail

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DISTRICT REGULATIONS**

SECTION 510-5 – MINIMUM SPECIFICATIONS FOR RESIDENTIAL STRUCTURES (RA)

Unless otherwise specified in this Ordinance, the following dimensional specifications are applicable to all residential structures in the Residential/Agricultural District (RA):

- A. Minimum Lot Size – Forty Thousand (40,000) Square Feet
- B. Minimum Lot Frontage – Two Hundred (200) Feet
- C. Minimum Lot Depth – Two Hundred (200) Feet
- D. Minimum Front Setback – Seventy-Five (75) Feet
- E. Minimum Side Setback – Twenty-Five (25) Feet
- F. Minimum Rear Setback – Twenty-Five (25) Feet
- G. First floor elevation should be at least 15 inches above the center of the road.

(Rev. 09/18/2018)

SECTION 510-6 – MINIMUM SPECIFICATIONS FOR AGRICULTURAL STRUCTURES (RA)

Unless otherwise specified in this Ordinance, the following dimensional specifications are applicable to all agricultural structures in the Residential/Agricultural District (RA):

- ❖ Minimum Lot Size – Three (3) Acres (may include owner residence)
- ❖ Minimum Lot Frontage – Two Hundred (200) Feet
- ❖ Minimum Front Setback – One Hundred (100) Feet
- ❖ Minimum Side Setback – Seventy-Five (75) Feet
- ❖ Minimum Rear Setback – Seventy-Five (75) Feet
- ❖

SECTION 520 - *Removed in its entirety with 12/19/2017 amendments.*

SECTION 530-1 – PURPOSE OF THE BUSINESS/COMMERCIAL DISTRICT (BC)

The purpose of the Business/Commercial District is to provide for the establishment of business and commercial uses that serve the needs of area residents and to regulate its development so it will not be detrimental to the community.

SECTION 530-2 – PERMITTED USES (BC)

(rev 11/20/2012;10/21/2014; 05/16/2017; 12/19/2017; 08/20/2019)

The following uses are permitted in the Business/Commercial District (BC). These uses also require a site plan to be submitted to the Planning Board for review and approval as provided in Article IX of this Ordinance.

- A. Adult Day Care Center
- B. Agriculture
- C. Agri-Business
- D. Animal Hospital
- E. Business, Retail
- F. Business, Service
- G. Campground
- H. Child Day Care Center
- I. Geriatric Care Facility
- J. Motel/Hotel

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- K. One Family Dwelling
- L. Professional Office
- M. Public Facilities
- N. Recreational Center
- O. Restaurant
- P. Retail Fuel Outlet
- Q. Tavern
- R. Two Family Dwelling
- S. Public Utilities (Essential Services)
- T. Church

SECTION 530-3 – PERMITTED ACCESSORY USES (BC) *(Rev 10/21/2014; 08/20/2019)*

The following are permitted accessory uses in the Business/Commercial District (BC):

- A. Accessory Structure
- B. Garage, Private
- C. In-Home Day Care Center
- D. Public Utilities (Essential Services)
- E. Roadside Stand
- F. Swimming Pools (Above and Below Ground)
- G. Alternative Energy Systems (Solar Powered)
- H. Alternative Energy Systems (Wind Powered)

SECTION 530-4 – USES ALLOWED BY SPECIAL PERMIT (BC) *(Rev. 05/16/2017)*

The following uses are allowed by Special Permit after review and approval by the Planning Board. These uses also require a site plan to be submitted to the Planning Board for review and approval as provided in Article IX of this Ordinance.

- A. Motor Vehicle Repair Shop
- B. Motor Vehicle Sales
- C. Clubs
- D. Storage Facilities

SECTION 530-5 – MINIMUM SPECIFICATIONS (BC) *(rev 11/20/2012; rev 2020)*

Unless otherwise specified in this Ordinance, the following dimensional specifications are applicable to all uses in the Business/Commercial District (BC): *Note: See Article VI, Section 601 C*

- A. Minimum Lot Size Non-Dwelling – Forty Thousand (40,000) Square Feet
- B. Minimum Lot Size One or Two Family Dwelling – Forty Thousand (40,000) Square Feet
- C. Minimum Lot Frontage Non-Dwelling – Two Hundred (200) Feet
- D. Minimum Lot Frontage One or Two Family Dwelling – Two Hundred (200) Feet
- E. Minimum Front Setback Non-Dwelling – Seventy-Five (75) Feet
- F. Minimum Front Setback One or Two Family Dwelling – Seventy Five (75) Feet
- G. Minimum Side Setback Non-Dwelling – Twenty-Five (25) Feet
- H. Minimum Side Setback One or Two Family Dwelling – Twenty Five (25) Feet
- I. Minimum Rear Setback Non-Dwelling – Fifty (50) Feet
- J. Minimum Rear Setback One or Two Family Dwelling – Twenty Five (25) Feet

**ARTICLE V
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SECTION 550-1 – PURPOSE OF THE INDUSTRIAL DISTRICT (I)

The purpose of the Industrial District (I) is to provide for the establishment of clean, environmentally sensitive industrial uses which are essential for a balanced economic base, and to regulate its development so it will not be detrimental to the community.

SECTION 550-2 – PERMITTED USES (I) *(Rev. 05/16/2017; 12/19/2017; 08/20/2019)*

The following uses are permitted in the Industrial District (I). These uses also require a site plan to be submitted to the Planning Board for review and approval as provided in Article IX of this Ordinance.

- A. Cold Storage Facility
- B. Cosmetic Production Facility
- C. Excavating and Mining
- D. Farm and Garden Implement Store
- E. Food Processing/Bottling Facility
- F. Nursery/Garden Center
- G. Parking and Storage of Commercial Trucks and Construction Equipment
- H. Product Assembly Facility
- I. Product Fabrication Facility
- J. Professional Office
- K. Public Utilities (Essential Services)
- L. Scientific Research Facility
- M. Storage Facility
- N. Warehouse/Distribution Facility
- O. One Family Dwelling
- P. Two Family Dwelling

SECTION 550-3 – PERMITTED ACCESSORY USES (I)

The following are permitted accessory uses in the Industrial District (I). These uses also require a site plan to be submitted to the Planning Board for review and approval as provided in Article IX of this Ordinance:

- A. Accessory Structure

SECTION 550-4 – USES ALLOWED BY SPECIAL PERMIT (I)

The following uses are allowed by Special Permit after review and approval by the Planning Board. These uses also require a site plan to be submitted to the Planning Board for review and approval as provided in Article IX of this Ordinance.

- A. Adult Business

SECTION 550-5 – ADDITIONAL PROVISIONS AND REQUIREMENTS (I)

- A. All industrial processes shall take place within an enclosed building. Incidental storage out of doors may be permitted at the discretion of the Planning Board provided that such materials are shielded from view from public streets, adjacent off-street parking areas and adjacent non-industrial districts by fencing, landscaping or other appropriate measures.

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- B. All uses permitted in this district shall set aside not less than ten (10) percent of the lot to be devoted to seeding, planting, and retention of tree cover or other landscaping. This area shall be used for no other purpose.
- C. Each use in this district shall provide truck loading and unloading area in an amount sufficient to permit the transfer of goods and products in other than a public street, off-street parking area or front yard.
- D. Industrial buildings or structures shall be located a minimum of one hundred (100) feet from any zoning district boundary line. This one hundred (100) foot buffer strip shall be perpetually maintained so as to provide visual screening and separation between industrial and non-industrial uses.
- E. Parking areas may be located in any of the required yard areas provided they are not less than fifty (50) feet from a right-of-way line or twenty-five (25) feet from a property line.

SECTION 550-6 – MINIMUM SPECIFICATIONS (I)

Unless otherwise specified in this Ordinance, the following dimensional specifications are applicable to all uses in the Industrial District (I):

- A. Minimum Lot Size – Five (5) Acres
- B. Minimum Lot Frontage – One Hundred Fifty (150) Feet
- C. Minimum Front Setback – Fifty (50) Feet
- D. Minimum Side Setback – Fifty (50) Feet
- E. Minimum Rear Setback – Fifty (50) Feet

SECTION 560-1 – PURPOSE OF THE CONSERVATION DISTRICT (C)

The purpose of the Conservation District is to preserve the unique and irreplaceable wetlands, wildlife habitats and streams within the Town of Clarendon.

SECTION 560-2 – APPLICABILITY (C)

- A. The Conservation District is an overlay district designated on the Zoning Map of the Town of Clarendon. This district includes all freshwater wetlands as defined and protected by Article 24 of the New York State Environmental Conservation Law (Freshwater Wetlands Act).
- B. The provision of the Conservation District shall take precedence over the underlying zoning district regulations.
- C. The requirements of the Freshwater Wetlands Act and all applicable Freshwater Wetlands Maps, unless contrary to any Town of Clarendon ordinances, laws or regulations are hereby adopted and incorporated by reference.

SECTION 570-1 – PURPOSE OF THE HISTORIC DISTRICT (H)

The purpose of the Historic District is to preserve certain areas of historical or cultural significance in the Town of Clarendon. Development in these areas should be consistent with the architectural, cultural and historic character of the area.

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SECTION 570-2 APPLICABILITY (H)

The Historic District shall take precedence over any other zoning district (except the Conservation District) to the extent that the provisions of this district are inconsistent with such other provisions.

SECTION 570-3 – ADDITIONAL PROVISIONS AND REQUIREMENTS (H)

- A. All building permits in the Historic District, including permits for residential development shall require site plan review and approval from the Planning Board as outlined in Article IX of this Ordinance.
- B. No building or structure shall be demolished or undergo substantial exterior alteration (resulting in an essential change in building appearance) without first undergoing site plan review and approval.
- C. The Planning Board in its review of a site plan, must document the following requirements in its findings:
 - 1. The building, alteration or use is consistent with the historic architecture and historic significance of the area.
 - 2. The building, alteration or use does not encroach, diminish or otherwise lessen the historical significance of the area.
 - 3. For site plans involving demolition, the applicant provided evidence of construction or structural problems that would preclude any reasonable efforts to rehabilitate restore or preserve the structure. Evidence must be in the form of a written structural assessment prepared by a licensed architect or professional engineer.
- D. The Planning Board may consult with licensed architects, landscape architects, professional engineers and/or historic experts when conducting its assessment of the requirements of Section 570-3.C above.

SECTION 580-1 – PURPOSE OF THE INDUSTRIAL MINING DISTRICT (IM)

The purpose of the Industrial Mining District (IM) is to acknowledge the unique mineral resources that exist within the Town, to recognize the particular processes required for its extraction, and to regulate these processes so they will not be a detriment to the health and safety of the community.

SECTION 580-2 – PERMITTED USES (IM)

The following uses are permitted in the Industrial Mining District (IM). These uses also require a site plan to be submitted to the Planning Board for review and approval as provided in Article IX of this Ordinance.

- A. Excavation, extraction, removal, processing, storage, stockpiling and sale of topsoil, sand, gravel and stone, consisting of both consolidated and unconsolidated material.
- B. Manufacture, storage and sale of concrete including any raw materials or ingredients thereof.
- C. Crushing (except initial or primary crushing), grading, screening, washing or processing of stone, sand or gravel within a fully enclosed building or buildings.
- D. Storage bins containing concrete and asphaltic concrete (including raw materials or ingredients such as asphalt, stone, sand, cement).

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- E. Stockpiling of finished stone shall be allowed outside an enclosed building.
- F. Storage of machinery and equipment for transporting such material shall be allowed outside an enclosed building.
- G. Public Utilities (Essential Services)
- H. All operations which are specifically governed by the mining permit issued by the New York State Department of Environmental Conservation shall be conducted only during the hours specified in such permit, although it shall be deemed the policy and recommendation of the Town of Clarendon for purposes of the mining permit process that such uses should be allowed only during the hours of 6:00 AM to 6:00 PM, Monday through Saturday, with no operations on Sundays. All other processing and/or plant operations permitted in the IM District shall be conducted within the hours of 6:00 AM to 6:00 PM, Monday through Friday and 6:00 AM to 4:00 PM on Saturdays, with no operations on Sundays, except that such hours may be extended due to specific extenuating circumstances making it necessary to complete previously commenced projects until 8:00 PM, Monday through Friday, and until 6:00 PM on Saturdays, provided that the owner/operator of the plant maintains on site a record of those projects necessitating the extended operations, which shall be made available to the Code Enforcement Officer upon request.
 - 1. The owner/operator may also obtain a temporary permit from the Code Enforcement Officer for extended hours of operation necessitated by specific contractual terms requiring the preparation and delivery of products outside of the permitted hours of operation by filing an application therefore with the Code Enforcement Officer at least seven (7) days prior to the date when the extended hours are to commence, which application shall include information as to the particular project sufficient to demonstrate the need for extended hours. Any permit issued by the Code Enforcement Officer for such extended hours shall specify the hours during which operations are permitted and the dates during which such extended hours shall be allowed.
 - 2. The foregoing limitations on hours of operation shall not apply to the normal and customary movement of vehicles to and from or within property in the IM District; or to any office functions, PROVIDED HOWEVER, that any vehicles or equipment operated on or within any property in the IM District which are required by law to maintain and utilize any form of alarm device shall be installed an alternate strobe light or other non-audible alarm device, and shall utilize such alternate non-audible device at all times that such use is permitted under applicable State or Federal regulations, including regulations of the Federal Mine Safety and Health Administration or Occupational Safety and Health Administration.
- I. Any exterior stockpiling and storage may be subject to conditions imposed by the Planning Board during site plan review.

SECTION 580-3 – PERMITTED ACCESSORY USES (IM)

The following are permitted accessory uses in the Industrial Mining District (IM). These uses also require a site plan to be submitted to the Planning Board for review and approval as provided in Article IX of this Ordinance:

- A. Accessory Structure.
- B. Storage, repair, servicing and maintenance of vehicles, machinery and equipment used in the processing, transportation and manufacture of mined materials or products.

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- C. Storage of gasoline, fuel oil, lubricants, tools, equipment and other supplies necessary for the repair and maintenance of industrial mining equipment. Storage of fuel, lubricants and other substances shall be in strict conformity with all Federal, State and local laws, ordinances, rules, regulations, permits and other promulgation regarding the same.

SECTION 580-4 – BLASTING PERMITS (IM)

- A. Applications for blasting permits shall be processed in accordance with Section 303 of this Ordinance.
- B. Blasting permits for blasting in the IM District may be issued for a maximum period of three (3) years, and shall expire at the same time as the mining permit issued by the New York State Department of Environmental Conservation.
- C. The mine operator shall design and submit with its application for a blasting permit a system to monitor seismic activity in the area of the mine. In the event any seismic event occurs in the area of the mine, all blasting activities shall cease until such time as it is determined by the U.S. Geological Survey or other governmental authority having jurisdiction that such blasting may continue without significant impact or future seismic activity.

SECTION 580-5 – ADDITIONAL PROVISIONS AND REQUIREMENTS (IM)

- A. The mine operator shall be required to obtain and maintain all Federal, State and local permits required for any and all aspects of the activities conducted on the premises. Any revocation of any such permits shall be deemed a violation of this Ordinance.
- B. The mine operator shall obtain and maintain a valid mining permit from the New York State Department of Environmental Conservation issued pursuant to Article 23 of the Environmental Conservation Law, Title 27.
- C. The Planning Board shall conduct site plan review in accordance with Article IX of this Ordinance. The applicant shall submit a completed SEQRA Environmental Assessment Form (6 NYCRR Part 617) to the Planning Board at the time of site plan submission. However, if the applicant has submitted such form to the New York State Department of Environmental Conservation in connection with its application for a mining permit and the Town or any of its Boards, Agencies or Departments has participated in a review of the environmental impacts of the operation as an interested party or lead agency and has received the applicable documents in connection with such review, no additional documents shall be required to be submitted and such previously received documents shall be considered in the site plan review. Nothing contained herein shall prevent the Town Board upon a rezoning of any property to the IM District, or the Planning Board on site plan review, from requiring the preparation of a Draft Environmental Impact Statement pursuant to 6 NYCRR Part 617, if the circumstances so warrant, unless a Draft Environmental Impact Statement has previously been prepared in conjunction with a coordinated review of the proposed mining operation by a State, Regional or County Agency.
- D. All mine operators shall enter into an agreement with owners of real property in the vicinity of the mine establishing a method whereby the value of such property shall be guaranteed by the mine operator. The Town Board shall determine those owners eligible to be parties to such an agreement and the form, terms and conditions thereof. The failure or refusal of any eligible owner(s) to enter into such agreement shall not adversely affect the mine operator's compliance with this subdivision, nor shall such failure or refusal impair any rights which the eligible owners might otherwise have against the mine operator.

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- E. The mine operator shall enter into an agreement with the Town of Clarendon regarding private water supplies and buildings. The agreement shall include a means for surveying or testing the wells and buildings to be covered by the agreement prior to any mining to determine the quality and quantity of the water, condition of the buildings and a method for the owners to present any claims to a tribunal authorized to determine the mine operators responsibility for any damage if any, and to assess compensation to be paid by the operator, if any. The residents to be covered by this agreement and other terms and conditions shall be determined by the Town Board and the mine operator.
- F. Any property placed in the IM District shall revert to its immediately preceding zoning classification one year after the mine operator no longer has a valid mining permit from the New York State Department of Environmental Conservation, unless within that one year period the mine operator has the permit reinstated or otherwise obtains a new mining permit continuing substantially the same terms and conditions as the previous permit, or at such time the mine operator ceases to actively conduct mining operations on the property for a period of one year, whichever shall first occur.
- G. The mine operator shall allow the Planning Board and/or Code Enforcement Officer to inspect the premises and all mining operations on an annual basis. The Planning Board shall determine the need for and timing of such inspections, and shall provide the mine operator with a minimum of 24 hours advance notice.

SECTION 580-6 – MINIMUM SPECIFICATIONS (IM)

Unless otherwise specified in this Ordinance, the following dimensional specifications are applicable to all uses in the Industrial Mining District (IM):

- A. Minimum Lot Size – One Hundred (100) Acres
- B. Minimum Lot Frontage – Four Hundred (400) Feet
- C. Minimum Front Setback – Two Hundred (200) Feet
- D. Minimum Side Setback – One Hundred (100) Feet
- E. Minimum Rear Setback – Two Hundred (200) Feet

SECTION 580-7 – SETBACKS FOR BLASING ACTIVITIES (IM)

- A. Blasting for the purpose of extracting consolidated material shall not take place within eight hundred (800) feet of any residence, commercial building or industrial building, excluding those buildings owned by the mine operator and located within the bounds of the permitted mining area.
- B. Blasting for the purpose of establishing a site or sites for the installation of machinery or equipment shall not take place within six hundred (600) feet of any residence, commercial building or industrial building, excluding those buildings owned by the mine operator and located within the bounds of the permitted mining area.
 - 1. Blast area sites, depths and setbacks shall be clearly shown on site plans for all mines.
 - 2. Blast area sites shall be clearly marked on the land using stakes.
- C. Blasting of trenches or tunnels for the purpose of conveying or transporting material or for the purpose of controlling surface water, storm water or other water runoff may take place up to the property line of the mine operator, but only for such limited purposes and in strict conformity with all Federal, State and local laws, ordinances, rules, regulations, permits and other promulgations governing such, but not within the six hundred (600) foot distance from buildings as set forth in Section 580-7.B above.

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SECTION *(Rev 08/20/2019)*

- 701** **Camp Ground**
- 703** **Excavation and Mining**
- 704** **Home Occupation**
- 705** **Cottage Industry**
- 706** **Kennel, Commercial/Animal Hospital**
- 707** **Farm Labor Camp**
- 708** **Mobile/Manufactured Home Park**
- 709** **Multi-Family Dwelling**
- 710** **Geriatric Care Facility**
- 711** **Motor Vehicle Repair Shop**
- 712** **Motor Vehicle Sales**
- 713** **Professional office**
- 714** **Public Facilities**
- 715** **Retail Fuel Outlet**
- 716** **Storage Facility**
- 717** **Child Day Care Center/Adult Day Care Center**
- 718** **Restaurant**
- 721** **Parking and Storage of Commercial Trucks and Construction Equipment**
- 722** **Adult Business**
- 724** **Clubs**
- 725** **Retail Business/Service Business**
- 726** **Tavern**
- 727** **Recreational Center**
- 728** **Riding Stable, Track or Arena**
- 729** **Exterior Solid Fuel Heating Device(s)**
- 730** **Alternative Energy System (Solar Powered) Utility Scale**

GENERAL STATEMENT – The requirements contained in this Article shall be in addition to the provisions specified elsewhere in this Ordinance.

SECTION 700 - AIRPORT *Removed with 2012 amendments*

SECTION 701 – CAMP GROUND

- A. Camp Grounds shall be occupied only by travel trailers, pick-up coaches, motor homes, camping trailers, recreational vehicles and tents suitable for temporary habitation and used for travel, vacation or recreational purposes. The removal of wheels and placement of the unit on a foundation in a camping ground is prohibited.
- B. Minimum site area: Fifteen (15) Acres.
- C. Not more than ten (10) travel trailers, campers, tents, recreational vehicles, or motor homes shall be permitted per acre of gross site area.
- D. A camp ground shall be located so that no entrance or exit from a site shall discharge traffic into any residential area nor require movement of traffic from the camping ground through a residential area. A camp ground shall have a minimum of two hundred (200) feet of frontage on a public street, road, or thoroughfare.

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- E. Condition of soil, ground water level, drainage, and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences and no portion of the camp grounds subject to flooding, subsidence or erosion shall be used for any purpose which would expose persons on the property to hazards.
- F. Management, headquarters, toilets, dumping stations, showers, coin operated laundries and other uses and structures customarily incidental to the operation of the camp ground are permitted as accessory uses in camp grounds in such districts where such uses are not allowed as principal uses, subject to the following restrictions:
1. Such establishments and the parking areas primarily related to their operations shall not occupy more than five (5) percent of the gross area of the camp ground. Such establishments shall be restricted in their use to occupants of the camp ground.
 2. Such establishments shall present no visible evidence from any street outside the camp ground of their commercial character which would attract customers other than occupants of the camp grounds.
 3. The structures housing such facilities shall not be located closer than one hundred (100) feet to any public road, street or thoroughfare and shall not be directly accessible from any public road, but shall be accessible only from a street within the camp ground.
- G. Plans for sewage disposal and water supply shall be designed in accordance with standards promulgated by the New York State Department of Health and/or New York State Department of Environmental Conservation, and shall receive approval from said agencies.
- H. Streets within camp grounds shall be private, but shall be constructed with a stabilized travel-way and shall meet the following minimum stabilized travel-way width requirements.
1. One Way With No Parking – 12 Feet
 2. One Way With Parking on One Side – 18 Feet
 3. Two Way With No Parking – 18 Feet
 4. Two Way With Parking on One Side – 27 Feet
 5. Two Way With Parking on Both Sides – 34 Feet
- I. Each travel trailer site shall be at least two-thousand five-hundred (2500) square feet in area and have a minimum width of forty (40) feet.
- J. A minimum of eight percent (8%) of the gross site area of the camp ground shall be set aside and developed as common use areas for open or enclosed recreation facilities. No travel trailer site, required buffer strip, street right-of-way, storage area, or utility site shall be counted as meeting recreational purposes.
- K. Entrances and exits to camp grounds shall be designated for safe and convenient movement of traffic on adjacent streets. All traffic into or out of the camp grounds shall be through such entrances and exists. An adequate lighting system shall be provided for the camp grounds.
- L. All utilities shall be underground.
- M. Not less than one (1) covered twenty (20) gallon garbage receptacle shall be provided for each camp site. Garbage and rubbish shall be collected and disposed of as often as may be necessary to insure sanitary conditions.

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- N. All applicable sanitation standards promulgated by the State of New York shall be met.
- O. Setbacks – Each building or structure within a camp ground shall comply with the setback regulations applicable to the zoning district in which such camp ground is located, except that travel trailers, campers, tents, motor homes, and other motor vehicles propelling or carrying the same may be located not closer than fifteen (15) feet to any side or rear lot line nor closer than one hundred (100) feet to any front lot line.

SECTION 703 – EXCAVATION AND MINING

- A. PURPOSE – It is the purpose of these supplementary regulations to provide for the proper uses of the land and to require an orderly continuing reclamation of all land permitted to be excavated for its resources. The objectives shall be: (1) to protect the land proposed for excavation; (2) to protect the surrounding land uses, natural environment and people from the result of excavating and appurtenant activities; (3) to provide for a plan to restore the excavated land for its ultimate reuse at the termination of excavation; and (4) to allow only those excavation uses which are in accordance with the Town Comprehensive Plan and development objectives.
- B. THE CLARENDON LINDEN FAULT – The Clarendon Linden Fault has an on-shore trace that extends north-south for more than eighty (80) kilometers across Western New York. It is the only large mapped fault system in Western New York. Significant earthquake activity, both historic and recent, is associated with the fault system. The Hamlet of Clarendon is located along a presumed major fault line. Should there be seismic activity associated with the activation of any part of the fault system reported by the United States Department of the Interior Geological Survey and/or New York State Earthquake Centers, all blasting associated with mining activity shall cease immediately. Activity shall not resume until such time that the Town of Clarendon is notified by the above authorities that it is prudent to allow mining and excavation to resume. (Refer to Clarendon-Linden Fault System of Western New York: A Viroseis-Seismic Study – Paul W. Pomeroy; Thaddeus A. Nowak, Jr.; Robert H. Fakundiny)
- C. PROVISIONS, REQUIREMENTS AND EXCEPTIONS
 - 1. No person, including a lessee, renter, contractor or subcontractor or any representative of a Federal, State, County or Local Government shall strip, excavate or otherwise remove topsoil, sand, gravel, rock or other natural deposits for sale in the Town of Clarendon without a special permit issued by the Planning Board.
 - 2. The Code Enforcement Officer or any other person designated by the Town Board shall make an inspection of all sand, gravel, rock or other natural deposit excavations in the spring and the fall of each year and at any other time deemed appropriate and necessary by Code Enforcement Officer.
 - 3. The following operations and uses are excepted from the application of this Section:
 - a. General Construction Exception – Nothing contained herein shall prohibit excavation incidental to construction of a driveway, private road, walkway, wall or building or part thereto, or accessory thereto, for which any required building permits have been issued, where the excavation occurs on the same or contiguous parcel as the construction. In cases of real estate subdivision, the cut and fill of on-site soils shall be in balance and not hauled off the building site. Provision shall be made to restore an effective cover crop to any area of land from which topsoil has been removed or covered with fill within the first growing season following the start of such operation.

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- b. General Farming Exception – Nothing contained herein shall prohibit excavation for the purpose of moving topsoil, soil or earth from one location to another location on the same or contiguous parcel for grading, improving or draining said land, provided that such excavation is necessary for, or accessory to, farming operations.
- c. Sewage Disposal and Underground Storage Tank Exception – Nothing contained herein shall prohibit excavation for sewage disposal systems or underground storage tanks.
- d. Fire and Farm Pond Exception – Nothing contained herein shall prohibit construction of private farm ponds, farm ditches and fire ponds. However, construction must meet all criteria required by the New York State Department of Environmental Conservation (NYSDEC) concerning classified waterways.

D. APPLICATION PROCEDURE

- 1. Five (5) copies of the special permit application shall be submitted to the Planning Board.
- 2. Upon filing an application for a special permit, the applicant shall pay a non-refundable filing fee as established by the Town Board which shall be deemed a reasonable sum to cover the cost of administration and which in no part shall be returnable to the applicant.
- 3. A pre-application conference will be arranged by the Planning Board at their next regularly scheduled meeting to determine the necessary documents and data required for the sketch plan.
- 4. After the applicant has provided all of the data requested, the Planning Board shall be permitted a reasonable time to review the sketch plan, but in no instance longer than forty-five (45) days provided, however, that this time period may be extended to sixty (60) days upon concurrence of both parties.
- 5. Following the Planning Board review of the sketch plan, application for site plan approval shall be made in writing by the applicant on a form provided by the Planning Board in accordance with the information required in Article IX and this Section of the Ordinance. A filing fee will be required which is non-refundable.
- 6. Five (5) copies of the site plan approval application shall be required. Each copy shall included a copy of site plan, maps, overlays, reclamation plan and overlay map.
- 7. Applicant shall submit a completed SEQRA Environmental Assessment Form (6 NYCRR Part 617) to the Planning Board at the time of site plan approval submission.
- 8. Special permits for mining and excavation shall be issued for a period of one (1) year and shall be subject to periodic site inspection and review by the Code Enforcement Officer or a duly authorized representative, the Town Clerk, member of the Planning Board, Town Board or Zoning Board of Appeals, or their duly authorized representative who shall be granted access to any mining or excavation site permitted hereunder to inspect or monitor compliance with permit conditions. The cost for inspection or monitoring services, plus any administrative costs incurred by the Town, shall be borne by the applicant as a condition of permit approval or renewal. If all operations undertaken pursuant to any permit issued hereunder have been conducted in full compliance with the term of such permit and all provisions of this Ordinance, the special permit may be renewed by the Planning Board for a period of one (1) year.
- 9. A renewal of a special permit for mining and excavation may be issued without a public hearing when the area covered by the renewal does not extend beyond the

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- area of operations originally authorized; however, the Planning Board may, in its discretion, direct a public hearing if it determines said hearing shall be necessary.
10. At least ten (10) days before taking any such renewal action, the Planning Board shall cause a notice to be published in the official town newspaper and posted on the Official Sign Board a notice of the proposed renewal and a statement indicating clearly both the property affected and the nature of the operation. All ordinances and regulations in effect at the time a renewal is granted shall apply to the renewal permit in the same manner as when a new or original permit is issued.
 11. Renewal of a special permit may be withheld if penalties levied by the appropriate authority against the applicant due to infractions of this Ordinance have not been satisfied and if violations have not been corrected.
 12. After the approval of the application and before the issuance of a special permit, the Planning Board shall require evidence that the applicant has posted a Performance Bond with the NYSDEC.
 13. A performance bond shall be required by the Town of Clarendon to assure that the conditions stipulated in the approval of the special use permit are carried out. After all other permit conditions have been established, the applicant and each owner of record of the premises other than the applicant, shall jointly make, execute and file with the Town Clerk, a performance bond in the amount approved by the Town Engineer of Consulting Engineer to cover each acre of land within the area to be used for excavation and appurtenant activities. The above parties guarantee that upon termination of the excavation, the ground surface will be restored in conformity with the established permit conditions and with any conditions required by the State of New York.
 14. The applicant shall furnish evidence of a valid permit from the NYSDEC pursuant to Title 27, Article 23 of the Environmental Conservation Law, when applicable.
 15. Before any excavation or appurtenant activities are commenced, five (5) copies of the application for special permit, together with all requirements stated in this Section, Article IX and Article X of this Ordinance, shall be filed with the Planning Board and the special permit application shall have been approved by the Planning Board and a special permit shall have been granted by the Planning Board.
 16. Before any excavation or appurtenant activities are commenced, any person, business or corporation issued a special permit by the Planning Board for the purpose of mining and excavation shall have placed in position, by a licensed engineer or surveyor, permanent metal markers that shall designate both the maximum and final limits of mining as well as designating the three year permit term limits granted by the NYSDEC. The markers shall be maintained in place during the life of the mine. The markers shall be color coded a minimum of four (4) feet above the ground level.
 17. Additional temporary metal markers shall be placed surrounding the area required for one (current) season's mining. Reference points denoting these markers shall be placed on both the operational and reclamation maps and filed in the Zoning Office. Temporary markers shall be color coded.
 18. Before any blasting is carried out at the excavation site, a blasting permit shall be obtained from the Code Enforcement Officer according to provisions of Section 303.

E. **SITE PLAN REVIEW** – In addition to the special permit required and in addition to the requirements set forth in Article IX of this Ordinance with respect to site plan review, the following supplemental information shall be supplied, if applicable, although the Planning Board may at its discretion, waive any particular requirements of this subsection.

1. A site plan of the property, showing the location and size of the excavation and all land and structures within one thousand (1000) feet of the excavation site indicating

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- contours of adequate scope and detail to show the site topography. Site Plan shall include name and address of applicant and authorization of owner, if different from applicant. Name and address of person or firm preparing the plan and maps.
2. A site plan map shall be prepared by a qualified professional such as a civil engineer, architect, or any other professional as deemed necessary by the Planning Board
 3. A duly acknowledged notarized consent in writing by the owner or lessee of the premises and mortgagee, if any, including addresses.
 4. Ownership intention such as purchase options shall be stated at time of application.
 5. A certified survey map, executed by a licensed surveyor, showing all boundary lines shall be submitted with site plan map.
 6. Current zoning classification of property, including exact zoning boundary if in more than one district.
 7. Property boundary lines to be plotted to scale. Distances, angles and area to be shown. North arrow, engineer's stamp and date shall be shown as well as names of owners of adjoining property.
 8. Vertical aerial photographs at a negative scale no smaller than one inch (1") equal to one thousand feet (1000') which are certified as flown not earlier than one (1) year prior to date of application. The area covered by the aerial photographs shall include all land within a distance of at least three thousand feet (3000') from the limits of the tract proposed for permit.
 9. Location maps in the forms of overlays to the aerial photographs giving the boundaries of the area proposed for permit, including NYSDEC permit, if applicable, and the area which has been excavated and identifying all existing utilities adjacent to and on the said premises, and the proposed protection or treatment thereof.
 10. A natural features map prepared by a licensed engineer or surveyor at a scale no smaller than one inch (1") equal to two hundred feet (200'). The map shall show the following both within the tract proposed for permit and within two hundred feet (200') of the tract:
 - a. Present and proposed contour lines.
 - b. The location of three bench marks.
 - c. The contour intervals shall be five feet (5') or as specified by the Town Engineer or Town Consulting Engineer.
 - d. Contour lines shall extend two hundred feet (200') beyond the property lines to indicate the nature of the adjacent property.
 - e. Any other information which may be required for proper review.
 - f. Spot elevations and/or cross sections as determined by Town Engineer or Consulting Engineer.
 - g. Areas of trees and forest.
 - h. Average thickness and height of overburden.
 - i. Surface drainage pattern including any drainage system to be installed during and after completion of work.
 - j. Grades of all creeks or drainage ditches at fifty foot (50') intervals for a minimum distance of five hundred feet (500') beyond the parcel of land covered by the permit and remaining lands.
 - k. If the application covers only a part of the applicant's tract, an aerial photograph of the entire tract, at a minimum scale of one inch equal to four hundred feet (1"=400') shall be provided. The part of the applicant's tract submitted for approval shall be considered in light of the entire tract.
 11. Each copy of the application shall include an operations map, presented as an overlay to the natural features map. The following features, including the area devoted to each, shall be shown:

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- a. Existing and proposed excavation areas.
 - b. Existing and proposed appurtenant activities, identified by type, including location of proposed structure, either temporary or permanent, including all existing and proposed access to and from proposed excavation site, including maintenance roads.
 - c. Existing and proposed access roads, identified by width and type of surface material, including origin or material brought onto site.
 - d. Existing and proposed parking and loading facilities, identified by type of surface material, including origin of material brought onto site.
 - e. Location of other existing development and uses.
 - f. Location and dimensions of existing and proposed buildings and structures to be used in said operations and appurtenant activities.
 - g. Location, size and flow direction of septic systems, sewers, if applicable, wells or water supply lines and culverts. Major electric, gas and telephone lines and appurtenances should also be shown.
 - h. Existing and proposed fencing, berms and buffers, identified by height and type of materials.
 - i. Areas where topsoil will be temporarily stored for use in reclamation and other material stockpiled.
 - j. All route(s) to be used to and from excavation site including Town, County or State Roads, including primary, alternate and maintenance roads.
12. A general narrative description which describes the method of operation including plans to reduce noise, dust and other nuisances.
 13. The reclamation plan and overlay map to natural features map shall be prepared and certified by a New York State licensed engineer or surveyor, including date of preparation.
 14. At the time the applicant submits a proposed Reclamation Plan to the NYSDEC, a copy shall also be submitted to the Town of Clarendon for the purpose of reviewing the proposed reclamation plan for proposed site reuses and to expedite the Special Permit process.
 15. No special permit shall be issued unless the Planning Board shall have approved a Reclamation Plan, which shall fully comply with the provisions of Paragraph E-Subdivision 11.13 and Paragraph E-Subdivision 11.14 of this section.
 16. The reclamation plan shall be approved by the Planning Board before issuance of a special permit.
 17. A copy of all plans and permits required by the NYSDEC if applicable, shall be delivered to the Planning Board for review.
- F. **FACTORS FOR CONSIDERATION** – The Planning Board’s review of the site plan shall include but is not limited to the following general considerations:
1. Location, arrangement, size, design and general site compatibility of buildings, structures and equipment both primary and appurtenant. Special attention to location of equipment that generates noise and dust.

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2. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic control both on site and off site within the general vicinity of site.
3. Adequacy and arrangement of pedestrian traffic and circulations, walkway structures, control of intersections where access to site is through residential and general business areas.
4. Whether access routes to site is through residential and/or general business areas.
5. Location, arrangement, appearance and sufficiency of off-street parking and loading.
6. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants. Special attention to the design and dimensions of buildings and structures for the accessibility of community fire equipment.
7. Adequacy, type and arrangement of trees, shrubs, berms and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
8. Adequacy of storm water and draining facilities.
9. Adequacy and impact of structures, roadways and landscaping in areas susceptible to ponding, flooding and/or erosion.
10. Adequacy of water supply and sewage disposal facilities. Special attention to adequacy of water supplies to adjacent lands.
11. Overall impact on the neighborhood with special consideration to the impacts of noise, dust and blasting levels in residential and subdivision areas, including compatibility of design considerations.
12. Adequacy of open space between excavation and mining sites and other uses.

G. ISSUANCE OF SPECIAL PERMITS FOR MINING AND EXCAVATION OPERATIONS

1. Standards – The following standards shall apply to all special permits for mining and excavation operations for which a NYSDEC permit is not required. For all operations for which a NYSDEC permit is required, these standards shall constitute the recommendations of the Town and its Supervisor to the NYSDEC for permit limitations and conditions, and shall be transmitted to the NYSDEC whenever the Town is notified of a pending application for a NYSDEC permit.
2. Setbacks
 - a. No excavation shall be conducted closer than six hundred feet (600') from an adjoining property line, or one thousand feet (1000') from an existing residence.
 - b. All buildings and excavation operations shall be located or shall occur not less than one thousand feet (1000') from any public right-of-way. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one (1) public notice sign, identifying the use of the property, fencing, berms, buffers, access roads and parking.
3. Access Roads and Parking
 - a. Each tract of land to be granted a permit for mining and excavation shall use only direct access to major highways and demonstrate proof of legal right to that access.
 - b. All access roads shall be designed to take advantage of buffers and other features to screen as much as feasible, excavation and appurtenant activities from public view. The junction of access roads and public roads shall be at an angle of not more than ten (10) degrees deviation from the right angle (90 degrees). The angle should be maintained approximately two hundred feet (200') from the public highway.

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- c. All major access roads shall be sufficiently free of dust and mud to prevent such material from being spread or blown from the premises. All precautions, such as oiling or watering periodically and when necessary, shall be taken to prevent dust and sand from being blown from the premises. The first two hundred feet (200') of access from a public road shall be improved with an asphalt or Portland Cement surface approved by the Town Engineer or Consulting Engineer as being capable of carrying heavy traffic. Adequate sight distance shall be required as determined by the Town Engineer or Consulting Engineer.
 - d. Sufficient off-street parking shall be provided for company employees and visiting vehicles. Off-street parking shall be provided as prescribed in Section 605. The parking of any such vehicle on a public right-of-way or the impending of traffic or creation of traffic hazards by the parking of any such vehicle shall be prima facie evidence of failure to provide adequate parking.
 - e. Truck loading and unloading areas shall be in an amount sufficient to permit the transfer of materials in other than a public street or off-street parking area.
4. Preservation of Natural Features (Conservation Measures)
- a. Topsoil. All topsoil shall be stripped from the active excavation area and shall be stockpiled for use in accordance with the Reclamation Plan. Such stockpiles shall be seeded, covered, or otherwise treated to minimize the effects of erosion by wind or water upon public roads, streams or other water bodies, or adjacent property. This provision applies to all excavations except those for topsoil removal, in which case the provision applies for only that topsoil which has been stripped for use in the reclamation plan.
 - b. Landscape. Excavations shall be buffered by appropriate landscaping sufficient to shield the operation from public view. Existing hills, trees and ground cover fronting along public roads or adjacent property shall be preserved, maintained and supplemented by selective cutting, transplanting and addition of new trees, shrubs and other ground cover for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back overburden around the perimeter of the excavation site to create a berm for the purpose of screening and noise reduction. Berms shall be constructed to such dimension as required by the Town Engineer for reason stated above.
 - c. All stumps, boulders and other debris resulting from excavation or appurtenant activities shall be disposed of by approved methods as mining progresses. If disposed of on the site, such debris shall be covered with a minimum of two (2) feet of soil. Other unsightly evidence of the operation such as dilapidated buildings, abandoned machinery, tires, drums and containers shall be disposed of off site as they accumulate.
 - d. Drainage. An adequate and comprehensive drainage system shall be provided to convey the storm water runoff originating on and crossing the premises in accordance with the natural direction of runoff for the total watershed area. Soil erosion, sedimentation and ground water seepage shall be controlled so as to prevent any negative effects on bodies of water, public roads, and neighboring properties. Sediment control measures shall be installed to keep sediment damage, if any, totally within the applicant's property. No excavation shall be allowed closer than two hundred feet (200') from a stream or other natural water body.

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The proposed grading and slope and the necessary auxiliary appurtenances shall provide adequate drainage to existing drainage facilities as shall be approved by the Town Engineer or Consulting Engineer before removal operations are commenced.

- e. Fencing. Fencing shall be required on all property lines of an excavation. The fencing shall be at least six feet (6') in height and of a type approved by the Planning Board. In areas where there are steep slopes, bodies of water, and any other hazards deemed such by the Planning Board, fencing shall be required to have three (3) strands of barbed wire along the top of the fence. All fences shall be maintained free of weeds, vines and vegetation. Areas between fence line and berm shall be maintained in an aesthetic manner.
 - f. Lateral Support. Lateral support shall be sufficient to prevent the hazard of damage to persons, adjacent properties, and public roads by reason of slides, sinking or collapse.
 - g. Hours of Operation. All operations shall be conducted between 7:00 am and 6:00 pm with no Sunday operations. An exemption will be allowed for emergencies, which must be declared by the Town of Clarendon Code Enforcement Officer or any other person designated by the Town Board of the Town of Clarendon.
 - h. Noise. Operational noise levels shall be limited to a maximum of sixty-five (65) dB(A) detectable at the outside property line of the parcel or contiguous parcels owned or controlled by the operator.
 - i. Dust and Dirt Control. Dust and dirt particle levels in the air shall not exceed the Federal Air Quality standards administered and enforced by the Federal Environmental Protection Agency (EPA) through the monitoring of Air Quality by New York State as stated in Chapter III Air Resources Part 257, 200, 201 of the New York State Environmental Conservation Law.
5. Standards for Reclamation
- a. Reclamation shall be a continuous operation, subject to the review and approval of not less than an annual inspection and at the termination of the permit period.
 - b. The active excavation area which has not been restored shall at all times be limited to the minimal acreage necessary to conduct the excavation operation such minimal acreage to be determined by the authorized activity stated in the current NYSDEC mining permit which is stated in areas, and the stated acreage as granted in the Special Permit issued by the Town of Clarendon (whichever acreage is the lesser shall be considered as the minimum).
 - c. A progressive Reclamation Plan shall be implemented in the active excavation area, defined as that area which is required for three (3) consecutive season's mining, before a renewal of the Town of Clarendon's special Permit is granted. In the event that reclamation has not taken place, a special review shall be undertaken which is to include the Town of Clarendon Planning Board, the applicant, and the NYSDEC. The review shall become part of the general review by the Planning board in considering renewal of special permit.
 - d. Topsoil shall be re-spread over the excavated area to a minimum depth of four inches (4") and sufficient topsoil shall be stockpiled on the premises to provide complete ground cover for the exposed area.
 - e. The reclamation area shall be planted with trees, shrubs, grass or other vegetation so as to provide for screening, natural beauty and soil stability. The planting shall follow acceptable conservation practices.

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- f. Reclamation shall be undertaken in such a way that natural and storm drainage, where it enters and leaves the premises, shall be altered only to the minimal degree necessary to carry out excavation and appurtenant activities. Any alterations of natural and storm drainage shall not adversely affect public roads or neighboring property owners.
 - g. Within one (1) year after termination of the excavation operation all equipment, buildings, structures and other unsightly evidence of the operation shall have been removed from the premises or disposed by approved methods and all reclamation shall have been completed.
6. Additional Requirements for Blasting Operations – Before any excavation requiring blasting is commenced, a blasting permit shall be obtained from the Zoning Office as required in Section 303. In addition to all of the requirements of Section 303 and Section 661, any applicant for a special permit hereunder shall be subject to the following additional requirements:
- a. Pre-Blast Procedures. Prior to the granting of any permit or license to conduct a blasting operation in the Town of Clarendon, the following is required:
 - 1. An inspection of all structures within one-half mile of the quarry property lines in all directions. Existing damages are to be recorded and photographed. Inspection reports are to be signed by the property owner. Copies of these are to be filed with the Town Clerk with a report sent to the property owner.
 - 2. Each well that serves a structure within one-half mile of the quarry property lines in all directions shall be examined for water level and water quality prior to the issuance of a license or permit.
 - 3. During any blasting operation, regardless of the length of said blasting, these wells should be continuously monitored to determine any change in either water level or quality of water experienced.
 - 4. Any well that suffers adverse effects that cannot be explained by climatic or natural occurring conditions shall be rectified by measures that will insure any adequate quality and quantity of water to the property owner. The expense of repairing any damaged well shall be borne by the applicant.
 - 5. The pre-blast survey of structures and wells shall be conducted by an independent party agreed upon by applicant and the Town of Clarendon. The expense of said survey shall be borne by the applicant.
 - b. Trial Blasting Procedures. Any operation which requires blasting operations to remove or extract minerals from the ground or includes the breaking of surface soil in order to accomplish the extraction or removal of minerals shall be required to conduct trial blasts in a test program which shall be monitored by experienced personnel with carefully calibrated instrumentation.
 - 1. All pertinent data from the test blasts are required to include depth of holes, diameter of holes, weight of explosive per hole, number of pounds of explosive per delay, and total weight of explosives as well as weather conditions, overpressure, the three components of particle velocity, and the distance from blast center to the instrumentation shall be recorded. These blasts shall be monitored at the location of a minimum of three (3) residences at varying distances from the blast site.
 - 2. Data from the testing program should be carefully analyzed to be used as a basis for calculation. An ever-increasing data base shall be generated to allow for the continual refinement of predictions

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- made from the test program. A trained individual in the employ of the Town of Clarendon shall oversee the monitoring of the blasts. Said employee shall be allowed to verify the various variables such as charge weight, hole depth, etc. as listed in number one above.
3. A permanent installation of a 'state of the art' seismograph should be made to monitor the test blasts and any and all future blasts at a blasting site. A minimum of three portable seismographs shall be placed at the location of structures at varying distances from the blast site to monitor the test blasts and any and all future blasts at a blasting site.
 4. Before mining begins, thirty (30) days of seismograph monitoring shall be recorded. A copy of these records shall be filed with the Town of Clarendon Zoning Office. In the event of increased seismic activity after mining commences, the activity shall be reported to the Code Enforcement Officer immediately and all mining activity shall cease, pending an investigation which shall include the following participants: Town of Clarendon Blasting Consultant, Zoning Office, Planning Board, Mine Operator and the NYSDEC.
 5. At the completion of the trial blasting program or in the absence of a required trial blasting program, the Town of Clarendon shall, during the permit or license period, monitor the blasting operations of the applicant in accordance with the standards herein set forth, and should it be found and determined by the Town of Clarendon that the applicant shall have exceed any of the standards hereunder, the Town of Clarendon may suspend and/or revoke the license issued hereunder until it is satisfied that compliance with the standards set forth herein is assured.
 6. For the purposes of these provisions, measurements of particle velocity and air pressure shall be made on the ground adjacent to the nearest public dwelling, school, church or residential, or other commercial or institutional building or structure not on the property of the applicant.
 7. No more than two (2) blasts shall occur within the town of Clarendon during any twenty-four (24) hour period.
- c. Monitoring Procedures.
1. If public water supply is not available test wells shall be established by applicant and monitored by the applicant and the Town of Clarendon. Number of test wells and their location to be approved by the Town Engineer or Consulting Engineer, engaged by the Town of Clarendon. Blasting operations shall conform to procedures recommended by a qualified consultant recommended by a qualified consultant, engaged for that purpose.
 2. Any peace officer, zoning enforcement officer or duly authorized representative of the town of Clarendon shall be granted access to any mining or excavation site permitted hereunder to inspect or monitor compliance with permit conditions.
 3. The cost for inspection or monitoring services, plus any administrative costs incurred by the Town, shall be borne by the applicant as a condition of permit approval or renewal.

H. FACTORS FOR CONSIDERATION. The Planning Board's review of the special permit shall include but is not limited to the following considerations:

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1. Whether the excavations and appurtenant activities and proposed Reclamation Plan are in accord with the intent of the comprehensive land development plan for the Town.
 2. Whether they will result in the creation of pits or holes which may be hazardous or dangerous and eventually permanent in nature.
 3. Whether they will cause soil erosion or the depletion of vegetation.
 4. Whether they will render the land unproductive or unsuitable for agricultural or development purposes, or unsuitable for recreation, wildlife habitat or other purposes.
 5. Whether they will affect the control of nuisances, such as noise, dust, excess traffic.
 6. Whether the areas excavated can be effectively restored and re-vegetated.
 7. Whether the proposed operation will adversely impact surrounding water quality and/or quantity.
 8. Whether the resultant drainage will be adversely affected.
 9. Whether any potential blasting on the project site may be in such proximity to existing residences or structures as to cause damage to such structures.
- I. **PENALTIES.** Violation of any provisions of this Section or failure to comply with any of its requirements shall constitute an offense. See Section 105 – Violations and Penalties.

SECTION 704 – HOME OCCUPATION

- A. No more than two (2) persons other than a member of the immediate family or resident(s) occupying the dwelling shall be employed in connection with a home occupation.
- B. The home occupation must be conducted entirely within the confines of the dwelling on the premises or entirely within the confines of an accessory structure thereto.
- C. The character of the dwelling or structure within which the home occupation is conducted may not be altered or modified in such a manner as would cause the premise to differ in character from other dwellings or structures in the zoning district.
- D. There shall be no outside storage of any kind related to the home occupation, nor will the outside display of goods, products or merchandise produced or generated by the home occupation be permitted.
- E. Home occupations shall not generate pedestrian or vehicular traffic beyond the normal volume in the neighborhood.
- F. No home occupation shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
- G. No more than thirty percent (30%) of the gross floor area of the residential dwelling shall be devoted to a home occupation.
- H. Exception: A home occupation may be exempt from the requirement of a Special Permit if, as part of the site plan review process, the Planning Board determines that the proposed home occupation would not:
 1. Create additional vehicular traffic;
 2. Create additional pedestrian traffic;

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3. Employ other than immediate family members on-site;
4. Require a sign;
5. Conduct any on-site sales of goods or products.

SECTION 705 – COTTAGE INDUSTRY

- A. No more than three (3) persons other than members of the immediate family or resident(s) occupying the dwelling shall be employed in connection with a cottage industry.
- B. The cottage industry must be conducted entirely within the confines of a dwelling on the premises or entirely within the confines of an accessory structure thereto.
- C. The character of the dwelling or accessory structure within which the cottage industry is conducted may not be altered or modified in such a manner as would cause the premises to differ in character from other dwellings or structures in the district.
- D. New construction of accessory structures for cottage industry is permitted provided it follows all specifications of Article V and would not cause the premises to differ in character from other dwellings or structures in the district.
- E. There shall be no outside storage of any kind related to the cottage industry. Outside display of goods, products, or merchandise produced or generated by the cottage industry shall be contained to an area not to exceed 25% of the road frontage of premises, up to a maximum of 50 feet, will not be in the “Right-of-Way” and shall not be a nuisance.
- F. The cottage industry shall not generate pedestrian or vehicular traffic beyond the normal volume in the neighborhood.
- G. No cottage industry shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no cottage industries exists.
- H. Exception: A cottage industry may be exempt from the requirement of a Special Permit if, as part of the site plan review process, the Planning Board determines that the proposed cottage industry would not:
 1. Create additional vehicular traffic;
 2. Create additional pedestrian traffic;
 3. Employ other than immediate family members on-site;
 4. Require a sign;
 5. Conduct any on-site sales of goods or products.

SECTION 706 - KENNEL, COMMERCIAL/ANIMAL HOSPITAL *(Rev 10/11/2005; 6/19/2007)*

- A. Dimensional Requirements:
 1. Minimum lot size – 120,000 square Feet.
 2. Minimum lot frontage – 300 Feet.
 3. Minimum lot depth – 300 Feet.
 4. Minimum front setback – 125 Feet.
 5. Minimum side setback – 100 Feet.
 6. Minimum rear setback – 100 Feet.
 7. This use shall not be allowed on flag lots.

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- B. Any combination of buffering, additional setbacks, fencing, screening, sound proofing or any other means may be required to ensure compatibility of the kennel, commercial/animal hospital with the surrounding neighborhood and to ensure the health and welfare of adjoining properties. The need for these requirements shall be determined by the Planning Board as part of the Special Use Permit approval process. *(Rev. 10/11/2005; 6/19/2007)*
- C. One off-street parking space shall be provided for each employee on the maximum work shift, one parking space provided for every kennel run provided, and one parking space provided for every 200 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Article VI, Section 605 of this Ordinance.
- D. A sanitary sewage system shall be installed of sufficient size to collect, dispose of and/or treat all sewage generated from the use, including any outdoor facilities, and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.
- E. All animals shall be kept inside an enclosed building between 8:00 pm and 6:30 am.
- F. All animal structures shall be maintained in a clean and sanitary manner to control disease, obnoxious odors and unsightly appearance.
- G. Outdoor facilities shall provide adequate shelter areas to prevent harm to animals from adverse weather conditions.
- H. Outdoor facilities shall be constructed to provide sufficient space for the movement and comfort of each animal.
- I. Sick animals shall be sufficiently separated from those appearing healthy and normal to prevent the contamination of healthy animals.
- J. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.
- K. Signs shall be in accordance with Article VI, Section 600.

SECTION 707 – FARM LABOR CAMP – PRIVATE

- A. Dimensional Requirements:
 - 1. Minimum Front Setback – 125 Feet.
 - 2. Minimum Side Setback – 100 Feet.
 - 3. Minimum Rear Setback – 100 Feet.
 - 4. These uses shall be allowed on flag lots.
- B. The Code Enforcement Officer may inspect the farm labor camp at any time on one (1) day's notice to the owner to assure compliance with the provision of this Ordinance.
- C. Laborers housed at a farm camp may only be used in the owner's personal farming operations. No commercial farm labor camps shall be allowed in the Town of Clarendon.
- D. The farm labor camp and camp buildings must continually comply with all the applicable Local, State and Federal codes, rules and regulations.

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- E. The Planning Board, during site plan review, may take into consideration the general suitability of establishment of a farm labor camp in the particular location requested.
- F. The Planning Board must hold a public hearing on such application for a farm labor camp. If substantial opposition to establishment of a farm labor camp in the location requested is received at the public hearing, the Planning Board may consider such opposition as one factor in making their determination of site plan approval or denial.

SECTION 708 – MOBILE/MANUFACTURED HOME PARK

(Rev 11/20/2012)

GENERAL – Special permits for the establishment and operation of Mobile/Manufactured Home Parks shall be allowed provided the sum total number of units in all Mobile/Manufactured Home Parks within the Town of Clarendon does not exceed ten (10) percent of the total residential unit of the Town.

- A. Each mobile/manufactured home on a lot within a park shall have a minimum front setback of twenty (20) feet from the near edge of the park roadway.
- B. Each mobile/manufactured home on a lot within a park shall have a minimum side setback of ten (10) feet on each side.
- C. Each mobile/manufactured home on a lot within a park shall have a minimum rear setback of ten (10) feet.
- D. The minimum site area of proposed mobile/manufactured home parks shall have no more than five (5) lots per acre, exclusive of roadways.
- E. Mobile/manufactured home lots shall have an area of not less than ten-thousand (10,000) square feet. Each mobile/manufactured home lot shall front on an interior park roadway and have a minimum width of one hundred feet by one hundred feet in depth (100' X 100').
- F. The minimum setbacks of every mobile/manufactured home, building, or other structure in a mobile/manufactured home park, from the nearest public street, road, or highway line, shall be on hundred (100) feet.
- G. Not more than one (1) mobile/manufactured home shall be located on any one (1) mobile/manufactured home lot. Every mobile/manufactured home within a mobile/manufactured home park shall be located on a mobile/manufactured home lot or in a designated storage area shown on the approved site plan for said park.
- H. At least one (1) service building shall be constructed in each mobile/manufactured home park which shall be adequate to provide for storage of all equipment, tools, and materials necessary for the maintenance of the park, and all such equipment, tools and materials shall be stored within said building when they are not in use.
- I. Each mobile/manufactured home lot must have not less than two (2) off-street parking spaces. Such parking spaces shall be connected to the entrance of the mobile/manufactured home by a permanent sidewalk having a minimum width of twenty-four (24) inches.
- J. No boars, campers, travel trailers, recreational vehicles, or unregistered and unlicensed motor vehicles shall be parked or stored at any place within a mobile/manufactured home park

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except in areas designated and approved for such storage as part of the site development plan approval.

- K. Every roadway within a mobile/manufactured home park shall have a minimum pavement width of twenty-two (22) feet and a minimum width of fifty (50) feet. The one hundred (100) foot lot depth is not to include the right-of-way. If cul-de-sacs exist, they shall have a minimum diameter of seventy (70) feet.
- L. A complete water distribution system approved by the Health Department including a water service pipe for each mobile/manufactured home lot or other appropriate water sources approved by the Health Department and evaluated during site plan approval.
- M. Appropriately spaced fire hydrants or access to water sufficient for firefighting as determined during the site plan approval.
- N. A sanitary sewage disposal system approved by the Health Department and other appropriate agencies shall be installed, including a sewer connection for each mobile/manufactured home lot or other adequate sewer disposal system approved by the Health Department and determined during site plan approval.
- O. All public utility, electric, gas, cable television and telephone lines shall be installed underground.
- P. Appropriate street lighting shall be installed on interior roadways with the minimum number of lights being one at each intersection of interior roadways with each other or with abutting public roads, and at least every two hundred (200) feet where such intersections are more than two hundred (200) feet apart.
- Q. A landscape plan shall be prepared and carried out which will assure the Planning Board that an appropriate planting of trees and shrubs will be included in the park design, including screening where necessary.
- R. No mobile/manufactured home shall be located on a mobile/manufactured home lot until the roadways, sanitary sewage disposal system, water supply systems, and storm drainage system serving said mobile/manufactured home lot have been installed in accordance with the approved site development plan for the mobile/manufactured home park.
- S. Each roadway shall be named and noted upon signs at each roadway intersection. Each mobile/manufactured home lot shall be assigned a permanent number which shall be noted on the mobile/manufactured home lot in a location clearly visible from the roadway.
- T. All fuel tanks used for heating within a mobile/manufactured home park, including all fuel tanks used for heating within mobile/manufactured homes, shall be installed underground in accordance with National Fire Protection Agency standards.
- U. Every mobile/manufactured home park shall have a recreational area or open space area for use by the occupants of the mobile/manufactured home park. Such areas shall be centrally located as the topography and design of the park permit. Such areas shall be not less than two thousand (2,000) square feet per mobile/manufactured home lot in the park.
- V. The park owner shall provide for the regular collecting and disposal of garbage, trash and rubbish.
- W. Not more than one (1) accessory building shall be permitted on any mobile/manufactured home lot.

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- X. The area between the base of the mobile/manufactured home and the ground or permanent slab foundation shall be enclosed with metal, wood or vinyl skirting within 30 days after placement of the unit on the lot.
- Y. No enclosure of addition, with the exception of patios, door porches not to exceed eight (8) feet in width, carports, shall be constructed, added on or attached to the exterior of any mobile/manufactured home.
- Z. Every roadway within a mobile/manufactured home park shall be maintained in good repair and shall be open at all times reasonably possible for travel by occupants of the park and necessary fire, police, ambulance, public utility maintenance and all accessory snow removal. The provisions of this subsection shall apply to mobile/manufactured home parks hereafter established with the Town of Clarendon.
- AA. The owner of every mobile/manufactured home park shall keep a record of the occupants and the mobile/manufactured homes located within the park. A copy of such register shall be made available to the Code Enforcement Officer upon his/her demand. Such register shall contain the following:
 - 1. The name and last address of each occupant.
 - 2. The make, model, year and serial number of each mobile/manufactured home, and the mobile/manufactured home space within the park on which the same is located.
 - 3. The dates of arrival and departure of each mobile/manufactured home.
- BB. The sale of individual lots within a mobile/manufactured home park shall not be allowed.

SECTION 709 – MULTI-FAMILY DWELLING

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 200,000 Square Feet.
 - 2. Minimum Lot Frontage – 400 Feet.
 - 3. Minimum Lot Depth – 500 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 100 Feet.
 - 6. Minimum Rear Setback – 100 Feet.
 - 7. This use shall not be allowed on flag lots.
- B. The overall land density shall not exceed four dwelling units per 40,000 square feet of lot area. No principal building shall contain more than eight (8) dwelling units.
- C. Each one bedroom unit shall provide a minimum of 800 square feet of habitable floor area. Each two bedroom unit shall provide a minimum of 1000 square feet of habitable floor area. Each three bedroom unit shall provide a minimum of 1200 square feet of habitable floor area. No dwelling unit shall have more than three bedrooms.
- D. In addition to any closets/storage areas routinely provided within individual dwelling units, a minimum of 100 square feet of dedicated storage area shall be provided for each dwelling unit. Storage areas shall be located in a convenient, centrally located area within the building or elsewhere on the site, where personal belongings may be stored under lock and key and separated from the belongings of other residents. Storage floor area requirements shall be exclusive of and in addition to the habitable floor area requirements noted above.
- E. A buffer shall be required along any property line shared with a residential dwelling. Buffers

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shall comply with the requirements specified in Article VI, Section 609 of this Ordinance.
(Rev. 6/19/2007)

- F. Each one bedroom unit shall require two off-street parking spaces. Each two bedroom unit shall require three off-street parking spaces. Each three bedroom unit shall require four off-street parking spaces. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.
- G. Multi-family dwelling developments with 12 or fewer individual dwelling units may utilize engineered septic systems for the disposal of sanitary sewage unless a public sanitary sewer system is present.
- H. Multi-family dwelling developments with more than 12 individual dwelling units shall be connected to a public sanitary sewer system or shall provide an on-site sanitary sewage treatment facility (package plant).
- I. The septic system, public sanitary sewer system and/or sanitary sewage treatment facility (package plant) servicing the development shall be of sufficient size and design to collect, dispose of and/or treat all sewage generated from the development.
- J. All septic systems, public sanitary sewer systems and/or sanitary sewage treatment facilities (package plants) shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.
- K. Multi-family dwellings shall be connected to a public water supply system. The water service line shall be of sufficient size to provide adequate potable water, and shall be designed, constructed and maintained in accordance with all applicable Town Water Department standards and State and County Health Department regulations.
- L. Multi-family dwellings shall comply with the landscaping requirements specified in Section 615 of this Ordinance.
- M. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.
- N. All electric lines (not including transformers or pad-mounted enclosures containing electrical equipment), telephone lines, natural gas distribution lines, cable television lines, and other public utility lines shall be placed underground in accordance with the requirements and specifications of the respective utility service providers.
- O. All natural gas or propane fuel tanks and service lines used in the heating/powering of multi-family dwellings shall be placed underground in accordance with the requirements and specification of the fuel service provider.
- P. Multi-family dwellings shall provide facilities (such as detention /retention basins) for the storage and/or treatment of storm water runoff generated by impervious surfaces.
- Q. Multi-family dwelling developments shall provide open space area for use by its residents. The open space area shall be a minimum of 20 percent of the total gross area of the lot and may include buffer strip area. Open space areas shall be sited on land that is relatively flat, dry and capable of serving the intended purpose. If a portion of the open space area is wooded, such areas may be left in a natural condition except that suitable walking trails may be provided.

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- R. Multi-family dwelling developments may be required to provide playground facilities/recreational areas for use by its residents. This requirement shall be determined by the Planning Board as part of the site plan review process.
- S. No business requiring issuance of a special permit shall be permitted to operate from any dwelling unit or accessory structure within a multi-family dwelling development.
- T. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 710 – GERIATRIC CARE FACILITY (rev 2012)

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 200,000 Square Feet.
 - 2. Minimum Lot Frontage – 400 Feet.
 - 3. Minimum Lot Depth – 500 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 100 Feet.
 - 6. Minimum Rear Setback – 100 Feet.
 - 7. This use shall be allowed on flag lots.
- B. Minimum floor area requirement shall comply with all applicable governing regulations for the intended occupancy.
- C. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. (Rev. 6/19/2007)
- D. Adequate parking shall be provided to accommodate the needs of all occupants, employees, visitors and deliveries as determined by the Planning Board during the site plan review process. No off-street parking areas shall be located within required buffer strips or within 50 feet of any property line.
- E. The septic system, public sanitary sewer system and/or sanitary sewage treatment facility (package plant) servicing the geriatric care facility shall be designed, approved, constructed and maintained in accordance with all applicable State and County Health Department regulations.
- F. Geriatric care facilities shall be connected to public water supply system. The water service shall be of sufficient size to provide adequate potable water, and shall be designed, constructed and maintained in accordance with all applicable Town Water Department standards and State and County Health Department regulations.
- G. Geriatric care facilities shall comply with the landscaping requirements specified in Section 615 of this Ordinance.
- H. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.

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- I. All electric lines (not including transformers or pad-mounted enclosures containing electrical equipment), telephone lines, natural gas distribution lines, cable television lines, and other public utility lines shall be placed underground in accordance with the requirements and specifications of the respective utility service providers.
- J. All natural gas or propane fuel tanks and service lines used in the heating/powering of a geriatric care facility shall be placed underground in accordance with the requirements and specifications of the fuel service provider.
- K. Geriatric care facilities shall provide facilities (such as detention/retention basins) for the storage and/or treatment of storm water runoff generated by impervious surfaces.
- L. Geriatric care facilities shall provide open space area for use by its residents. The open space area shall be a minimum of 20 percent of the total gross area of the lot and may include buffer strip area. Open space areas shall be sited on land that is relatively flat, dry and capable of serving the intended purpose. If a portion of the open space area is wooded, such areas may be left in a natural condition except that suitable walking trails may be provided.
- M. Geriatric care facilities may be required to provide recreational areas for use by its residents. This requirement shall be determined by the Planning Board as part of the site plan review process.
- N. No business requiring issuance of a special permit shall be permitted to operate from any dwelling unit or accessory structure within a geriatric care facility.
- O. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 711 – MOTOR VEHICLE REPAIR SHOP

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 75,000 Square Feet.
 - 2. Minimum Lot Frontage – 250 Feet.
 - 3. Minimum Lot Depth – 300 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 100 Feet.
 - 6. Minimum Rear Setback – 100 Feet.
 - 7. This use shall not be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*
- C. One off-street parking space shall be provided for each employee on the maximum work shift, one parking space provided for each motor vehicle to be repaired on the premises, and one parking space provided for every 200 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirement specified in Section 605 of this Ordinance.
- D. No more than five (5) licensed motor vehicles awaiting service or repair shall be parked on the premises at any one time. No individual motor vehicle shall be parked for a period of more than five (5) working days.

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- E. All servicing or repairs of motor vehicles shall be performed in a fully enclosed building.
- F. No motor vehicles shall be offered for sale on the premises at any time.
- G. All motor vehicles awaiting repair shall bear a New York State Department of Motor Vehicles' registration.
- H. No Motor Vehicle Repair Shop shall be located within a distance of two hundred (200) feet of a neighboring residence, cemetery, school, church, hospital, nursing home, senior housing facility or other space of public assembly designed for an occupancy of fifty (50) persons or more, or within five hundred (500) feet of any other motor vehicle repair shop or gasoline station located on the same side of the street. Distance shall be measured in a straight line between the nearest points of each lot or premise. *(rev 05/16/2017)*
- I. No motor vehicles shall be stored within twenty-five (25) feet of any property line or within the highway right-of-way.
- J. No retail sale of fuels shall occur on the site at any time.
- K. All supplies, equipment, apparatus or materials associated with the conduct of business (except vehicles) must be kept inside an enclosed building.
- L. The sanitary sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use, and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations. This requirement shall be determined as part of the site plan review.
- M. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 712 – MOTOR VEHICLE SALES

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 75,000 Square Feet.
 - 2. Minimum Lot Frontage – 250 Feet.
 - 3. Minimum Lot Depth – 300 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 100 Feet.
 - 6. Minimum Rear Setback – 100 Feet.
 - 7. This use shall be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*
- C. One off-street parking space shall be provided for each employee on the maximum work shift, one parking space provided for each motor vehicle offered for sale, lease or rent on the premises, and one parking space provided for every 200 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.

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- D. A minimum of one off-street loading area shall be required. Off-street loading areas shall comply with the requirements specified in Section 606 of this Ordinance.
- E. No motor vehicles shall be displayed for sale, lease or rent within twenty-five (25) feet of any property line or within the highway right-of-way.
- F. All motor vehicles offered for sale, lease or rent shall be displayed in a neat and orderly manner.
- G. All motor vehicles offered for sale, lease or rent shall be in proper working order at all times and shall bear a New York State Department of Motor Vehicles' registration.
- H. Repair of motor vehicles on the site shall be completed within an enclosed structure.
- I. No retail sale of fuels shall occur on the site at any time.
- J. All supplies, equipment, apparatus or materials associated with the conduct of business (except vehicles) must be kept inside an enclosed building.
- K. The sanitary sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use, and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.
- L. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 713 – PROFESSIONAL OFFICE

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 40,000 Square Feet.
 - 2. Minimum Lot Frontage – 200 Feet.
 - 3. Minimum Lot Depth – 200 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 50 Feet.
 - 6. Minimum Rear Setback – 50 Feet.
 - 7. This use shall be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*
- C. One off-street parking space shall be provided for each employee on the maximum work shift and one parking space provided for every 200 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.
- D. A minimum of one off-street loading area shall be required. Off-street loading areas shall comply with the requirements specified in Section 606 of this Ordinance.
- E. The sanitary sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use, and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.

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- F. Professional offices shall be connected to a public water supply system. The water service line shall be of sufficient size to provide adequate potable water and shall be designed, constructed and maintained in accordance with all applicable Town Water Department standards and State and County Health Department regulations.
- G. Professional offices shall comply with the landscaping requirements specified in Section 615 of this Ordinance.
- H. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.
- I. All electric lines (not including transformers or pad-mounted enclosures containing electrical equipment), telephone lines, natural gas distribution lines, cable television lines, and other public utility lines shall be placed underground in accordance with the requirements and specifications of the respective utility service providers.
- J. All natural gas or propane fuel tanks and service lines used in the heating/powering of professional offices shall be placed underground in accordance with the requirements and specifications of the fuel service provider.
- K. Professional offices shall provide facilities (such as detention/retention basins) for the storage and/or treatment of storm water runoff generated by impervious surfaces, as determined by the Planning Board as part of the site plan review process.
- L. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 714 – PUBLIC FACILITIES

- A. Dimensional Requirement:
 - 1. Minimum Lot Size – 75,000 Square Feet.
 - 2. Minimum Lot Frontage – 250 Feet.
 - 3. Minimum Lot Depth – 300 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 100 Feet.
 - 6. Minimum Rear Setback – 100 Feet.
 - 7. This use shall be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*
- C. One off-street parking space shall be provided for each employee on the maximum work shift, and one parking space provided for every 200 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.
- D. A minimum of one off-street loading area shall be required. Off-street loading areas shall comply with the requirements specified in Section 606 of this Ordinance.

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- E. The sanitary sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use, and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.
- F. Public facilities shall be connected to a public water supply system. The water service line shall be of sufficient size to provide adequate potable water and shall be designed, constructed and maintained in accordance with all applicable Town Water Department \ standards and State and County Health department regulations.
- G. Public facilities shall comply with the landscaping requirements specified in Section 615 of this Ordinance.
- H. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.
- I. All electric lines (not including transformers or pad-mounted enclosures containing electrical equipment), telephone lines, natural gas distribution lines, cable television lines, and other public utility lines shall be placed underground in accordance with the requirements and specifications of the respective utility service providers.
- J. All natural gas or propane fuel tanks and service lines used in the heating/powering of public facilities shall be placed underground in accordance with the requirements and specifications of the fuel service provider.
- K. Public facilities shall provide facilities (such as detention/retention basins) for the storage and/or treatment of storm water runoff generated by impervious surfaces, as determined by the Planning Board as part of the site plan review process.
- L. Any public facility equipped with a restaurant open to the general public shall also comply with the provisions of Section 718 of this Ordinance.
- M. Any public facility equipped with a tavern open to the general public shall also comply with the provisions of Section 726 of this Ordinance.
- N. Public facilities may be required to provide playground facilities/recreational areas for use by the public. This requirement shall be determined by the Planning Board as part of the site plan review process.
- O. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 715 – RETAIL FUEL OUTLET

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 40,000 Square Feet.
 - 2. Minimum Lot Frontage – 200 Feet.
 - 3. Minimum Lot Depth – 200 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 50 Feet.

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6. Minimum Rear Setback – 50 Feet.
 7. This use shall not be allowed on flag lots.
- B. Gasoline pump islands shall be located on a minimum of 100 feet from the street centerline and a minimum of 50 feet from all other property lines.
- C. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*
- D. One off-street parking space shall be provided for each employee on the maximum work shift, and one parking space provided for every 200 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.
- E. A minimum of one off-street loading area shall be required. Off-street loading areas shall comply with the requirements specified in Section 606 of this Ordinance.
- F. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.
- G. Retail fuel outlets shall provide facilities (such as detention/retention basins) for the storage and/or treatment of storm water runoff generated by impervious surfaces, as determined by the Planning Board as part of the site plan review process.
- H. Repair of motor vehicles on the site is prohibited unless the provisions of Section 711 of this Ordinance are complied with in full.
- I. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 716 – STORAGE FACILITY

- A. Dimensional Requirements:
1. Minimum Lot Size – 40,000 Square Feet.
 2. Minimum Lot Frontage – 200 Feet.
 3. Minimum Lot Depth – 200 Feet.
 4. Minimum Front Setback – 125 Feet.
 5. Minimum Side Setback – 50 Feet.
 6. Minimum Rear Setback – 50 Feet.
 7. This use shall be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*
- C. One Off-street parking space shall be provided for each employee on the maximum work shift, and one parking space provided for every three storage spaces or storage units provided. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.

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- D. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.
- E. Outdoor storage of materials or property shall be prohibited.
- F. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 717 – CHILD DAY CARE CENTER/ADULT DAY CARE CENTER

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 40,000 Square Feet.
 - 2. Minimum Lot Frontage – 200 Feet.
 - 3. Minimum Lot Depth – 200 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 50 Feet.
 - 6. Minimum Rear Setback – 50 Feet.
 - 7. This use shall be allowed on flag lots.
- B. A buffer strip shall be provided along any property line shared with a residential dwelling. Buffer strips shall comply with requirements specified in Section 611 of this Ordinance.
- C. One off-street parking space shall be provided for each employee on the maximum work shift and one parking space provided for every two children or adults in care. Off-street parking areas and driveway shall comply with the requirements specified in Section 605 of this Ordinance.
- D. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and is accordance with the typical driveway/roadway section.
- E. Child Day Care Centers and Adult Day Care Centers shall provide open space area for use by those in care. The open space area provided shall be a minimum of one hundred (100) square feet per child or adult. All outdoor play areas shall be appropriately fenced or protected from roads and nearby properties.
- F. Outdoor recreational equipment, if provided, shall not be placed within fifteen (15) feet of any property line, fence or structure.
- G. The sanitary sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use, and shall be signed, constructed and maintained in accordance with all applicable State and County Health department regulations.
- H. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 718 – RESTAURANT

- A. Dimensional Requirements:

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1. Minimum Lot size 40,000 Square Feet.
 2. Minimum Lot Frontage – 200 Feet.
 3. Minimum Lot Depth – 200 Feet.
 4. Minimum Front Setback – 125 Feet.
 5. Minimum Side Setback – 50 Feet.
 6. Minimum Rear Setback – 50 Feet.
 7. This use shall not be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*
- C. One off-street parking space shall be provided for each employee on the maximum work shift, and one parking space provided for every 100 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.
- D. A minimum of one off-street loading area shall be required. Off-street loading areas shall comply with the requirements specified in Section 606 of this Ordinance.
- E. The sanitary sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.
- F. Restaurants shall be connected to a public water supply system. The water service line shall be of sufficient size to provide adequate potable water and shall be designed, constructed and maintained in accordance with all applicable Town Water Department standards and State and County Health Department regulations.
- G. Restaurants shall comply with the landscaping requirements specified in Section 615 of this Ordinance.
- H. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.
- I. All electric lines (not including transformers or pad-mounted enclosures containing electrical equipment), telephone lines, natural gas distribution lines, cable television lines, and other public utility lines shall be placed underground in accordance with the requirements and specifications of the respective utility service providers.
- J. All natural gas or propane fuel tanks and service lines used in the heating/powering of a restaurant shall be placed underground in accordance with the requirements and specifications of the fuel service provider.
- K. Restaurants shall provide facilities (such as detention/retention basins) for the storage and/or treatment of stormwater runoff generated by impervious surfaces as determined by the Planning Board as part of the site plan review process.
- L. Any restaurant equipped with a tavern open to the general public shall also comply with the provisions of Section 726 of this Ordinance.

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- M. Restaurants located adjacent to or integrated into a shopping center or cluster of commercial facilities shall share a common access driveway with the other businesses to the fullest extent practicable.
- N. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 721 – PARKING & STORAGE OF COMMERCIAL TRUCKS & CONSTRUCTION EQUIPMENT

- A. **PERMITTED USE.** One truck unit is permitted on a residential lot where the owner/operator lives.
- B. **PROVISIONS AND REQUIREMENTS – STORAGE/PARKING OF COMMERCIAL TRUCKS AND CONSTRUCTION EQUIPMENT NOT USED PRIMARILY FOR AGRICULTURE.** Equipment used more than fifty (50) percent in agricultural uses are exempt from this section. For the purposes of this Ordinance, one *truck unit* may be defined as a truck, trailer and piece of construction equipment carried on the trailer; a tractor trailer rig; or any large truck that requires a Commercial Driver’s License (CDL). For the purpose of this Ordinance, each additional individual piece of construction equipment in excess of the one allowable truck unit shall be considered to be an additional truck unit. (*Rev. 11/16/2010*)
- C. Storage/parking of commercial trucks and construction equipment not used primarily for agriculture may be allowed by special permit after the Planning Board has completed a site plan review. Up to five (5) truck units with the following restrictions (more than five vehicles should go to the industrial district):
 - 1. On a residential lot – where the resident owns both the land and all the vehicles, the following restrictions apply:
 - a. 2-3 truck units – minimum lot size, 5 (5) acres with minimum of 300’ frontage.
 - b. 4-5 truck units – minimum lot size ten (10) acres with minimum of 300’ frontage.
 - c. Must have a garage type maintenance building capable of housing the largest maintenance work.
 - 2. On a non-residential lot – Commercial trucks and equipment storage are not allowed. They must be in an industrial zoning district.
- D. Driveways and parking areas must be to private drive standards with nine (9) inches crushed stone or better. Driveways may not be closer than fifty (50) feet to lot line and parking area may not be within set back areas, one hundred (100) feet front, fifty (50) feet sides and back. Driveway width must be adequate for egress and ingress turns and driveway cut and culvert must be approved by the highway department.
- E. No outside storage of construction materials or truck maintenance or operating supplies permitted on site.
- F. Screening and fencing as required by the Planning Board.
- G. Hours of operation will be limited by the Planning Board.
- H. Fuel, oil, anti-freeze, handling and disposition must conform to State and Federal regulations.
- I. Shall not create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than that usually expected in an average residential occupancy in the district in question under normal circumstances.

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SECTION 722 – ADULT BUSINESS

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 200,000 Square Feet.
 - 2. Minimum Lot Frontage – 400 Feet.
 - 3. Minimum Lot Depth – 500 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 100 Feet.
 - 6. Minimum Rear Setback – 100 Feet.
 - 7. This use shall not be allowed on flag lots.

- B. No adult business shall be allowed to occur within 500 feet of the property boundary of another existing adult business, school or place of worship (church).

- C. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*

- D. One off-street parking space shall be provided for each employee on the maximum work shift, and one parking space provided for every 100 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.

- E. A minimum of one off-street loading area shall be required. Off-street loading areas shall comply with the requirements specified in Section 606 of this Ordinance.

- F. Adult businesses shall be connected to a public sanitary sewer system or shall provide an on-site sanitary sewage treatment facility (package plant). The sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use, and shall be designed, constructed and maintained in accordance with all applicable State and County Health department regulations.

- G. Adult businesses shall be connected to a public water supply system. The water service line shall be of sufficient size to provide adequate potable water and shall be designed, constructed and maintained in accordance with all applicable Town Water Department standards and State and County Health Department regulations.

- H. Adult businesses shall comply with the landscaping requirements specified in Section 615 of this Ordinance.

- I. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.

- J. All electric lines (not including transformers or pad-mounted enclosures containing electrical equipment), telephone lines, natural gas distribution lines, cable television lines, and other public utility lines shall be placed underground in accordance with the requirements and specifications of the respective utility service providers.

- K. All natural gas or propane fuel tanks and service lines used in the heating/powering of an

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adult business shall be placed underground in accordance with the requirements and specifications of the fuel service provider.

- L. Adult businesses shall provide facilities (such as detention/retention basins) for the storage and/or treatment of storm water runoff generated by impervious surfaces.
- M. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.
- N. Conduct of Business:
 - 1. No adult business shall be conducted in a manner that permits the observation of any material depicting, describing or relating to specific sexual activities or specific anatomical areas from any public right-of-way or from any property not registered as an adult business. This requirement shall apply to any display, decoration, sign, show window or other opening.
 - 2. No person under twenty-one (21) years of age shall be permitted on or within the premises of an adult business.
- O. Special Permit Application Requirements:

Each special permit application for an adult business shall contain the information described below:

 - 1. The applicant's name and residential street address (and mailing address if different).
 - 2. The location or street address (and mailing address if different) of the proposed adult business.
 - 3. All other residences of the applicant for the three year period immediately preceding the date of application.
 - 4. The business, occupation or employment of the applicant for the three year period immediately preceding the date of application.
 - 5. Written proof that the applicant is twenty-one (21) years of age or older.
 - 6. A complete set of the applicant's fingerprints.
 - 7. A description of the facilities and services to be available on the premises of the proposed adult business.
 - 8. The history of the applicant in the operation of similar establishments or businesses, including, but not limited to whether or not the person, is previously operating in this state or another state under license, has had such permit revoked or suspended and the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.
 - 9. The criminal record if any, of the applicant (other than misdemeanor traffic violations). If the applicant is an association or partnership, the criminal record of each associate or partner shall be provided. If the applicant is a corporation, the criminal record of each officer or director of the corporation and each of the stockholders owning more than ten percent (10%) of the stock of the corporation shall be provided. If the applicant is a limited liability company, the criminal record of each of the members and managers of the limited liability company shall be provided.
 - 10. A scaled site plan showing: north arrow, drawing scale, tax map number, property boundaries and dimensions, existing and proposed buildings and dimensions, proposed grading and drainage, vegetation, parking, driveways, lighting, signs, refuse containers, fences, water source, sewage system and any other pertinent information.
- P. Approval, Denial, Suspension or Revocation of Adult Business Special Permits; the following shall apply:
 - 1. Upon receipt of a complete application, the Planning Board shall make or cause to be

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- made a thorough investigation of the applicant's criminal record, and shall review the site plan for compliance with the provisions of this Ordinance.
2. Special Permit Approval. A special permit application may be approved by the Planning Board where it appears that the applicant has not be convicted of any offense which Would be cause for denial of a special permit upon an original application, has not made false statements on an application for a special permit, has not previously owned or operated an adult business which resulted in suspension or revocation of permits or licenses, and has not committed an act in violation of this Ordinance.
 3. Special Permit Denial. A special permit application may be denied by the Planning Board where it appears that the applicant has been convicted of any offense which would be cause for denial of a special permit upon an original application , or has made a false statement on an application for a special permit, or has previously owned or operated an adult business which resulted in suspension or revocation of permits or licenses, or has committed an act of violation of this Ordinance. The Planning Board shall give the applicant written notice specifying the grounds for special permit denial.
 4. Special Permit Suspension. A special permit may be suspended and a fine levied against the permit holder by the Code Enforcement Officer where it appears that the permit holder has committed an act in violation of this Ordinance. The Code Enforcement Officer shall give the special permit holder written notice which shall: direct the permit holder to immediately cease operation of the business; specify the grounds for suspension; specify the action that the permit holder must undertake to correct the violation; designate a ten day time period from the date of said notice for all violations to be corrected to the satisfaction of the Code Enforcement Officer; specify that if the violations are not adequately corrected within the ten day time period, the special permit shall be immediately revoked; and specify the fine to be levied against the special permit holder. The special permit holder may, upon payment of all fines and within ten days from the date of such suspension, file a written request with the Planning Board for a public hearing. The hearing shall be conducted by the Planning Board and held within thirty days after filing the request for the hearing, and at which time the permit holder may present evidence bearing upon the question. The Planning Board shall then issue a written finding within five days after the date of the public hearing as to whether the permit was properly suspended. If the Planning Board determines the permit was unduly suspended, the permit shall be immediately reinstated, monies collected for fines shall be returned and the adult business shall be allowed to resume operation. If the Planning Board determines the permit was property suspended, the adult business shall continue not to operate and the permit holder shall have ten days from the date of receipt of the written finding to correct the violation(s) to the satisfaction of the Code Enforcement Officer. If the violation(s) are adequately corrected, the Code Enforcement Officer shall immediately reinstate the permit and the adult business shall be allowed to resume operation. If the violation(s) are not adequately corrected, the Code Enforcement Officer shall immediately revoke the permit following the procedures described below.
 5. Special Permit Revocation. A special permit may be revoked and a fine levied against the permit holder by the Code Enforcement Officer where it appears that the permit holder has not corrected violations pertaining to a previously issued suspension notice, or has committed an act in violation of this Ordinance. A special permit shall be automatically revoked if the special permit holder receives more than three separate suspensions. The Code Enforcement Officer shall give the permit holder a written notice directing the permit holder to immediately terminate operation of the business and shall specify the grounds for revocation. The permit holder may, within ten days from the date of such revocation, file a written request with the Planning Board for a public hearing. The hearing shall be conducted by the Planning Board and held within thirty days after the filing of the request for the hearing, and at which time the permit holder may present evidence bearing upon the question. The Planning Board shall then issue a written finding within five days after the public hearing as to whether the permit was

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properly revoked. If the Planning Board determines the permit was unduly revoked, the permit shall be reinstated and the adult business use shall be allowed to resume operation. If the Planning board determines the permit was properly revoked, the adult business shall immediately and permanently cease to operate.

SECTION 724 – CLUBS (LODGE, FRATERNAL ORGANIZATION)

- A. Dimensional Requirements:
1. Minimum Lot Size – 75,000 Square Feet.
 2. Minimum Lot Frontage – 250 Feet.
 3. Minimum Lot Depth – 300 Feet.
 4. Minimum Front Setback – 125 Feet.
 5. Minimum Side Setback – 100 Feet.
 6. Minimum Rear Setback – 100 Feet.
 7. This use shall be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev 6/19/2007)*
- C. One off-street parking space shall be provided for each employee on the maximum work shift and one parking space provided for every two members of the club. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.
- D. A minimum of one off-street loading area shall be required. Off-street loading areas shall comply with the requirements specified in Section 606 of this Ordinance.
- E. The sanitary sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.
- F. Clubs shall be connected to a public water supply system. The water service line shall be of sufficient size to provide adequate potable water, and shall be designed, constructed and maintained in accordance with all applicable Town Water Department standards and State and County Health Department regulations.
- G. Clubs shall comply with the landscaping requirements specified in Section 615 of this Ordinance.
- H. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.
- I. All electric lines (not including transformers or pad-mounted enclosures containing electrical equipment), telephone lines, natural gas distribution lines, cable television lines, and other public utility lines shall be placed underground in accordance with the requirements and specification of the respective utility service providers.
- J. All natural gas or propane fuel tanks and service lines used in the heating/powering of a club shall be placed underground in accordance with the requirements and specifications of the fuel service provider.

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- K. Clubs shall provide facilities (such as detention/retention basins) for the storage and/or treatment of storm water runoff generated by impervious surfaces.
- L. Any club equipped with a restaurant open to both club members and the general public shall also comply with the provisions of Section 718 of this Ordinance.
- M. Any club equipped with a tavern open to both club members and the general public shall also comply with the provisions of Section 726 of this Ordinance.
- N. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 725 – RETAIL BUSINESS/SERVICE BUSINESS

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 75,000 Square Feet.
 - 2. Minimum Lot Frontage – 250 Feet.
 - 3. Minimum Lot Depth – 300 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 100 Feet.
 - 6. Minimum Rear Setback – 100 Feet.
 - 7. This use shall be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance.
(Rev. 6/19/2007)
- C. One off-street parking space shall be provided for each employee on the maximum work shift, and one parking space provided for every 200 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.
- D. A minimum of one off-street loading area shall be required. Off-street loading areas shall comply with the requirements specified in Section 606 of this Ordinance.
- E. The sanitary sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.
- F. Retail Businesses/Service Businesses shall be connected to a public water supply system. The water service line shall be of sufficient size to provide adequate potable water and shall be designed, constructed and maintained in accordance with all applicable Town Water Department standards and State and County Health Department regulations.
- G. Retail Businesses/Service Businesses shall comply with the landscaping requirements specified in Section 615 of this Ordinance.
- H. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.

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- I. All electric lines (not including transformers or pad-mounted enclosures containing electrical equipment), telephone lines, natural gas distribution lines, cable television lines and other public utility lines shall be placed underground in accordance with the requirements and specifications of the respective utility service providers.
- J. All natural gas or propane fuel tanks and service lines used in the heating/powering of a retail business/service business shall be placed underground in accordance with the requirements and specifications of the fuel service provider.
- K. Retail Businesses/Service Businesses shall provide facilities (such as detention/retention basins) for the storage and/or treatment of storm water runoff generated by impervious surfaces.
- L. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 726 – TAVERN

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 75,000 Square Feet.
 - 2. Minimum Lot Frontage – 250 Feet.
 - 3. Minimum Lot Depth – 300 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 100 Feet.
 - 6. Minimum Rear Setback – 100 Feet.
 - 7. This use shall be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*
- C. One off-street parking space shall be provided for each employee on the maximum work shift, and one parking space provided for every 100 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.
- D. A minimum of one off-street loading area shall be required. Off-street loading areas shall comply with the requirements specified in Section 606 of this Ordinance.
- E. The sanitary sewage system shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.
- F. Taverns shall be connected to a public water supply system. The water service line shall be of sufficient size to provide adequate potable water and shall be designed, constructed and maintained in accordance with all applicable Town Water Department standards and State and County Health Department regulations.
- G. Taverns shall comply with the landscaping requirements specified in Section 615 of this Ordinance.
- H. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the

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Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.

- I. All electric lines (not including transformers or pad-mounted enclosures containing electrical equipment), telephone lines, natural gas distribution lines, cable television lines, and other public utility lines shall be placed underground in accordance with the requirements and specifications of the respective utility service providers.
- J. All natural gas or propane fuel tanks and service lines used in the heating/powering of a tavern shall be placed underground in accordance with the requirements and specifications of the fuel service provider.
- K. Taverns shall provide facilities (such as detention/retention basins) for the storage and/or treatment of storm water runoff generated by impervious surfaces.
- L. Any tavern equipped with a restaurant open to the general public shall also comply with the provisions of Section 718 of this Ordinance.
- M. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 727 – RECREATIONAL CENTER

- A. Dimensional Requirements:
 - 1. Minimum Lot Size – 75,000 Square Feet.
 - 2. Minimum Lot Frontage – 250 Feet.
 - 3. Minimum Lot Depth – 300 Feet.
 - 4. Minimum Front Setback – 125 Feet.
 - 5. Minimum Side Setback – 100 Feet.
 - 6. Minimum Rear Setback – 100 Feet.
 - 7. This use shall be allowed on flag lots.
- B. A buffer shall be required along any property line shared with a residential dwelling. Buffers shall comply with the requirements specified in Article VI, Section 609 of this Ordinance. *(Rev. 6/19/2007)*
- C. One off-street parking space shall be provided for each employee on the maximum work shift, and one parking space provided for every 200 square feet of gross floor area. Off-street parking areas and driveways shall comply with the requirements specified in Section 605 of this Ordinance.
- D. Concrete or asphalt sidewalks shall be provided in locations where they are deemed by the Planning Board to be appropriate in the interest of worker and public safety and in accordance with the typical driveway/roadway section.
- E. Recreational centers may be required to provide playground facilities/athletic courts and fields for use by the public. This requirement shall be determined by the Planning Board as part of the site plan review process.
- F. For land containing no buildings or structures intended for public occupancy, the necessity for providing a water supply service and/or sanitary sewage system shall be determined by the Planning Board as part of the site plan review process. If a sanitary sewage system is

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determined to be necessary, it shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use, and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.

- G. The property owner shall be wholly responsible for the proper upkeep and routine maintenance of all buildings, structures, facilities, parking areas, driveways, landscaping and grounds.

SECTION 728 – RIDING STABLE, TRACK OR ARENA

- A. Dimensional Requirements:
1. Minimum Lot Size – 200,000 Square Feet.
 2. Minimum Lot Frontage – 500 Feet.
 3. Minimum Lot Depth – 400 Feet.
 4. Minimum Front Setback – 125 Feet.
 5. Minimum Side Setback – 100 Feet.
 6. Minimum Rear Setback – 100 Feet.
 7. This use shall be allowed on flag lots.
- B. For lots measuring 200,000 square feet to 400,000 square feet in size, the following number of horses shall be allowed to be permanently housed onsite, with the total combination of horses not exceeding five at any one time:
1. Up to five adult or juvenile horses.
 2. Up to five adult or juvenile miniature horses.
- C. For lots measuring over 400,000 square feet and less than 800,000 square feet in size, the following number of horses shall be allowed to be permanently housed on-site, with the total combination of horses not exceeding ten at any one time:
1. Up to ten adult or juvenile horses.
 2. Up to ten adult or juvenile miniature horses.
- D. For lots measuring 800,000 square feet or more in size, the following number of horses shall be allowed to be permanently housed on-site, with the total combination of horses not exceeding fifteen at any one time:
1. Up to fifteen adult or juvenile horses.
 2. Up to fifteen adult or juvenile miniature horses.
- E. Permanent shelter shall be provided for all horses. The shelter shall be of sufficient size and equipped with adequate food and water for the number and type(s) of horses harbored on the premises.
- F. All shelter shall be located a minimum of 150 feet from any property line.
- G. Any supplies, equipment, apparatus or materials necessary for the keeping of horses must be kept inside an enclosed accessory structure located on the lot. The accessory structure shall be located a minimum of 50 feet from any property line. If the accessory structure will also be used to shelter horses, the structure shall be located a minimum of 150 feet from any property line.
- H. A minimum of one-half acre of pasture land shall be provided for each horse or miniature horse harbored on the lot.

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- I. All excrement produced by the horses shall be collected and disposed of on a regular basis for health purposes and to control flies, rodents and odor. If excrement must be temporarily stored on site, it shall be located a minimum of 200 feet from any property line, blue line stream, wetland, pond and drinking water well. Stored excrement shall either be placed in covered containers or placed in a covered and confined stockpile/compost pile. Waste lagoons shall be prohibited.
- J. Stored excrement shall be either composted and reused on the premises, or entirely removed from the lot. Excrement removed from the premises shall be loaded and transported in a manner to prevent the loss, discharge or spillage of excrement onto the highway or neighboring properties.
- K. A fenced area or enclosed area shall be provided on the lot which is capable of containing the horses harbored on site.
- L. Fences and enclosures shall not exceed six feet in height, as measured at the highest point of round directly below the fence or enclosure.
- M. Fences and enclosures shall be located a minimum of 50 feet from any property line.
- N. The finished side (good side) of any fence or enclosure shall face adjoining properties. Fence posts shall face in and away from any adjoining lots or property owned by others.
- O. The use of electrified fencing on the lot shall be allowed.
- P. Materials used for any fence or enclosure shall be of sufficient sturdiness and properly designed, installed and maintained so as to prevent straying.
- Q. The quantity and location of off-street parking spaces shall be determined by the Planning Board during the site plan review process. Parking spaces shall be sized to accommodate both motor vehicles and associated horse trailers.
- R. All horses, shelters, grounds and operations associated with this section shall be subject to periodic visual inspections by the Code Enforcement Officer. The Code Enforcement Officer shall determine the need for and timing of such inspections, and shall provide the property owner with advance notice.
- S. A person shall be considered in violation of this Ordinance if one or more of the following occurs: harboring more horses than allowed; failure to provide proper food and water; failure to provide permanent shelter; failure to provide adequate pasture land; failure to properly clean and maintain the shelter and grounds; failure to properly collect, store, compost, reuse or dispose of excrement; failure to provide adequate fencing or enclosures; straying of horses off the property; and failure to allow visual inspection of the premises. Any person deemed in violations of this Ordinance shall be subject to the procedures and penalties set forth herein.
- T. If the landowner fails to correct any identified violation(s), the own shall have the authority to seize the animals and to dispose of them in a manner deemed proper.
- U. Stables, tracks and arenas lawfully operating prior to adoption of this Ordinance shall be allowed to remain, but no horses shall be added to the site unless the property owner complies with all of the provisions of this section.
- V. For land containing no buildings or structures intended for public occupancy, the necessity for providing a water supply service and/or sanitary sewage system shall be determined by

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the Planning Board as part of the site plan review process. If a sanitary sewage system is determined to be necessary, it shall be of sufficient size to collect, dispose of and/or treat all sewage generated from the use and shall be designed, constructed and maintained in accordance with all applicable State and County Health Department regulations.

SECTION 729 – EXTERIOR SOLID FUEL HEATING DEVICE(S)

GENERAL – Although Exterior Solid Fuel Heating Devices may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This Section is intended to ensure that these devices are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of the Town of Clarendon.

- A. No Exterior Solid Fuel Heating Device(s) shall be installed within the Town of Clarendon without first obtaining a building permit from the Code Enforcement Officer (CEO).
- B. No Exterior Solid Fuel Heating Device(s) shall be installed within the Residential/Hamlet District.
- C. Emission standards currently required by the EPA are hereby adopted by referenced together with any amendments or modifications made to them in the future.
- D. Exterior Solid Fuel Heating Device(s) may only be used from September 15 to May 15 each year.
- E. All Exterior Solid Fuel Heating Device(s) shall comply with the minimum setbacks of the zoning district within which it is installed.
- F. Installation of any electrical or plumbing apparatus or device used in connection with the operation of an Exterior Solid Fuel Heating Device(s) shall be in conformity with all applicable electrical and plumbing codes and, in the absence of such code, in conformity with the manufacturer's installation specifications.
- G. The use of Exterior Solid Fuel Heating Devices must follow all operating instructions supplied by the manufacturer.
- H. The only fuels allowed shall be those listed fuels recommended by the manufacturer.
- I. All Exterior Solid Fuel Heating Device(s) shall be equipped with properly functioning spark arrestors.
- J. The following are prohibited: trash, plastics, gasoline, rubber, naphtha, household garbage, material treated with petroleum products (particle board, railroad ties and pressure-treated wood), leaves, paper products and cardboard.
- K. Users must follow the manufacturer's written instructions for recommended loading times and amounts.
- L. Lighter fluids, gasoline or chemicals to start the furnace are prohibited.
- M. The unit must be located with due consideration to the prevailing wind direction.

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- N. Stack location shall be a minimum of two hundred (200) feet from the nearest residence not served by the furnace.
- O. All Exterior Solid Fuel Heating Devices shall comply with any other County, State or Federal guidelines for the same. (*Rev. 8/19/2008*)

SECTION 730 – ALTERNATIVE ENERGY SYSTEM (SOLAR POWERED) UTILITY SCALE

A. PURPOSE

The Town Board of the Town of Clarendon, New York has determined that solar energy, properly regulated, is clean, readily available and is a renewable energy source beneficial to the Town of Clarendon, its residents, and the general public. These supplementary regulations are designed to control the placement of Commercial Solar Energy Facilities (SEFs) to protect the public health, safety and welfare of its citizens and visitors; to minimize the adverse impacts on the Town of Clarendon character and economy; to minimize negative impacts on the unique scenic resources including but not limited to, adjacent lands and waterways; to minimize the adverse impacts on property values of nearby citizens; to minimize the adverse impacts on the town’s farming communities; and to minimize the adverse impacts on the town’s environment and ecosystems.

These regulations do not address private residential solar use or a small solar array that is on a farm or other business whose primary purpose is for onsite energy usage. These regulations are not intended to abridge safety, health or environmental requirements contained in other applicable codes, standards, or laws. The provisions contained herein shall not be deemed to nullify any provisions of any state or federal law.

B. AUTHORITY AND REFERENCES

The Clarendon Town Board enacts these regulations establishing comprehensive regulations for Commercial Solar Energy Facilities for the Town of Clarendon, New York providing for the administration, enforcement and amendment thereof, in accordance with the provisions of law.

C. INTENT

The New York General Statute (e.g. 272-a) and repeated in the foundation of the Clarendon Comprehensive Plan, gives our local legislators the power to write zoning and regulation laws for the purpose of promoting the health, safety or general welfare of their community. It states “While municipalities are given the power to regulate land uses in the community, it is understood that these decisions should be based on sound planning principles and are not to be arbitrary or capricious.”

D. PERMIT REQUIRED

Utility scale solar energy facilities shall be allowed by Special Use Permit within the Town of Clarendon only in the Residential/Agricultural (RA) Zoning District or the Industrial (I) Zoning District. Such facilities shall be subject to the requirements and permitting process of ~~this Local Law~~ these regulations in addition to other applicable local, state and federal laws.

These regulations shall apply to all areas of the Town of Clarendon, New York.

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E. DEFINITIONS

As used in this law, the following terms shall have the meanings indicated. Words not defined in these regulations shall be given their ordinary and common meaning:

ACCESSORY BUILDING: A building that is located on the Solar Energy Facility (SEF) property.

ACCESSORY EQUIPMENT: Any equipment serving or being used in conjunction with a SEF. The Term includes utility or transmission equipment, power supplies, generators, batteries, equipment sheds and storage sheds, shelters or similar structures.

BROWNFIELD: With certain legal exclusions and additions, the term “brownfield site” means real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

COMPLETED APPLICATION: An application that contains all information and/or data required and requested to enable an informed decision to be made with respect to that application.

CONSERVATION AREA: Such areas include natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act 33 USC Sec. 1251 et seq.; shore land areas; water bodies; riparian buffers; populations of endangered or threatened species or habitat for such species; archaeological sites, cemeteries and burial grounds; important historic sites; other significant natural features and scenic view sheds; and existing trails or corridors that connect the tract to neighboring areas.

ESCROW ACCOUNT: An account in which funds are accumulated and maintained for specific disbursements.

MAINTENANCE: The cleaning, painting, repair or replacement of defective parts (including plumbing, electrical or mechanical work that might require a building permit) in a manner that does not alter the basic design or composition of a structure, such as a solar array.

MODIFICATION OR MODIFY: Any change, addition, removal, swap-out, exchange and the like that does not qualify as “repairs and/or maintenance” as defined herein is a modification. Also included is any change, addition, swap-out, exchange and the like that requires or results in changes and/or upgrades to the structural integrity of a solar array.

PERSON: An individual, trustee, executor, receiver, other fiduciary, corporation, firm, partnership, association, organization, club, etc. acting as an entity.

REPAIR: The replacement of existing work with the same kind of material used in the existing work, not including additional work that would:

- Change the structural safety of the structure
- That would affect or change required existing facilities, a vital element of an elevator, plumbing, gas piping, wiring or heating installations that would be in violation of a provision of law or this regulation.
- The term “Repair” or “Repairs” shall not apply to any change in construction.

SOLAR ARRAY: An active solar energy system that converts sunlight into electricity using either Thermal or Photovoltaic methods. Such a system has multiple solar collectors, and might include transformers, generators, batteries and other additional structures and/or facilities.

SOLAR COLLECTOR: A device that converts sunlight into electricity using either Thermal or Photovoltaic methods.

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SOLAR ENERGY: There are two general ways sunlight is converted into useful energy; Passive and Active. Passive refers to such actions as opening a window shade to let sunlight in to heat a room. Active uses mechanical devices to collect, convert, store and distribute solar energy. The two most common Active conversions of sunlight into electricity are Thermal and Photovoltaic.

SOLAR ENERGY FACILITY (SEF): A commercial electricity-generating facility (PV or CSP), whose primary purpose is to produce electrical energy for offsite usage. This consists of one or more solar arrays and other accessory structures and buildings, including substations, electrical infrastructure, generators, transmission lines, and other additional structures and/or facilities. Also referred to as a large scale Industrial Solar Energy Facility.

SOLAR FARM: A marketing term for a SEF.

STATE: State of New York.

UTILITY POLE: A structure owned and/or operated by a public utility, municipality, electric membership corporation or rural electric cooperative that is designed specifically for and used to carry lines, cables or wires for telephone, cable television or electricity, or to provide lighting.

F. PERMIT REQUIREMENTS

1. General: Before a building permit may be submitted for a SEF, a building Permit Application must first be approved by the Town Planning Board.

2. Permit Application: Throughout the permit process, the Applicant/Owner/Operator shall promptly notify the Town Planning Board of any changes to the information contained in the permit application. Changes that do not materially alter the initial site plan may be administratively accepted. The application for a SEF shall consist of five paper copies and electronic (digital) filing that contain at least the following:

3. Summary: A narrative overview of the SEF, including its generating capacity.

4. Inventory: A tabulation describing the:

- a) Number and type of each proposed solar array, including their generating capacity;
- b) Dimensions and respective manufacturers;
- c) Additional structures and/or facilities.

5. Vicinity Map: Identification of the property on which the proposed SEF will be located.

6. Site Plan: A plan showing the:

- a) Planned location of each solar array;
- b) All property lines within 100 feet of the property lines of the proposed site;
- c) Each array's setback distance from the closest SEF boundary;
- d) Access road and turnout locations;
- e) Substation(s) and ancillary equipment, buildings and structures;
- f) Electrical cabling from the SEF to the substation(s) and from the substation(s) to where the electricity will leave the site, and associated transmission lines;
- g) Conservation Areas, including natural areas protected by law such as wetlands, that meet the definition in the Clean Water Act; shore land areas; water bodies; riparian buffers; populations of endangered or threatened species (federal or state), or habitat for such species; flyways; archaeological sites, cemeteries and burial grounds; important local historic sites; existing healthy, native forests consisting of at least one acre of contiguous area; individual existing health trees that are at least 100 years old; other significant natural features and scenic view sheds; existing trails or corridors that connect the tract to neighboring areas;

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h) A landscaping plan that shows proposed screening and buffering of all arrays, buildings and other non-array structures on the site or sites.

7. Miscellaneous: The Applicant/Owner/Operator shall provide the following information to the Town Planning Board:

- a)** Documentation that the Project will meet all the requirements of the nationally recognized electrical code;
- b)** A Stand-down Plan for high wind conditions;
- c)** Signed copies of all original leases/easements and agreements for this SEF.

8. Economic Impact Study: The Town of Clarendon will hire independent experts (paid for from the Escrow Account) who will do a thorough, realistic assessment of the SEF's net economic impact on the community. This will include possible tourism impact, property values, cost to community, health effects, higher cost of electricity, etc. This will be compared to any guaranteed incomes from the SEF. The Town of Clarendon shall pay from the Escrow Account for at least ten (10) representative soil sample tests prior to construction of a SEF for comparison of soil sample tests taken during the decommissioning process.

9. Maintenance Plan: The Applicant/Owner/Operator shall detail storm and other severe weather event follow-up and other actions that shall be taken to keep the SEF operating quietly, efficiently and not polluting land, water, air. Steps shall be taken to insure proper operation of inverters, inverter filters and associated electrical equipment. This should include checks for electrical pollution. The Applicant/Owner/Operator shall conduct preventive maintenance inspections at least every six months and after any wind event defined as severe wind, which would be wind over 40 miles per hour for one hour or wind gust 58 miles per hour or greater. Each inspection shall look for such things as metal fatigue, nut loosening, leakage and other potential failures that might impact the public health and safety. Such inspection reports shall be provided to the Town of Clarendon Zoning or Code Enforcement Officer within thirty (30) days of the inspection. Once a year, the Clarendon Building Inspector or designee will inspect for safety of the SEF.

10. Decommissioning Plan: A description of how the structural and array materials will be disposed of, how the site will be restored, as well as:

- a)** Anticipated life of the SEF;
- b)** Estimated decommissioning costs including contingency costs of at least 20% (in current dollars), as provided by an appropriately experienced licensed engineer;
- c)** A verifiable means of determining if the decommissioning plan needs to be activated due to cessation of use if electricity is not received from any array within the SEF for any thirty (30) consecutive days;
- d)** The Applicant/Owner/Operator's plan to dispose of all hazardous waste contained in the SEF;
- e)** Method for ensuring that funds will be available for decommissioning and restoration as set forth in a decommission bond.

11. Ancillary Materials: Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Town of Clarendon to ensure compliance with these Regulations or to protect the health, safety and well-being of the town's citizens or local ecosystems. The inputs of local citizens will be solicited in at least one (1) public hearing on this application.

12. Town Planning Board Decision: The approval by the Town Planning Board shall be via Special Use Permit and shall include but is not limited to, a review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].

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13. Special Permit Criteria and Restrictions: To provide for at least minimal operational safety for persons and property located outside of a SEF, all SEFs shall comply with the following:

- a) Minimum lot size: Shall be fifteen (15) acres.
- b) Number of systems per lot: There shall be only one (1) SEF allowed per lot.
- c) Maximum overall height: The height of the system shall not exceed fifteen (15) feet when oriented at maximum tilt. Height is measured from the lowest adjacent grade to the highest point of the structure, including any attachments (such as a lightning protection device).
- d) Minimum front setback: As measured from center of the road shall be two hundred fifty (250) feet.
- e) Minimum side and rear setback: Measured from lot lines shall be two hundred fifty (250) feet.
- f) Minimum setback: Measured from any residence shall be three hundred (300) feet.
- g) Minimum setback: From any zoning district boundary shall be three hundred (300) feet. Such minimum setback for a SEF shall be measured from its outermost extension that is nearest the SEF property line, public or private right-of-way and access easement.
- h) A utility-scale solar energy system shall adhere to all applicable federal, state, county and Town of Clarendon laws, regulations, building, plumbing, electrical, and fire codes, and the applicant shall provide any requested documentation of such correspondence.
- i) Development and operation of a utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Clarendon or other federal or state regulatory agencies.
- j) The design, construction, operation, and maintenance of a utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- k) All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
- l) All transmission lines and wiring associated with a utility-scale solar energy system shall be buried and include necessary encasements in accordance with the International Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
- m) All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- n) Artificial lighting of utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- o) Prior to issuance of a Certificate of Occupancy, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
- p) Compliance with regulatory agencies: The applicant is required to obtain and maintain all necessary regulatory approval and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a utility-scale solar energy system.

14. Power Collection: The electrical connection system from the solar arrays to a substation shall, to the maximum extent possible, be placed underground. The power from that substation may use overhead transmission lines, if approved by the Town Planning Board.

15. The SEF shall:

- a) Not contain any signage or other advertising (including flags, streamers or decorative items or any identification of the array manufacturer Applicant/Owner/Operator). This does not include any identification plaques that might be required by the electric utility or a governmental agency;
- b) Have a minimum landscape buffer on sides where neighboring homes can see into the SEF. The type of buffer including to but not limited to: plantings, berm, additional screening, or any

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other means necessary to ensure compatibility and the health and welfare of adjoining properties shall be determined by the Planning Board as part of the site plan process. Plantings at a minimum shall consist of a double row of ten (10) foot evergreens planted in a staggered configuration. Vegetative screening shall be maintained and replaced as necessary for the life of the facility.

16. Security: The Applicant/Owner/Operator shall submit design plans to verify that the SEF is:
a) Located, fenced or otherwise secured so as to prevent unauthorized access inside the planted buffer. The minimum security fence shall be eight (8) feet in height.
b) Installed in such a manner that they are accessible only to persons authorized to operate or service them, and inaccessible to non-authorized individuals.
c) Provisions have been made for emergency responders to gain access to the site as necessary.

17. SEF Escrow Account: The Applicant/Owner/Operator shall pay to the Town of Clarendon a non-refundable Application Fee. The Town Planning Board is required to obtain engineering, economic impact, environmental impact, or other professional services to aid it in the review of any submitted SEF application. These costs (and other expenses incurred by the Town of Clarendon) are reimbursable only from the Escrow Account, not the Application Fee. The amount of the escrow account will be determined by consulting with the appropriate professional organizations. There will be a minimum amount of \$150,000 in the account at all times.

18. Reimbursement: The Applicant/Owner/Operator shall reimburse the Town of Clarendon for all oversight expenses incurred relating to the SEF, from application through decommissioning.

19. These SEF related oversight expenses include but are not limited to: amounts required for Building Permits, Licensing, Re-Licensing and Decommissioning – e.g. administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. “Legal” includes reasonable attorney fees for the Town of Clarendon in the event that an action is commenced by the Town to enforce provisions of these Regulations.

20. Any Escrow Interest: Shall stay with the account and be considered new principal.

21. Escrow Account Setup will be by the Applicant/Owner/Operator at the time of the SEF permit application. This Escrow Account will be at a financial institution approved by the Town of Clarendon, solely in the name of the Town of Clarendon, to be managed by the Town of Clarendon, or designee appointed by the Clarendon Town Board.

The Applicant/Owner/Operator will make an initial deposit in an amount to be determined by the Town of Clarendon. A SEF Permit Application will not be processed until the applicant/Owner/Operator has provided proof of deposit. A SEF Permit Application determination will not be made until all costs incurred to date have been reimbursed by the Applicant/Owner/Operator.

22. SEF Application Denial If the SEF Application is denied, all Escrow Account funds will be returned to the applicant/Owner/Operator, less related expenses incurred by the Town of Clarendon. The money will be returned along with a statement as to these costs within thirty (30) days of the Application being formally denied or receipt of a Letter of Withdrawal. Permit Fees are non-refundable.

23. Escrow Account Funding: This Escrow Account will be funded during the life of the SEF by the applicant/Owner/Operator. The applicant/Owner/Operator will replenish any Escrow funds used by the Town of Clarendon within thirty (30) calendar days of being sent written report and accounting of said withdrawals. Failure to maintain the Escrow Account at a minimum balance

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set by the Clarendon Town Planning Board within thirty (30) days of being given notice, shall be cause for revocation or denial of renewal of the SEF Permit.

24. Decommissioning Verification: Once the SEF Applicant/Owner/Operator believes that they have satisfactorily complied with the decommissioning conditions specified herein, they will send the Clarendon Town Planning Board written notification. The Town of Clarendon then has ninety (90) days to verify to their satisfaction that all decommissioning conditions have been complied with. If there is material non-compliance, the Clarendon Town Planning Board will so notify the SEF Applicant/Owner/Operator and the process starts over. Otherwise, the Town of Clarendon will return all Escrow Account funds to the SEF Applicant/Owner/Operator less related expenses incurred by the Town of Clarendon, along with an explanatory statement.

25. SEF Surety for Removal when Decommissioned: The Applicant/Owner/Operator shall place with the Town of Clarendon an acceptable letter of credit, bond, or other form of security that is sufficient to cover the cost of removal at the end of each SEF array's useful life as detailed in the decommissioning plan. Such surety shall be determined based on best practices and research for each acre of a solar array. The Town of Clarendon may approve a reduced surety amount that is not less than 150% of a cost estimate that is certified by an Engineer, Salvage Company or other expert acceptable to the Town of Clarendon. This calculation will not take into account any estimated salvage values.

The Town of Clarendon shall use this surety to assure the faithful performance of the decommissioning terms and conditions of the Applicant/Owner/Operator's plan and these Regulations. The full amount of the bond or security shall remain in full force and effect until all necessary site restoration is completed to return the site to a condition comparable to what it was prior to the SEF, as determined by the Town Planning Board. The Applicant/Owner/Operator will be responsible for assuring that any subsequent Assigns of the SEF will provide acceptable surety to the Town of Clarendon prior to any transfer of ownership.

26. SEF Indemnification: Any application for a SEF within the Town of Clarendon shall contain an indemnification provision. The provision shall require the Applicant/Owner/Operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town of Clarendon and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said SEF, excepting however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Clarendon or its employees or agents. With respect to the penalties, damages, or changes referenced herein, reasonable attorneys' fees, consultants' fees and expert witness fees are included in those costs that are recoverable by the Town of Clarendon.

27. SEF Permit Fees: The non-refundable Permit Application Fee shall be set by the Clarendon Town Board and amended from time to time as needed.

28. Permit Decision Standards: The Clarendon Town Planning Board may disapprove a SEF Permit application for a variety of legal reasons, including but not limited to:

- a) Conflict with safety and safety related codes and requirements;
- b) The use or construction of a SEF that is contrary to an already stated purpose of a specific zoning or land use designation;
- c) The operation of a SEF would be a net economic liability to the community;
- d) The operation of a SEF would create unacceptable health risks to the public;

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- e) The replacement and operation of a SEF that would create unacceptable risks to wildlife and/or regional ecosystems;
- f) The placement and location of a SEF would result in a conflict with or compromise or change in the nature or character of the surrounding area;
- g) The operation of a SEF would create unacceptable interference with any type of military or aviation operations;
- h) Conflicts with any provisions of this Local Law.

G. SEF POST-PERMIT APPROVAL REQUIREMENTS

1. SEF Construction Related Damage: The owner of any permitted SEF shall to the extent practicable repair or replace all real or personal property, public or private, damaged during the SEF construction.

a) Any road damage during construction that is caused by the Applicant/Owner/Operator or one or more of its subcontractors that is identified by the New York State Department of Transportation (NYSDOT), Orleans County Highway Department and Town of Clarendon Highway Department (as appropriate) shall be repaired or reconstructed to the satisfaction of the appropriate Agency at the Applicant/Owner/Operator's expense prior to the final inspection. In addition, the Applicant/Owner/Operator shall pay for all costs related to the NYSDOT, Orleans County Highway Department and Town of Clarendon Highway Department (as appropriate) pre-inspection work prior to receipt of the final inspection;

b) The surety for removal of a decommissioned SEF shall not be released until the Town of Clarendon or designee is satisfied that any road damage identified during and after decommissioning that is done by the Applicant/Owner/Operator and/or one or more of its contractors or subcontractors, has been repaired or reconstructed to the satisfaction of the appropriate Agency at the applicant/Owner/Operator's expense. In addition, the applicant/Owner/Operator shall pay for all costs related to work of the NYSDOT, Orleans County Highway Department and the Town of Clarendon Highway Department (as appropriate) for inspection prior to receipt of the release of the surety.

2. SEF Environmental Monitoring: The Applicant/Owner/Operator will permit post-construction environmental studies deemed appropriate by the Clarendon Town Planning Board/Building Inspector or designee, which will be funded by the Escrow Account. The Applicant/Owner/Operator is responsible to see that the Town of Clarendon has current Material Safety Data Sheets (MSDS) for all chemicals used for maintenance, etc. of the SEF (e.g. pesticides, herbicides, cleaners). This list shall include quantity and frequency of application of each of these chemicals. At any time if this information is out of date, the Applicant/Owner/Operator will be subject to a fine of \$250 per incident.

Post-construction field studies will include scientific assessments of regional nesting failures and territory abandonment of special status species within one (1) mile of the SEF. When these assessments are being done, only researchers involved with these studies will be legally allowed to touch carcasses. SEF personnel who move carcasses without written Town of Clarendon approval will be subject to a fine per law as solar arrays have been known to kill endangered and other highly protected species. During the life of the project, carcasses found anywhere within the SEF must be reported to the Town of Clarendon Building Inspector by the Applicant/Owner/Operator within seven (7) days. The fine for violation of Section 9.2 is \$250 per carcass per incident.

3. SEF Decommissioning: The Town of Clarendon will review the projected Decommissioning costs every five (5) years. The SEF owner will adjust their security to any changes from the original calculation. If the Town of Clarendon Building Codes Official condemns any portion of a SEF, or if no electricity is generated from any solar array for three (3) consecutive months, the

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Applicant/Owner/Operator and/or property owner shall have three (3) months to remedy the safety issues or complete the decommissioning of the SEF, according to the approved plan.

4. Time Extensions: The Town of Clarendon may, through the Code Enforcement Officer, grant reasonable extensions of time for repair and/or maintenance for good cause, such as the need to back-order parts that are not currently available from the supplier or the need to repair a SEF damaged by a storm.

5. Removal: Decommissioning shall include the complete removal of solar arrays, building, electrical components, cabling, roads and any other associated facilities and/or structures, buffered fencing, including below-ground items (e.g. foundations) to a depth of four (4) feet below grade.

6. Grading: Disturbed or compacted earth shall be de-compacted, graded and re-seeded, unless the landowner requests in writing to the Applicant/Owner/Operator and the Town Planning Board that the access roads or other land surface areas not to be restored.

7. Soil Samples: The Town of Clarendon shall pay from the Escrow Account for at least ten (10) representative soil sample tests prior to construction on the site and as part of the site decommissioning process to assure that no new contaminants are left behind. If evidence of new contaminants is found, the Applicant/Owner/Operator is obligated to remedy the situation to the Town of Clarendon Planning Board's satisfaction.

8. SEF Complaints: The Town of Clarendon shall set up a procedure for filing and handling SEF complaints. The Applicant/Owner/Operator shall initially be given a reasonable opportunity to resolve all complaints. The cost of such resolution shall be borne by the Applicant/Owner/Operator. If resolution is not made in a reasonable time or sixty (60) days (reasonable as determined by the Clarendon Town Planning Board), the Town of Clarendon may utilize its Escrow Account to attempt to resolve any SEF issues. The Town of Clarendon Planning Board shall monitor and oversee resolution of complaints regarding SEFs.

H. SEF LIABILITY INSURANCE

1. The Holder of a Permit for a SEF Shall Agree to secure and maintain for the duration of the permit, public liability insurance as follows:

a) Commercial general liability covering personal injuries, death and property damage:\$5,000,000 per occurrence (\$10,000,000 aggregate) which shall specifically include the Town of Clarendon and its officers, councils, employees, attorneys, agents and consultants as additional named insured;

b) Umbrella coverage: \$10,000,000.

2. Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".

3. Insurance Policy Cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Clarendon with at least thirty (30) days prior written notice in advance of cancellation.

4. Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the town of Clarendon at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

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5. Copies of Insurance Policy: No more than fifteen (15) days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Clarendon a copy of each of the policies or certificates representing the insurance in the required amounts.

6. Certificate of Insurance: A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Clarendon shall not be deemed to comply with this Law.

I. MISCELLANEOUS - Fiscal Responsibility

1. Audited Report: The Clarendon Town Board may at its discretion, request the most recent annual audited financial report of the permittee prepared by a duly licensed Certified Public Accountant during the review process. If such report does not exist, the Clarendon Town Board may in its sole discretion, require a suitable alternative to demonstrate the financial responsibility of the applicant/Owner/Operator and its ability to comply with the requirements of these Regulations.

2. No Transfer or Sale of any SEF, including the sale of more than 30% of the stock of such entity (not counting sale of shares on a public exchange) shall occur without advanced written acceptance by such entity of the obligations of the permittee under these Regulations. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as permittee.

3. The requirements of these Regulations shall apply to all SEFs proposed, operated, modified or constructed after the effective date of these Regulations.

J. APPLICABILITY

The requirements of these regulations shall apply to all SEF's proposed, operated, modified, or constructed after the effective date of the regulation.

K. SEVERABILITY

Should any provision of these regulations be declared by any court, administrative body or board or any other government body or board to be unconstitutional, invalid, preempted, void or otherwise inapplicable for any reason, such decision shall not affect the validity of these Regulations as a whole or any part thereof other than the part so decided to be unconstitutional, invalid, preempted, void or otherwise inapplicable.

**ARTICLE VIII
ADMINISTRATON AND ENFORCEMENT**

SECTION

800	Enforcement
801	Duties and Procedures of The Code Enforcement Officer
802	Review of Code Enforcement Officer Actions
810	Duties and Procedures of the Planning Board
820	Duties and Procedures of the Zoning Board of Appeals
830	Variances
837	Required Referrals to The County Planning Board
838	Effect of County Planning Board Review
839	Report on Final Local Action
840	Consultation
841	Agricultural Data Statement

SECTION 800 - ENFORCEMENT

The duty of administering and enforcing the provisions of this Ordinance is hereby conferred upon the Code Enforcement Officer. The Code Enforcement Officer shall be appointed by the Town Board and receive compensation as determined by the Town Board.

SECTION 801 - DUTIES AND PROCEDURES OF THE CODE ENFORCEMENT OFFICER

- A. Administer the Zoning Ordinance, Local Laws and the Building Code of New York State - The Code Enforcement Officer shall review all applications for building permits to determine compliance with all applicable requirements of this Ordinance, all local laws of the Town of Clarendon, and the Building Code of New York State and all subsequent amendments thereto. If and when an applicant has demonstrated that all of the foregoing requirements are met, the Code Enforcement Officer shall issue a building permit in accordance with Section 301 of this Ordinance. Otherwise, the Code Enforcement Officer shall deny the application for a building permit in writing.
- B. Referral to the Zoning Board of Appeals - In any case where an applicant has appealed any action of the Code Enforcement Officer to the Zoning Board of Appeals (ZBA) pursuant to Section 802, the Code Enforcement Officer shall notify the Chairperson of the ZBA of the appeal and forward all necessary supporting information.
- C. Zoning, Local Law and Building Code Violations
 - 1. Stop-Work Orders –
Whenever the Code Enforcement Officer has reasonable grounds to believe that work on any building or structure is proceeding without a permit or is otherwise in violation of the provisions of any applicable law, code, ordinance, rule or regulation, or is not in conformity with any provisions of the application, plans or specifications on the basis of which a permit was issued, or is being conducted in an unsafe or dangerous manner, the Code Enforcement Officer shall notify either the owner of the property or the owner’s agent or the person, firm or corporation performing the work to immediately suspend all work. Such stop-work order shall be in writing on a form prescribed by the Code Enforcement Officer and shall state the reason for the stop-work order, together with the date of issuance. The stop-work order shall bear the signature of the Code Enforcement Officer, or that of any deputy or assistant, and shall be prominently posted at the work site. In such instance, any and all persons shall immediately suspend all related activities until the stop-work order has been duly rescinded.

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2. Notices and Appearance Tickets
 - a. Whenever it is found that there has been a violation of this Ordinance, any local law, the Building Code of New York State or any other applicable law, code, ordinance, rule or regulation enforcement of which is the responsibility of the Code Enforcement Officer, the Code Enforcement Officer may issue a violation notice and/or appearance ticket to the person, individual, partnership or corporation owning, operating or maintaining the premises in which such violation has been noted.
 - b. Violation notices shall be in writing; shall identify the property or premises; shall specify the violation or remedial action to be taken; and shall specify that the violation must be corrected within ten (10) days from the receipt of the violation notice, unless the ten (10) day period is modified by the Code Enforcement Officer or unless a shorter period of time has been prescribed for by law.
 - c. Violation notices and other orders or notices referred to in this Ordinance shall be served on the owner or on one of the owner's executors, legal representatives, agents, lessees, any tenant or other person occupying the premises or other persons have a vested or contingent interest in the premises, either personally or by certified mail, addressed to the last known address, if any, of the owner or one of the owner's executors, legal representatives, agents, lessees or other persons having a vested or contingent interest in the same, as shown by the last preceding completed record of the Receiver of Taxes, or in the office of the County Clerk.
 - d. The Code Enforcement Officer shall have the authority, pursuant to the Criminal Procedure Law, to issue an appearance ticket subscribed by him or her, directing a designated person to appear in court at a designated time in connection with the commission of a violation of this Ordinance, any local law, the Building Code of New York State, or any other applicable law, code, ordinance, rule or regulation, the enforcement of which is the responsibility of the Code Enforcement Officer, or any order made thereunder.
 - e. The Code Enforcement Officer shall also have the authority to commence proceedings or impose penalties against any person violating any of the foregoing pursuant to the provisions of Section 105 and Section 106 of this Ordinance.
- D. Report to the Town Board - A monthly report to the Town Board describing the enumerating actions taken and permits issued shall be given by the Code Enforcement Officer.
- E. Public Record - The Code Enforcement Officer shall file all permit actions with the Town Clerk.

SECTION 802 - REVIEW OF CODE ENFORCEMENT OFFICER ACTIONS

- A. Interpretations and Variances from the Zoning Ordinance - Whenever it is claimed that the Code Enforcement Officer misinterpreted or misconstrued this Zoning Ordinance in approving or disapproving any application or granting or refusing to grant any permit under this Ordinance, or where the Code Enforcement Officer has denied a permit or application and the applicant seeks a variance from the provisions of this Ordinance, all such appeals shall be heard and determined by the Zoning Board of Appeals in accordance with Section 820 of this Ordinance.
- B. Appeals Related to Application of the Building Code of New York State -
 1. Whenever it is claimed that the Code Enforcement Officer misconstrued the Building Code of New York State in approving or disapproving any application or granting or refusing to grant any permit or certificate of occupancy, the person affected may appeal from the decision of the Code Enforcement Officer to the Zoning Board of Appeals pursuant to Section 820 of this Ordinance.

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2. Where strict compliance with any provision or requirement of the Building Code of New York State would entail practical difficulties or unnecessary hardship or otherwise be unwarranted, petitions for variances from or modifications to the application of the Building Code of New York State in particular instances may be made to the Regional Board of Review in accordance with the Part 450 of Title 19 of the New York Code, Rules and Regulations, entitled Uniform Code: Board of Review as promulgated by the New York Department of State (hereinafter Part 450).
3. In routine cases, as defined in Part 450, the New York State Department of State may grant variances from or modifications to the application of the Building Code of New York State in particular instances in accordance with Part 450 in lieu of transmitting a petition to the Regional Board of Review.
4. The Code Enforcement Officer shall maintain a copy of Part 450 for public inspection and a copy of all decisions rendered by the Regional Board of Review and Department of State pertaining to matters affecting the Town of Clarendon.

SECTION 810 - DUTIES AND PROCEDURES OF THE PLANNING BOARD

- A. Pursuant to Section 271 of Town Law, there shall be a Planning Board consisting of five(5)members, with members appointed by the Town Board. At least one member should be a person engaged in agricultural pursuits as defined in Section 271 of Town Law. Terms of all Planning Board members shall be staggered as the law requires. *(Rev. 11/15/2011)*
- B. In accordance with Local Law #2 of 1996 (See Appendix #6: Authorizing the Appointment of Alternate Members to the Planning Board and Zoning Board of Appeals of the Town of Clarendon) two alternate members of the Planning Board may be appointed by the Town Board.
- C. Officers, rules and expenses of the Planning Board:
 1. The Town Board may select a Chairperson of the Planning Board, or on failure to do so, the Planning Board shall elect a chairperson from its own members.
 2. The Planning Board may adopt rules or by-laws for its operation.
 3. The Town Board shall provide an appropriation to the Planning Board to cover necessary expenses, including a means for the Planning Board to maintain a written record of its meetings and public hearings.
 4. All decisions shall be by a majority vote of the membership(three votes)except in those cases contrary to a County Planning Board disapproval referral recommendation. In such cases, a super majority vote (majority plus one vote) shall be required. *(Rev.11/15/2011)*
- D. Functions of the Planning Board:
 1. Approval of Special Permits as authorized by Town Law, Section 271 and as prescribed in Article X of this Ordinance.
 2. Conduct site plan review as authorized by Town Law, Section 274-A and as prescribed in Article IX of this Ordinance.
 3. Prepare a Town comprehensive land development plan or amendments thereto if authorized by the Town Board under Town Law, Section 272-a.
 4. Review and comment on all proposed zoning amendments.
 5. Conduct subdivision reviews; approval of plans; development of filed plans as authorized by Town Law, Section 276 and as prescribed by Local Law #1 of 1996 (See Appendix #4: Design

**ARTICLE VIII
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Criteria and Construction Specifications for Land Development in the Town of Clarendon).

6. Render assistance to the Zoning Board of Appeals on its request.
7. Research and report on any matter referred to it by the Town Board.
8. Make investigations, maps, reports, and recommendations in any matter related to planning and development as it deems desirable, providing the expenditures of the board do not exceed its appropriations (Town Law, Section 275).

SECTION 820 - DUTIES AND PROCEDURES OF THE ZONING BOARD OF APPEALS

- A. Pursuant to Section 267 of Town Law and in accordance with Local Law #4 of 2007, decreasing the membership of the Zoning Board of Appeals, there shall be a Zoning Board of Appeals consisting of five (5) members, with members appointed by the Town Board. Terms of all Zoning Board of Appeals members shall be five (5) years in duration and shall be staggered as the law requires. The Town Board shall appoint a chairperson of the Zoning Board of Appeals. *(Rev. 11/20/07)*
- B. In accordance with Local Law # 2 of 1996, Authorizing the Appointment of Alternate Members to the Planning Board and Zoning Board of Appeals of the Town of Clarendon, two alternate members of the Zoning Board of Appeals may be appointed by the Town Board.
- C. Officers, rules and expenses of the Zoning Board of Appeals:
 1. The ZBA may adopt rules or by-laws for its operation.
 2. The Town Board shall provide an appropriation to the ZBA to cover necessary expenses, including a means for the ZBA to maintain a written record of its meetings and public hearings.
 3. All decisions shall be by a majority vote of the membership (four votes) except in those cases contrary to a County Planning Board disapproval referral recommendation. In such cases, a super-majority vote (majority plus one vote) shall be required.
- D. Functions of the Zoning Board of Appeals
 1. Interpretation - Upon appeal of a decision by the Code Enforcement Officer, or a request for interpretation from the Town Board or Planning Board, the ZBA shall decide any question involving interpretation of any provisions of this Ordinance.
 2. Appeals for Variances - Upon denial of a building permit by the Code Enforcement Officer, or a referral from the Town Board or Planning Board, the ZBA shall hear requests for variances.

SECTION 830 - VARIANCES

- A. General Policy. The granting of variances shall be principally for those seeking area variances. Use variances seek to allow activities otherwise prohibited in the zoning district, and such requests will be carefully reviewed.
- B. Granting Area Variances:
 1. Pursuant to Section 267-b of Town Law, when making its determination to grant or deny an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.
 2. In determining whether to grant or deny an area variance, the ZBA shall also consider:
 - a. Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance;
 - b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - c. Whether the requested area variance is substantial;

**ARTICLE VIII
ADMINISTRATON AND ENFORCEMENT**

- d. Whether the proposed area variance will have an adverse effect or impact on the physical or environment conditions in the neighborhood or district;
 - e. Whether the alleged difficulty was self- created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.
- C. Granting Use Variances:
- 1. Pursuant to Section 267-b of Town Law, no use variance shall be granted by the ZBA without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.
 - 2. In order to prove such unnecessary hardship the applicant shall demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - d. That the alleged hardship has not been self-created.
- D. Procedures for Granting a Variance:
- 1. All applications for variances shall be on forms established by the ZBA. Forms shall be available from the Code Enforcement Officer.
 - 2. Every application shall refer to the specific provisions of the Ordinance or local law involved and establish the details of why the variance should be granted.
 - 3. Upon receipt of the completed application, the ZBA shall:
 - a. Refer the application to the County Planning Board, if required by General Municipal Law, Section 239. Refer to Section 837 of this Ordinance for additional information.
 - b. Schedule a public hearing and arrange for the publication of a notice of the public hearing as described in Paragraph E. of this Section.
 - c. Prepare the appropriate SEQRA environmental assessment form short form or full form) and determine whether a Draft Environmental Impact Statement should be prepared.
 - d. Within sixty-two (62) days after the close of the public hearing, the ZBA shall render a decision. If the matter was referred to the County Planning Board, a copy of the ZBA*s finding and decision must be sent to the County Planning Board.
- E. Notice of Public Hearing:
- 1. The board shall fix a reasonable time for hearing of appeals, not to exceed sixty-two (62) days where cases are referred to the County Planning Board, and shall give due notice of the time set for the hearing to the applicant. Public notice shall be by publication of a notice in the official newspaper of the Town, and shall briefly describe the nature of the appeal and the time and place of the hearing.
 - 2. The notice of the public hearing shall be published at least five (5) calendar days prior to the date of the public hearing and shall contain sufficient information so as to identify the property involved and the nature of the proposed action.

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ADMINISTRATON AND ENFORCEMENT**

- F. Meetings of the Zoning Board of Appeals:
1. The ZBA shall hold meetings at the call of the chairperson, or at the request of four (4) or more members.
 2. The presence of four (4) members shall constitute a quorum for the conduct of business before the ZBA.
 3. A concurring vote of four (4) members of the ZBA shall be necessary to decide in favor of the applicant for any variance or to decide upon any other matter brought before the ZBA, unless otherwise stipulated in this Ordinance.
 4. All votes of the ZBA shall be taken by roll call.
 5. In accordance with General Municipal Law, any member of the ZBA having a conflicting interest in a matter before the board shall abstain from any discussion or voting on that matter.
 6. The ZBA may request and obtain advice and opinions on the law relating to any matter before the board from the Town Attorney, and request the Town Attorney to attend its meetings.
 7. The ZBA may require the Code Enforcement Officer to attend its meetings to present any facts relating to any matter before the board.
 8. The ZBA shall keep minutes of all its meetings. The Town Board shall provide a secretary for the ZBA.
 9. The ZBA shall make factual records of all its proceedings including the reasons of the case, public hearing, deliberation, voting, and decisions of the board. These factual records shall be taken by a stenographic and/or tape recorder means and shall be accurate, but not necessarily a verbatim transcript, but may be in narrative form. The factual record shall be taken by the secretary of the board.

SECTION 837 - REQUIRED REFERRALS TO THE COUNTY PLANNING BOARD

- A. General Municipal Law requires that any of the following local zoning actions be referred to the County Planning Board prior to action by any local board. Any application for a special permit, variance, site plan approval, zoning text or map revision, or rezoning which would affect real property lying within a distance of five hundred (500) feet from the boundary of:
1. Any county
 2. Any town
 3. Any village
 4. Any existing or proposed county or state park
 5. Any right-of-way of any county or state road or parkway
 6. Any stream or canal owned by the county
 7. Any land on which a public building or institution is situated must be referred to the County Planning Board who shall have thirty (30) days from the date of county receipt to take action on the matter. By mutual agreement of the county and the municipality, the thirty (30) day period may be extended in special cases.

SECTION 838 - EFFECT OF COUNTY PLANNING BOARD REVIEW

- A. If the County recommends approval of a referral, then the local board decision is governed by a majority vote.
- B. If the County recommends disapproval of a referral, or approval of a referral subject to stated conditions or modifications, the local board may override the County opinion only by a super-majority vote (majority plus one vote).

**ARTICLE VIII
ADMINISTRATON AND ENFORCEMENT**

SECTION 839 - REPORT ON FINAL LOCAL ACTION

The local board must send a copy of its final decision and reasons for such decision on a County referral case to the County Planning Board within thirty (30) days after the local decision is reached.

SECTION 840 - CONSULTATION

Costs for consultant review of plans and supporting documentation incurred by the Town shall be borne by the applicant as a condition of permit approval, permit renewal or variance approval.

SECTION 841 - AGRICULTURAL DATA STATEMENT

- A. In accordance with Section 283-a of Town Law, any application for a special permit, site plan approval, use variance or subdivision approval requiring municipal review and approval by the Planning Board or Zoning Board, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within 500 feet of a farm operation located within an agricultural district, shall include an agricultural data statement. The Planning Board or Zoning Board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district.
- B. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within 500 feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of the farm operations identified in the agricultural data statement.
- C. Upon receipt of such application by the Planning Board or Zoning Board, the board shall mail written notice of the application to the owners of land as identified by the applicant in the agricultural data statement. The notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or federal law, ordinance, rule or regulation for the project. The cost of mailing the notices shall be borne by the applicant.
- D. If the project location meets any of the criteria set forth in Section 837 of this Ordinance, the Planning or Zoning Board shall refer all applications and the agricultural data statement to the County Planning Board as required under Sections 239m and 239n of General Municipal Law.

ARTICLE XI INCENTIVE ZONING

SECTION

- 1100 Purpose**
- 1101 Zoning Districts Eligible for Incentives**
- 1102 Amenities for Which Incentives May Be Offered**
- 1103 Incentives Permitted**
- 1104 Criteria and Procedure for Approval**
- 1105 Cash Payment in Lieu of Amenity**

SECTION 1100 - PURPOSE

The purpose of these provisions is to offer incentives to applicants who provide amenities that assist the Town in implementing the specific physical, environmental, economic, cultural and social policies outlined in the Town of Clarendon Comprehensive Plan, as supplemented by the local laws and ordinances adopted by the Town Board.

SECTION 1101 - ZONING DISTRICTS ELIGIBLE FOR INCENTIVES

All zoning districts are eligible for zoning incentives. Incentives may be extended to those applicants who offer acceptable amenities to the Town in exchange for the incentive.

SECTION 1102 - AMENITIES FOR WHICH INCENTIVES MAY BE OFFERED

- A. The following amenities may be offered by an applicant. These amenities may be provided either on or off the site of the subject application:
 - 1. Affordable housing.
 - 2. Passive and active open space and related improvements.
 - 3. Parks.
 - 4. Child care or elderly-care facilities.
 - 5. Utilities.
 - 6. Road improvements.
 - 7. Health or other human-service facilities.
 - 8. Cultural or historical facilities.
 - 9. Other facilities or benefits to the residents of the community.
 - 10. Any combination of amenities and/or cash in lieu of any amenity (ies).
- B. These amenities shall be in addition to any amenities that may be mandated elsewhere in this Ordinance.

SECTION 1103 - INCENTIVES PERMITTED

- A. The following incentives may be granted by the Town Board. These incentives would apply to the site of the subject application:
 - 1. Reduction in lot size requirements.
 - 2. Reduction in setback or height requirements.
 - 3. Reduction in open space requirements.

ARTICLE XI INCENTIVE ZONING

4. Changes in use or zoning classifications.
5. Changes to any other provisions of this Ordinance.

SECTION 1104 - CRITERIA AND PROCEDURE FOR APPROVAL

- A. Applications for incentives in exchange for amenities shall be submitted to the Town Board. The following information shall be provided by the applicant so that the Town Board can evaluate the adequacy of amenities to be provided in exchange for incentives:
 1. The requested incentive.
 2. The proposed amenity.
 3. The cash value of the proposed amenity.
 4. A description of the benefits to be provided to the community by the proposed amenity.
 5. A description of the existing sewer, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located, and the adequacy of these facilities to handle the additional demands the incentive and amenity may place on these facilities (beyond the demand that would be placed on them as if the district were developed to its fullest potential).
 6. An explanation as to how the amenity will assist in implementing the specific physical, environmental, economic, cultural and social policies outlined in the Town of Clarendon Comprehensive Plan, as supplemented by the local laws and ordinances adopted by the Town Board.

- B. The Town Board shall review the proposal and inform the applicant whether or not the proposal is worthy of further consideration. If it is deemed worthy of further consideration, the applicant may then submit two (2) sketch plans to the Planning Board:
 1. First Sketch Plan:
 - a. The first sketch plan shall show how the site will be developed with the amenity (if it is on-site) and the incentive. In addition to meeting the requirements of Section 902 of this Ordinance, the plan shall also show existing development, property owner names and tax account numbers for all property within two hundred (200) feet of the property lines of the proposed project site or such other distance as specified by the Town Board.
 - b. If the incentive will result in a setback or open space reduction, the drawing shall show this reduction in relation to the principal structures on-site and on adjacent properties, as well as property line locations.

 2. Second Sketch Plan:
 - a. The second sketch plan shall show how the site would be developed exclusive of any amenity or incentive. In addition to meeting the requirements of Section 902 of this Ordinance, the plan shall show existing development, property owner names and tax account numbers for all property within two hundred (200) feet of the property lines of the project site or such other distance as specified by the Town Board.
 - b. The applicant shall also provide any additional information or plans which the Planning Board deems necessary (including any information required under Section 903 of this Ordinance) to perform a thorough evaluation of the proposal.

ARTICLE XI INCENTIVE ZONING

- C. The Planning Board will review the proposal and report to the Town Board with its evaluation of the adequacy with which the amenity(ies)/incentive(s) fit the site and how they relate to adjacent uses and structures. The Planning Board=s review shall be limited to the planning, design and layout considerations involved with the project or such other issues as may be specifically referred by the Town Board. The Planning Board=s report shall be submitted to the Town Board within seventy (70) days from the date of the Planning Board meeting at which the proposal is first placed on the agenda. This time period may be extended/suspended with the consent of the applicant or for good cause by the Town Board.
- D. The Town Board will review the Planning Board=s report. The Town Board will notify the applicant as to whether it is willing to further consider the proposal. If the Town Board decides to further consider the proposal, it shall conduct a public hearing thereon. For Town Board public hearings involving incentive zoning requests, the Town Clerk shall give notice of the hearing in the official newspaper of the Town at least five (5) days prior to the date of the hearing.
- E. All applicable requirements of the State Environmental Quality Review Act (SEQRA) shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sewer, water, transportation, waste disposal and fire protection facilities to:
1. First, serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal; and
 2. Then, serve the on-site amenity and incentive, given the development scenario in Subsection E.1.above.
- F. Following the hearing and in addition to compliance with the SEQRA requirements, the Town Board shall, before taking action, refer the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other town boards and officials for review and comment.
- G. In order to approve an amenity/incentive proposal, the Town Board shall determine that the proposed amenity provides sufficient public benefit to provide the requested incentive. In no circumstance, however, shall the Town Board be compelled to approve any amenity/incentive proposal and it may deny any such proposal in its sole and absolute discretion. The Town Board may also impose conditions upon its approval as it may deem appropriate to promote the health, safety and welfare of the community.
- H. Following approval by the Town Board, the applicant shall apply for any additional permits or approvals that are required under this Ordinance or any other law or regulation, including where appropriate, site plan approval under Article IX of this Ordinance. No such additional permit or approval by any board or agency of the Town shall materially alter any condition imposed by the Town Board under Paragraph G hereof, and in the event that any permit or approval by any agency outside the Town materially alters any such condition, then the project may not proceed until and unless the Town Board approves of the modification.

**ARTICLE XI
INCENTIVE ZONING**

SECTION 1105 - CASH PAYMENT IN LIEU OF AMENITY

If the Town Board finds that a community benefit is not suitable on site or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified prior to acceptance of the funds. Cash payments shall be made prior to the issuance of a building permit. Cash payments in lieu of amenities are not to be used to pay general and ordinary town expenses.

ARTICLE X SPECIAL PERMITS

SECTION

1000	Policy
1001	Administration
1002	Procedure
1003	Interpretation
1004	General Findings
1005	Special Findings
1006	Renewal of Special Permits
1007	Modification of Special Permits

SECTION 1000 - POLICY

It is the intent of this Ordinance to use special permits to control the impact of certain land uses designated in Article VII of this Ordinance upon areas where they would be incompatible, unless conditioned in a manner suitable to a particular location. Special permits provide flexibility and individuality to the otherwise rigid controls of the zoning regulations.

SECTION 1001 - ADMINISTRATION

- A. Pursuant to Town Law, the Town Planning Board will administer the review and granting of special permits. Site plan review and approval will be conducted as part of the special permit review process, pursuant to Article IX of this Ordinance.
- B. Performance bonds, reclamation bonds, letters of credit, or some other financial guarantee may be required to assure that the conditions stipulated in the approval of all special permits are carried out.

SECTION 1002 - PROCEDURE

- A. After the Planning Board receives a special permit application, the applicant and the Planning Board shall meet for an informal discussion of site plan review and approval procedures.
- B. No special permit may be issued until site plan approval, as set forth in Article IX of this Ordinance, has been granted and attached to the special permit application.
- C. The Town Planning Board shall designate a date for a public hearing on the special permit, within a period of time not to exceed sixty-two (62) days. A notice of the public hearing shall be published in a newspaper of general circulation in the town.
- D. The notice of the public hearing shall be sent and published at least five (5) calendar days prior to the date of the public hearing and shall contain sufficient information so as to identify the property involved and the nature of the proposed action.
- E. The Planning Board shall make a factual record of all its proceedings involving the granting of a special permit. The minutes of the Planning Board shall contain the reasons for its decision.

ARTICLE X SPECIAL PERMITS

- F. The Planning Board shall render its decision, approving the special permit, approving the special permit with modifications or conditions, or denying the special permit, within sixty-two (62) days after the close of the public hearing. This time period may be extended by mutual consent of applicant and the Planning Board. The Planning Board shall inform the applicant in writing of its decision. A copy of the appropriate written minutes may suffice for this notice.

SECTION 1003 - INTERPRETATION

General findings are a prerequisite prior to the issuance of any special permit in this Ordinance. Special findings are separate from, but in addition to, the general findings.

SECTION 1004 - GENERAL FINDINGS

- A. Before granting a special permit, the following general findings shall be made:
1. The proposed use is in compliance with all other applicable regulations of this Ordinance inclusive of specific district controls and controls applicable to all districts, and all other applicable Local, State and Federal regulations.
 2. The proposed use is physically and visually compatible with, and will not discourage the appropriate development of, the general area or adversely affect the character of existing land uses within close proximity of the subject site.
 3. The proposed use will be provided with adequate supporting services such as fire and police protection, public and private utilities, and all other supporting public services necessary and appropriate to the proposed use.
 4. Access facilities are adequate for the estimated traffic volumes on the fronting streets or highways, and are designed to ensure public safety and to avoid traffic congestion and hazards. Furthermore, that vehicular entrances and exits are clearly visible from the street and situated away from street or highway intersections, except under unusual circumstances.
 5. There are an adequate number of off street parking and loading spaces provided for the anticipated number of occupants, employees, attendants, and patrons or visitors, and that the layout of the spaces and driveways is convenient and conducive to safe operation.
 6. Adequate buffer areas and screening are provided where necessary to protect adjacent properties and land uses.
 7. Controls for pedestrian movement are designed to ensure the safety of the general public and the employees, occupants, attendants, patrons, and visitors for whom the proposed use is intended.
 8. Adequate provisions are made for the collection and disposal of storm water runoff from the site, sanitary sewage, refuse or other waste, whether liquid, solid, gaseous, or of other character.

ARTICLE X SPECIAL PERMITS

9. That the lot area is appropriate and adequate for the proposed use, and the reasonable anticipated operation and expansion thereof.

SECTION 1005 - SPECIAL FINDINGS

The Planning Board may grant a special permit for those special permit uses specified in Article VII of this Ordinance, provided that the requirements and conditions set forth in that Article are complied with in full.

SECTION 1006 - RENEWAL OF SPECIAL PERMITS

- A. Any Special Use Permit granted by the Planning Board shall be effective for a one (1) year period. Special Use Permits shall be renewable on an annual basis provided the use is continuously operated in a manner consistent with the terms and conditions of the original permit.
- B. Renewal of a Special Use Permit is the sole responsibility of the permit holder. Failure to renew in a timely manner will result in the revocation of the Special Use Permit.
- C. Not less than sixty (60) days before the expiration date of a Special Use Permit, the Code Enforcement Officer shall inspect the premises to determine if the use is being operated in a manner consistent with the terms and conditions of the original permit. The Code Enforcement Officer shall notify the Planning Board as to whether the use is being operated in compliance or in non-compliance with the terms and conditions of the permit.
- D. If the use is operating in non-compliance, the Code Enforcement Officer shall notify the Special Use Permit holder in writing specifying the issues of non-compliance, and shall set forth those procedures necessary to bring the use into compliance and shall notify the Planning Board. All use of the Special Use Permit shall be suspended unless corrective action has been completed within the permit expiration timeframe and the CEO has been notified by the permit holder requesting a re-inspection. The permit use shall remain suspended until compliance verification is received by the Planning Board. The permit holder is responsible for all corrective action necessary to bring the permit into compliance and for scheduling a re-inspection with the Code Enforcement Officer. Failure to take corrective action within the permit expiration timeframe will result in revocation of the permit.
- E. A Special Use Permit shall terminate and become ineffective upon the occurrence of any of the following:
1. Failure to renew the Special Use Permit within the permit expiration timeframe.
 2. The sale or transfer of the premises for which the Special Use Permit was granted.
Exception: Special permits that have been reviewed, approved and re-issued under the name of the new owner/applicant by the Planning Board.
 3. The transfer, or attempted transfer, of the Special Use Permit to anyone other than the original permit holder without Planning Board approval.
 4. The failure of the permit holder to strictly comply with all conditions imposed by the Planning Board at the time the special permit was granted.

**ARTICLE X
SPECIAL PERMITS**

5. Any enlargement, modification, or alteration in the use for which the Special Use Permit was initially granted.

SECTION 1007 - MODIFICATION OF SPECIAL PERMITS

- A. Once issued, no modifications shall be permitted to any Special Use Permit unless approved by the Planning Board.
- B. Applications for modifications to a Special Use Permit shall be made in writing to the Planning Board.
- C. The Planning Board shall follow the procedures outlined in Article X, Section 1002 when reviewing any request for modification to a Special Use Permit.

ARTICLE X SPECIAL PERMITS

SECTION

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- B. No special permit may be issued until site plan approval, as set forth in Article IX of this Ordinance, has been granted and attached to the special permit application.
- C. The Town Planning Board shall designate a date for a public hearing on the special permit, within a period of time not to exceed sixty-two (62) days. A notice of the public hearing shall be published in a newspaper of general circulation in the town.
- D. The notice of the public hearing shall be sent and published at least five (5) calendar days prior to the date of the public hearing and shall contain sufficient information so as to identify the property involved and the nature of the proposed action.
- E. The Planning Board shall make a factual record of all its proceedings involving the granting of a special permit. The minutes of the Planning Board shall contain the reasons for its decision.

ARTICLE X SPECIAL PERMITS

- F. The Planning Board shall render its decision, approving the special permit, approving the special permit with modifications or conditions, or denying the special permit, within sixty-two (62) days after the close of the public hearing. This time period may be extended by mutual consent of applicant and the Planning Board. The Planning Board shall inform the applicant in writing of its decision. A copy of the appropriate written minutes may suffice for this notice.

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General findings are a prerequisite prior to the issuance of any special permit in this Ordinance. Special findings are separate from, but in addition to, the general findings.

SECTION 1004 - GENERAL FINDINGS

- A. Before granting a special permit, the following general findings shall be made:
1. The proposed use is in compliance with all other applicable regulations of this Ordinance inclusive of specific district controls and controls applicable to all districts, and all other applicable Local, State and Federal regulations.
 2. The proposed use is physically and visually compatible with, and will not discourage the appropriate development of, the general area or adversely affect the character of existing land uses within close proximity of the subject site.
 3. The proposed use will be provided with adequate supporting services such as fire and police protection, public and private utilities, and all other supporting public services necessary and appropriate to the proposed use.
 4. Access facilities are adequate for the estimated traffic volumes on the fronting streets or highways, and are designed to ensure public safety and to avoid traffic congestion and hazards. Furthermore, that vehicular entrances and exits are clearly visible from the street and situated away from street or highway intersections, except under unusual circumstances.
 5. There are an adequate number of off street parking and loading spaces provided for the anticipated number of occupants, employees, attendants, and patrons or visitors, and that the layout of the spaces and driveways is convenient and conducive to safe operation.
 6. Adequate buffer areas and screening are provided where necessary to protect adjacent properties and land uses.
 7. Controls for pedestrian movement are designed to ensure the safety of the general public and the employees, occupants, attendants, patrons, and visitors for whom the proposed use is intended.
 8. Adequate provisions are made for the collection and disposal of storm water runoff from the site, sanitary sewage, refuse or other waste, whether liquid, solid, gaseous, or of other character.

ARTICLE X SPECIAL PERMITS

9. That the lot area is appropriate and adequate for the proposed use, and the reasonable anticipated operation and expansion thereof.

SECTION 1005 - SPECIAL FINDINGS

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SECTION 1006 - RENEWAL OF SPECIAL PERMITS

- A. Any Special Use Permit granted by the Planning Board shall be effective for a one (1) year period. Special Use Permits shall be renewable on an annual basis provided the use is continuously operated in a manner consistent with the terms and conditions of the original permit.
- B. Renewal of a Special Use Permit is the sole responsibility of the permit holder. Failure to renew in a timely manner will result in the revocation of the Special Use Permit.
- C. Not less than sixty (60) days before the expiration date of a Special Use Permit, the Code Enforcement Officer shall inspect the premises to determine if the use is being operated in a manner consistent with the terms and conditions of the original permit. The Code Enforcement Officer shall notify the Planning Board as to whether the use is being operated in compliance or in non-compliance with the terms and conditions of the permit.
- D. If the use is operating in non-compliance, the Code Enforcement Officer shall notify the Special Use Permit holder in writing specifying the issues of non-compliance, and shall set forth those procedures necessary to bring the use into compliance and shall notify the Planning Board. All use of the Special Use Permit shall be suspended unless corrective action has been completed within the permit expiration timeframe and the CEO has been notified by the permit holder requesting a re-inspection. The permit use shall remain suspended until compliance verification is received by the Planning Board. The permit holder is responsible for all corrective action necessary to bring the permit into compliance and for scheduling a re-inspection with the Code Enforcement Officer. Failure to take corrective action within the permit expiration timeframe will result in revocation of the permit.
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 2. The sale or transfer of the premises for which the Special Use Permit was granted.
Exception: Special permits that have been reviewed, approved and re-issued under the name of the new owner/applicant by the Planning Board.
 3. The transfer, or attempted transfer, of the Special Use Permit to anyone other than the original permit holder without Planning Board approval.
 4. The failure of the permit holder to strictly comply with all conditions imposed by the Planning Board at the time the special permit was granted.

**ARTICLE X
SPECIAL PERMITS**

5. Any enlargement, modification, or alteration in the use for which the Special Use Permit was initially granted.

SECTION 1007 - MODIFICATION OF SPECIAL PERMITS

- A. Once issued, no modifications shall be permitted to any Special Use Permit unless approved by the Planning Board.
- B. Applications for modifications to a Special Use Permit shall be made in writing to the Planning Board.
- C. The Planning Board shall follow the procedures outlined in Article X, Section 1002 when reviewing any request for modification to a Special Use Permit.



Main Street –Elba, NY early 1900's. Courtesy of the Genesee County History Department

Town Of Elba New York Zoning Laws

Adopted: April 14, 1988

Revised: June 14, 2001



Main Street – Elba, NY 2001. Photo by Debra Mosier.

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TOWN OF ELBA

ZONING LAW

ARTICLE I **ENACTING CLAUSE, TITLE, PURPOSES, APPLICATION AND VALIDITY**

SECTION 101 **ENACTING CLAUSE**

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Elba hereby adopts and enacts as follows:

SECTION 102 **TITLE**

This Zoning Law shall be known as the "Town of Elba Zoning Law".

SECTION 103 **PURPOSES**

This Zoning Law is adopted for the protection and promotion of the public health, safety, morals and general welfare of the community, as follows:

A. To guide the future growth and development of the Town in accordance with a comprehensive land use and population density that represents the most beneficial and convenient relationships among the residential, non-residential and public areas within the Town, considering the suitability of each area for such uses, as indicated by existing conditions; trends in population and mode of living, and having regard for the use of land, building development and economic activity, considering such conditions and trends both within the Town and with respect to the relation of the Town to areas outside thereof.

B. To provide adequate light, air and privacy; to promote safety from fire, flood and other danger, and to prevent over-crowding of the land and undue congestion of the population.

C. To protect and conserve the value of the land throughout the Town and the value of buildings appropriate to the various districts established by this Zoning Law.

D. To protect the character and the social and economic stability of all parts of the Town, and to encourage the orderly and beneficial development of all parts of the Town.

E. To bring about the gradual conformity of the uses of land and buildings through the comprehensive zoning plan set forth in this Zoning Law, and to minimize the conflicts among the uses of land and buildings.

F. To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard to the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian traffic movement appropriate to the various uses of land and buildings throughout the Town.

G. To provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the Town.

H. To limit concentrated development to an amount equal to the availability and capacity of public facilities and services.

I. To prevent the pollution of streams and ponds; to safeguard the water table, and to encourage the wise use and sound management of the natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.

SECTION 104 APPLICATION OF REGULATIONS

No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purpose except in conformity with this Zoning Law. No building, land, water, structure, or premises shall be used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind, that is noxious by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the health or safety of the community.

In interpreting and applying this Zoning Law, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public safety, health, morals and general welfare. This Zoning Law shall not be deemed to affect in any manner whatsoever any easements, covenants or other agreements between parties; however, where this Zoning Law imposes greater restrictions than are imposed by other Zoning Laws, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, then the provisions of this Zoning Law shall prevail.

This Zoning Law shall not apply to uses which were legal, prior, existing, non-conforming uses as defined herein.

Nothing herein contained shall require any change in plans or construction of a building for which a zoning permit has been issued.

All buildings under construction at the time of this Zoning Law is adopted shall conform to the Zoning Law in effect at the time construction was commenced for purposes of issuance of the initial Certificate of Compliance. The regulations contained in this Zoning Law shall govern all future activities undertaken in such buildings.

SECTION 105 VALIDITY

The invalidity of any section or provision of this Zoning Law shall not invalidate any other section or provision thereof.

SECTION 106 EFFECTIVE DATE AND REPEAL

This Zoning Law shall take effect only after a summary thereof is published in the

Batavia Daily News. The existing Zoning Ordinance of the Town of Elba, its Local Law Regulating Mobile Home Parks in the Town of Elba, New York, Local Law No. 1 of 1979, and any other enactments of the Town Board of the Town of Elba which are inconsistent with the provisions of this Zoning Law are hereby repealed.

ARTICLE II DEFINITIONS

SECTION 201 INTERPRETATION OF TERMS AND WORDS

For the purposes of this Zoning Law, all words used in the present tense include the future tense. All words in the plural number include the singular number, and all words in the singular number include the plural number, unless the natural construction of the word indicates otherwise. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual. The word "shall" is mandatory and directory. The word "may" is permissive. The word "used" includes "designed, intended or arranged to be used".

SECTION 202 DEFINITIONS:

Accessory Structure: A structure the use of which is incidental to the principal use of the main structure and which is located on the same lot.

Accessory Use - Use of building, structure or land customarily incidental and subordinate to principal use or building, and located on the same lot.

Adult Care: The provision of temporary or long term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29, and 31 of the Mental Hygiene Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

Adult Care Facility: A facility other than a Family Type Home, which provides adult care. For the purposes of this Zoning Law an Adult Care Facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult-care facility as defined by NYS Department of Social Services Chapter II, Subchapter D, Part 485.

Adult Uses: Business including, but not limited to, an Adult Bookstore, Adult Entertainment, Cabaret, Adult Mini Motion Picture Theater and Adult Motion Picture Theater as those terms are defined in Section 613.

Alterations - As applied to a building or structure, a change or rearrangement in the structure parts, or an enlargement whether by extending on a side, increasing in height or the moving from one location or position to another.

Amusement Game: Any mechanical, electric or electronic device used or designated to

be operated for entertainment or as a game by the insertion of a coin, slug, token, plate, disc, key or any other article into a slot, crevice, or other opening or by paying money to have it activated. Not included are rides, bowling alleys, any device maintained within a residence for the not-for-profit use of occupants thereof and their guests, any gambling device, or juke boxes.

Animal Kennel: Building used for the housing, grooming, breeding, or training of domestic animals, including dogs and cats, that operates for commercial purposes. This definition does not include Animal Shelters.

Animal Shelter: Building or land used for the temporary harboring of stray or homeless dogs, cats, and other similar household pets, together with facilities for the provision of necessary veterinary care and adoption of the harbored animals.

Animal Waste Storage Facility: Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

Antenna - An arrangement of wires or metal rods used in transmitting or receiving electromagnetic waves.

Area Variance: The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this Zoning Law.

Bed and Breakfast: See Tourist Home

Board of Appeals: The officially designated Town of Elba Board of Appeals as established by the Town Board in accordance with Section 267 of Town Law.

Boarding House: Owner-occupied dwelling wherein more than three (3) non-related, non-transient people are sheltered for profit.

Buffer - A strip of land covered with sufficient permanent evergreen planting (consisting of both trees and shrubs) to provide a continuous physical screen preventing visual access from one use to another and to reduce the noise intensity transferred from one use area to another, subject to approval of the Planning Board.

Building - A structure wholly or partially enclosed within exterior and party walls, and a roof, affording shelter to persons, animals or property. For the purposes of this Zoning Law, a utility trailer or vehicle attached to the ground or otherwise immovable, shall be considered a building.

Building Area - The aggregate of the areas of all enclosed and roofed spaces of the principal building and all accessory buildings. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

Building Height - The vertical dimensions measured from the average elevation of the finished lot grade at the front of the building to the highest point of roof for flat roofs; to the decline of a mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.

Building Line - A line formed by the intersection of a horizontal plane at average grade level and a vertical plane with the exterior surface of the building on any side. In case of a

cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

Building Primary - A building or buildings, in which is conducted the main or principal use of the lot on which said building is situated.

Campground/Recreational Vehicle Park - A parcel of land used or intended to be used, let, or rented for occupancy by campers or for occupancy by or of three or more recreational vehicles, tents, or movable or temporary dwellings, rooms, or sleeping quarters of any kind.

Certificate of Compliance - A certificate issued by the Zoning Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certification shall acknowledge compliance with all the requirements of this Zoning Law and such adjustments thereto granted by the Board of Appeals.

Child Day Care: Shall mean care for a child on a regular basis provided away from the child's residence for less than twenty-four (24) hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity of the parents or stepparents of such child.

Child day care does not refer to care provided in:

(1) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;

(2) A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation;

(3) A facility providing day service under an operating certificate issued by the department;

(4) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or

(5) A kindergarten, pre-kindergarten or nursery school for children three (3) years of age or older, or a program for school-age children three (3) years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

Child Day Care Center: Shall mean a program or facility in which child day care is provided on a regular basis to more than six (6) children for more than three (3) hours per day per child for compensation or otherwise, except those programs operating as a group family day care home, a family day care home, or school-age child care program, as defined in this Section.

Club House - A building used to house a social, fraternal or service organization or club not organized or conducted for profit and which is not an adjunct to or operated by or in conjunction with a public tavern, cafe, or other place of business.

Club Membership - A group of persons organized in accordance with the Not-For-Profit Law (example-fish and game clubs).

Cluster Development - A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, but maintaining the density limitation imposed by said minimum lot area through the provision of open space as a part of the subdivision plan.

Commercial Communication Tower: A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

Commercial Excavation: A lot or part thereof used for the purpose of excavation, processing or sale of sand, gravel, or clay, or other natural mineral deposits or the quarrying of any kind of rock formation, and exclusive of the process of grading a lot preparatory to the construction of a building for which a building permit application has been filed. Commercial excavation shall be divided into two categories based on the scale and type of operation as follows:

1. Major Excavation: All excavations requiring a New York State Mined Land Reclamation Permit shall be considered major excavations.

2. Minor Excavation: All excavations not requiring a New York State Mined Land Reclamation Permit shall be considered minor excavations.

Community Area - An area or space within a mobile home park including fences, walls, and other minor structures, which is designated for joint use of occupants or restricted to non-residential use.

Community Residence - A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than fourteen (14) individuals and provides client supervision on a 24-hour basis. For the purposes of this Zoning Law, an approved community residence as defined herein is considered a one-family dwelling.

Community Structure - A structure within a mobile home park providing laundry, toilet, recreation, parking or other common facilities, including management office and storage buildings.

Convalescent Home, or Extended Care Facility: See "Hospital"

Coverage - That percentage of the plot or lot area covered by the total building area.

Curb Level - The officially established grade of the curb in front of the mid-point of the lot.

Day Treatment Center - A supervised day treatment program operated in compliance with the New York State Mental Hygiene Law.

Dwelling Unit - One or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one family.

Dwelling, One Family - A dwelling containing one dwelling unit only.

Dwelling, Two Family - A dwelling containing two dwelling units only.

Dwelling, Multi Family - A dwelling containing three or more dwelling units.

Family - One (1) or more persons, related by birth, marriage or other domestic bond, occupying a dwelling unit and living as a single housekeeping unit.

Family Day Care Home: Shall mean a dwelling unit occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, as provided for by NYS Department of State. The name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling.

Family-Type Home: Adult care established and operated for the purpose of providing long-term residential care, room, board and personal care, and/or supervision to four (4) or fewer adult persons unrelated to the operator. For the purposes of this Zoning Law a family-type home shall be considered a home occupation.

Farm - The use of a minimum of ten (10) acres of land for agricultural purposes including tilling of the soil, dairying, pasture, apiculture, arboriculture, horticulture, floriculture, viticulture, forestry, animal and poultry husbandry and the necessary accessory uses for packing or storing of products, provided that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

Fence - An artificially constructed barrier of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials other than temporary uses such as snow fences or rabbit fences.

Floor Area Total - The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business. Said areas shall be measured between the outside face of exterior walls, or from the center line of walls separating two (2) uses. Said areas shall not include areas below the average level of the adjoining ground, garage space, or accessory building space.

Frontage: The extent of a building or a lot along one public street as defined herein.

Game Room: A building or place containing five (5) or more amusement games as defined herein (see Amusement Game).

Garages, Private - A secondary building used in conjunction with a primary building which provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.

Garages, Public - Any garage other than a private garage, operated for gain.

Gasoline Station - Any area of land including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry-cleaning or otherwise cleaning or servicing such motor vehicles or other commercial activities.

Gasoline Station-Market (Convenience Store): A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market, or food market, or a commercial use which provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

Grade, Established - The elevation of the center line of the streets established by the Town authorities.

Grade, Finished - The completed surfaces of lawns, walks, and roads brought to grades as shown on official plans or designs relating thereto.

Group Family Day Care Home: Shall mean a dwelling unit occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise, as provided for by NYS Department of State. The name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home (as defined in this Section) shall be considered a home occupation.

Habitable Floor Area: Any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation or combination thereof. A floor used only for storage purposes is not "habitable".

Home Occupation: An accessory use of a dwelling unit for gainful employment involving the manufacture, provision or sale of goods, and/or services. Home occupations are further classified as being either category II or I, depending upon on whether or not non-resident individuals are working on-site and whether more than one customer visit is expected at a time.

In particular, a home occupation may include, but is not limited to, the following: art studio; barber shop/beauty parlors (limited to two work stations); cleaning services; contractors; computer programmer; cook; day nursing; direct sale product distribution (Amway, Avon, Tupperware, etc.); draftsman; dressmaker or tailor; electrical/radio/television repair; financial planning and investment services; insurance agent; musician; photographer; professional offices of a physician, dentist, lawyer, accountant, engineer or architect; real estate office; teaching or tutoring (limited to two students at one time); telephone answering; upholsterer; group family day care home; school-age child care and family-type home.

However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and animal kennels, small engine repair shop, restaurants or furniture refinisher involving "dip tanks" or stripping.

Home Occupation I: A home occupation that employs only on-site residents and which expect not more than one customer visiting the site at any given time.

Home Occupation II: Any home occupation which is not considered a Home Occupation I as set forth above.

Hospital, Animal: An establishment for the medical and/or surgical care of injured animals.

Indoor Recreational Facility - A parcel of land and building used or intended to be used for the following types of uses: theater, bowling, roller skating, ice skating, court games, and swimming.

Junk - Shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, scrapped, ruined, dismantled or wrecked motor vehicles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous materials, tires and pallets.

Junkyard - A lot, land or structure, or part thereof, where junk, waste, discarded or salvaged materials are bought, sold, exchanged, sorted, baled, packed, disassembled, handled, or abandoned, including: automobile or other vehicle or machinery, wrecking or dismantling yards; house wrecking yards; used lumber yards; places or yards for storage of salvaged house wrecking and structural steel materials and equipment; or where more than two (2) vehicles or old mobile homes no longer intended or capable of occupancy as a residence are held outside of a completely enclosed building, whether for the purpose of resale or sale of used parts therefrom, for the purpose of reclaiming for use some or all the materials therein, or for the purpose of storage or disposing of the same for any other purpose. The term junkyard shall not include pawn shops and establishments for the sale, purchase or storage of used furniture, household equipment and clothing, or for processing of used, discarded or salvaged materials as part of manufacturing operations.

Exceptions:

- (1) New, and/or used motor vehicles, which are operable, qualify for a current New York State Motor Vehicle inspection sticker under Article 5 of the New York Motor Vehicle and Traffic Law, and are offered for sale to the public, may be stored on premises on which new or used car sales may be conducted in accordance with the provisions of these regulations.
- (2) The storage of vehicles subject to seasonal use such as travel trailers and snowmobiles even though such vehicles may be unlicensed during the part of the year they are not in use.
- (3) The storage of agricultural equipment, machinery and vehicles in an Agricultural-Residential A-R District which are a part of farm operations.

Landfill, Sanitary: The depositing of refuse in a natural or man-made depression or trench, or dumping it at ground level, then compacting to the smallest practical volume, and covering with earth or other material in a systematic and sanitary manner.

Light Industrial: The processing, fabrication, assembly or packaging of previously

prepared or refined materials.

Lot - A parcel or area of land, the dimension and extent of which are determined by the latest official records or by the latest approved map of a subdivision of which the lot is a part.

Lot Area - An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculating lot area.

Lot, Corner - A parcel of land at the junction of and fronting on two (2) or more intersecting streets.

Lot Coverage - That percentage of the lot area which is devoted to building area.

Lot Line - A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public space.

Lot Line, Front - In the case of a lot abutting upon only one street, the line separating the lot from the street right-of-way; in the case of a lot abutting more than one street, each street line shall be considered a front lot line.

Lot, Through - A lot, other than a corner lot, which has frontage on more than one street.

Lot, Zoning - A parcel of land occupied, or to be occupied, by a principal use, or uses, together with permitted accessory uses, yards, and open spaces, having frontage on an officially accepted street and having not less than the minimum area required by these regulations for a lot in the zoning district within said parcel of land is located. A Lot of Record may or may not be a zoning lot.

Lot Depth - The average horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot Width - The horizontal distance between the side lot lines measured at right angles to its depth at the front lot line.

Lot of Record - An area designated as a separate and distinct parcel of land on a legally recorded subdivision plat or in a legally recorded deed as filed in the official records of the County Clerk.

Mobile Home - A portable unit, designed or built to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed without a permanent foundation for year round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. Mobile units arrive at the site where they are to be occupied as dwelling completed, including major appliances and furniture, and ready for occupancy except for minor and incidental unpacking and assembly operations, location of foundation supports, connection to utilities, and the like.

Mobile Home Lot - A designated site within a mobile home park or subdivision for the exclusive use of the occupants of a single mobile home.

Mobile Home Park - A parcel of land under single management which has been planned and improved for the rental or lease of lots and the provision of services for mobile homes for non-transient use.

Mobile Home Pad - That part of an individual mobile home lot which has been reserved for the placement of the mobile home.

Mobile Home Subdivision - A parcel of land developed under single ownership where lots are sold for the use of mobile homes and where such services as water, sewage disposal, recreational facilities and laundry facilities may be provided by the management for a service charge.

Motel/Hotel - A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room are provided within the building or in an accessory building.

Motor Vehicle Repair Shop - A building used for repair and servicing of motor vehicles.

Non-Conforming Building - A building which in its design or location upon a lot does not conform to the regulation of this Zoning Law for the zone in which it is located.

Non-Conforming Lot - A lot of record existing at the date of the passage of this Zoning Law which does not have the current minimum width or contain the minimum area for the zone in which it is located.

Non-Conforming Use - Use of a building or of land that does not conform to the regulation of the zone in which it is located.

Nursery - Any place used commercially as a garden for the open cultivation and growing of trees, shrubs and other plants, including the replanting of said plants grown at places other than the nursery, exclusive of retail sales.

Nursing Home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

Office Building: A building used primarily for conducting the affairs of a business, profession, service, industry or government, or like activity, that may include ancillary services for office workers such as a restaurant, coffee shop, newspaper or candy stand.

Outdoor Recreation Facility - A parcel of land used or intended to be used for the following types of uses: golf, tennis, swimming, picnicking, court games, field games, skiing, ice skating, sledding or fish and game club. An outdoor recreation facility shall not include motorized vehicle race tracks or courses.

Outdoor Solid Fuel Burning Device: A solid fuel burning device designed and intended for installation outside of the primary building on a lot, and used to produce heat for transfer to the primary or accessory building(s) on such lot.

Owner: Person or persons holding legal or equitable title to the property.

Parking Space, Off-Street Automobile - An off-street area suitable for vehicular parking and having direct access to a road. The minimum area per automobile shall be two hundred (200) square feet with a minimum width of ten (10) feet.

Patio/Deck - An outdoor living space with a floor designed to supplement the residential living area.

Personal Services: Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

Planning Board - The officially designated Elba Town Planning Board, as established by the Town Board in accordance with Chapter 62 of the Consolidated Laws, Article 16, Sections 271 and 272.

Pond: A manmade body of water other than a swimming pool, greater than two feet in depth.

Primary Use - The main or principal use to which a building or lot is to be used.

Public Utility - Telephone, electric and cable television, poles, equipment and structures; water or gas pipes, mains, valves or structures; sewer station; and all other facilities; equipment and structures necessary for conducting a service by a government or a public utility.

Recreational Vehicle - A vehicle type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are:

- A. Travel Trailer - A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and of a body width of no more than eight (8) feet and a body length of no more than thirty-two (32) feet when factory equipped for the road.
- B. Camp Trailer - A vehicular portable unit, mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle.
- C. Truck Camper - A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck campers are of two basic types:
 - (1) Slide-in camper - A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.
 - (2) Chassis-mount camper - A portable unit designed to be affixed to a truck chassis.
- D. Motor Home - A vehicular unit built on a self-propelled motor vehicle chassis.

Recyclables Handling and Recovery Facility: Recyclables handling and recovery facility means a solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated

recyclables are collected and which is regulated by 6 NYCRR Part 360.

Religious Institution: Church, temple, parish house, convent, seminary and retreat house.

Restaurant - Any establishment, however designated, at which food is sold for consumption on the premises to patrons seated within an enclosed building. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground, play field or park operated by the agency or group of an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

Restaurant-Drive-In - A restaurant at which food is sold for consumption off the premises. For the purposes of this Zoning Law, a restaurant which sells food for both on premises and off-premises consumption shall be considered a drive-in restaurant.

Retail Trade: Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Roadside Stand: Structure of a nonpermanent nature (movable and temporary) located on the owner's property utilized during the harvest season for the sale of agricultural products grown primarily by the owner.

Rooming House - A dwelling in which three (3) or more persons, either individually or as families, are housed for hire with or without meals. A lodging house, boarding house or bed and breakfast shall be deemed a rooming house.

Satellite Dish: A structure which is designed and/or intended to receive, relay or send television signals to or from orbiting or geostationary satellites.

School: Schools shall include parochial, private and public institutions providing New York State approved educational services, including preschool and vocational programs, together with private and public schools and colleges and universities.

School-Age Child Care Program: Care provided on a regular basis to more than six school-age children under 13 years of age or who are incapable of caring for themselves where such children attend a school higher than kindergarten or attend full day (at least six hours) kindergarten at a public or private school whether such care is provided for compensation or otherwise.

Self-Service Storage Facility: A building or group of buildings in a controlled-access and fenced compound that contains varying sizes of individual, compartmentalized, and controlled-access stalls or lockers for the dead storage of customer's goods or wares.

Secondary Use - A subordinate use of a lot or building, the purpose of which is incidental to that of the primary use and which is located on the same lot.

Service Station, Motor Vehicle - See "Gasoline Station".

Sign - Any device, structure, or object for visual communication that is used for the

purpose of bringing the subject thereof to the attention of others, but not including any flag, badge, or insignia of any public, quasi-public, civic, charitable or religious groups.

Sign, Area - The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines the said sign.

Sign, Advertising - An advertising sign directing attention to a business, commodity, service, entertainment, etc. conducted, sold or offered elsewhere than upon the premises where such sign is located.

Sign, Business - A business identification sign containing the name of the business enterprise located on the same premises.

Site Plan - A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, right-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

Skilled Trade Shop: A shop where an individual involved in a skilled building trade including a carpenter, plumber, or electrician that assembles custom fixtures including cabinets or other indoor or outdoor fixtures for installation by him/her at a residential or commercial construction site. No retail sales of materials and/or products directly to the public shall be allowed on site.

Small Engine Repair Shop: The repair, storage and refurbishing of motorized equipment or vehicles for commercial gain (other than automobiles, motorcycles and trucks) including all-terrain vehicles, lawnmowers, lawn tractors, mopeds, or any other item powered under an internal combustion engine or electric cell technology.

Special Use Permit - A specifically designated use that would not be appropriate generally or without restriction through the zoning district but which, if controlled as to number, area, location, or relation to the neighborhood, would, in the opinion of the Board of Appeals, promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.

Stable, Private - An accessory building in which one or more horses or other livestock are kept for private use and not for hire, remuneration, or sale.

Stable, Public - A building in which any horses or other livestock are kept for remuneration, hire or sale.

Stabling of Farm Animals: A concentration of livestock, poultry or fur bearing animals within a building, structure or other defined area for the purpose of housing or feeding.

Street/Road - A public thoroughfare which has been dedicated or deeded to the public for public use, and which has been improved in accordance with municipal standards.

Street/Road Grade - The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the

street grade.

Street/Road Right-of-Way Line - That line determining the limit of the highway rights of the public, either existing or contemplated.

Structure - An assembly of materials, forming a construction framed of component structural parts for occupancy or use, including buildings.

Swimming Pool - All private or semi-private swimming, bathing, wading pools or tanks of a permanent or semi-permanent nature which have a depth of two (2) feet or more and which are erected or constructed either above, below or partly above and below grade level. All farm ponds which come under other local or state jurisdiction shall be excluded from this Zoning Law.

Swimming Pool, Private - A swimming pool operated as a secondary use to a residential dwelling unit or units, located on an individual residential lot and installed and operated in conformance with Section 609.

Swimming Pool, Public - A public or privately owned pool open to the general public or on a membership basis and having appropriate dressing room facilities, recreation facilities and off-street parking area.

Temporary Use - An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this Zoning Law. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

Use - The specific purposes for which land, water or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

Use Variance: The authorization by the Zoning Board of Appeals for use of land for a purpose which is not allowed or is prohibited by this Zoning Law.

Utility, Public: Any person, firm, corporation or governmental subdivision, duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television, or other similar service.

Yard - An open unoccupied space on the lot, plot, or parcel of land on which the building stands, which extends the entire length of the front or rear of interior lot line.

Yard Area, Front - An open, unoccupied space on the same lot with the principal building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of that lot. Setback line shall be synonymous with the rear limit of the required front yard area.

Yard, Rear - A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of any building on the same lot. The depth of a rear yard shall be measured at right angles to the rear line of the lot, or if the lot is not rectangular, then in the general direction of its side building lines.

Yard, Side - An open, unoccupied space between the side line of the lot and the nearest

line of the building. It shall extend from the front yard to the rear yard, or in the absence of either, to the street or rear lot lines as the case may be. The width of a side yard shall be measured at right angles to the side line of the lot.

Zoning Enforcement Officer: The Zoning Enforcement Officer of the Town of Elba as appointed by the Town Board.

Zoning Permit: A permit issued by the Zoning Officer, stating that the purpose for which a building, structure or land area is to be used is in conformance with the uses permitted and all other requirements of this Zoning Law.

ARTICLE III ESTABLISHMENT OF ZONING DISTRICTS

SECTION 301 ZONING DISTRICT CLASSIFICATION

The Town of Elba is hereby divided into the following zoning districts and overlay zones:

R	Residential District
A-R	Agricultural-Residential District
B	Business District
FP	Flood Plain Overlay Zone (for information purposes only)
MHO	Mobile Home Overlay Zone
PUD	Planned Unit Development District

SECTION 302 ZONING MAP ESTABLISHED

Said zoning districts are bounded and defined as shown in a map entitled "Zoning Map of the Town of Elba, N.Y.". The official copy of the zoning map is hereby made a part of this Zoning Law and is on file with the Town Clerk.

SECTION 303 INTERPRETATION OF ZONING DISTRICT BOUNDARIES

Where uncertainty exists as to the location of any boundaries shown on the zoning map, the following rules shall apply:

A. Zoning district boundary lines are intended to follow streets, right-of-way, water courses or lot lines, or be parallel or perpendicular thereto, unless such district boundary lines are fixed by dimensions, as shown on the zoning map.

B. Where zoning district boundaries are indicated as following approximate streets, right-of-way, or water courses, the center lines thereof shall be construed to be such boundaries.

C. Where zoning district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs of other bodies of water, mean high water lines thereof shall be construed to be the zoning district boundaries.

D. Where zoning district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.

E. If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine the location of said lines.

SECTION 304 OVERLAY DISTRICTS

A. In an overlay zoning district, property is placed simultaneously in two districts and the requirements of both districts apply.

B. The requirements of the overlay zone modify those of the basic district.

SECTION 305 **LOTS IN TWO OR MORE DISTRICTS**

Where a zoning district boundary line divides a lot in single ownership at the effective date of this Zoning Law, leaving part subject to permissive regulations and part subject to prohibitive regulations, the Zoning Board of Appeals after public hearing may permit an extension of the use of that lot into the district where it is prohibited provided the extension does not extend more than fifty (50) feet into that district. Furthermore, the Board may impose conditions of that extension as protection to neighboring property.

SECTION 306 **EXISTING LOTS OF RECORD**

A single family dwelling, mobile home, and/or customary accessory buildings may be placed on any undeveloped lot of record existing prior to the effective date of this Zoning Law and having a minimum of one hundred (100) feet in width and twenty thousand (20,000) square feet in area. This provision shall apply even though such lot fails to meet the requirements for area, width or yard size, provided that the other requirements of this Zoning Law are met. The minimum yard requirements for single family dwellings on existing lots shall be as follows:

- 1. Front.....Seventy-five (75) feet
- 2. Side.....Fifteen (15) feet
- 3. Rear.....Thirty-five (35) feet

ARTICLE IV GENERAL REGULATIONS

The provisions of this Zoning Law shall be subject to such exceptions, additions or modifications as herein provided by the following general supplementary regulations. The dimensions and restrictions set forth in Schedule A are incorporated herein and made a part of this Zoning Law.

SECTION 401 **BUILDINGS, USES AND LOTS**

A. One Principal Building and Use Per Lot - There shall not be more than one (1) principal building and one (1) principal use on any one lot in the Agricultural-Residential A-R, and the Residential - R Districts except as provided for in the following:

- (1) An approved multifamily dwelling project,
- (2) A single family dwelling accompanying a non-residential use, or uses, permitted on a lot in Agricultural-Residential (A-R) and Residential (R) Districts, provided there is only one use of a commercial nature on the lot, or
- (3) A single family dwelling accompanying a non-residential use, or uses, requiring a Special Use Permit in Agricultural Residential (A-R) and Residential (R.) Districts, if approved by the Planning Board as part of the Special Use Permit Application Process, provided there is only one use of a commercial nature on the lot.

B. Yard and Open Space for Every Building - No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building. Also, no yard or any other

open space on one lot shall be considered as a yard or open space for a building on any other lot.

C. Subdivision of a Lot - Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation shall be effected so as not to violate any of the requirements of this Zoning Law with respect to the existing building, including yards and other required spaces in connection therewith. No zoning permit shall be issued for the erection of a building on the new lot thus created unless there is full compliance with all the provisions of this Zoning Law.

D. Irregularly Shaped Lots - Where a question exists as to the proper application of any of the requirements of this Zoning Law to a particular lot or parcel because of the peculiar or irregular shape of the lot or parcel, the matter shall be referred to the Zoning Board of Appeals and dealt with in accordance with the applicable provisions of Section 807.

E. Lots Under Water or Subject to Flooding

1. No more than twenty-five (25) percent of the minimum area requirements of a lot may be met by land which is under water or subject to periodic flooding.

2. Land which is under water and is open to use by persons other than the owner shall be excluded from the computation of the minimum area of a lot.

3. Land in the bed of a stream not exceeding five (5) feet in width at mean water level, and land in a pond not exceeding one hundred fifty (150) square feet in area shall not be considered as under water for the purpose of computing lot area.

4. Where any part of a lot is separated by the main body of water, such separate land shall not be included in computing lot area.

F. Required Road Frontage - No zoning permit shall be issued for any structure unless the lot upon which that structure is to be built has the required frontage on a road, as defined herein, which frontage provides the actual access to such structure, and which road shall have been suitably improved to Town Board standards or a bond posted therefor to the satisfaction of the Town Board or Planning Board, as provided in Section 280a of the Town Law.

G. Parts of Lot Not Counted Toward Area Requirements - No part of such lot less in width than one-half of the minimum requirements for the district in which it is located shall be counted as part of the minimum required lot area.

H. Adjacent Lots - Where two or more adjacent lots are at the time of the effective date of this Zoning Law in the same ownership, they shall not be considered a single lot, unless they are described as one parcel in a deed recorded at the Genesee County Clerk's Office.

I. Yards on Corner Lots - Any yard adjoining a street shall be considered front yard for the purpose of this Zoning Law and shall comply with all the requirements for a front yard in the district in which located. The remaining yards shall be considered side yards.

SECTION 402 **SUPPLEMENTARY YARD REGULATIONS, STRIPPING, AND EXCAVATIONS**

A. Porches - No unroofed structures shall be considered part of a building insofar as yard requirements are concerned. A roofed porch shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

B. Projecting Horizontal Architectural Features - Architectural features, such as window sills, belt courses, porches, railings, chimneys, cornices, eaves or bay windows, shall not project more than four (4) feet into any required yard.

C. Fire Escapes - Open fire escapes may extend into any required yard.

D. Visibility at Intersections - On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three feet in height, shall be erected, placed or maintained within the triangular area formed by the intersecting rights-of-way lines and a straight line joining said road lines at points which are forty (40) feet distance from the point of intersection, measured along said rights-of-way lines. This paragraph shall not apply to existing trees, provided that no branches are closer than ten (10) feet to the ground.

E. Buffer Strip - Wherever a buffer strip is required by this Zoning Law, it shall meet the following standards:

1. Be at least ten (10) feet in width along any commercial or industrial lot line abutting a lot in a Residential or Agricultural-Residential District.

2. Be of evergreen planting of such type, height and spacing as, in the judgement of the Planning Board, will screen the activities on the lot from view of a person standing at street level on the adjoining residential lot. The plans and specifications for such planting shall be filed with the approved plan for the use of the lot.

3. A wall or fence of which the location, height, and design has been approved by the Planning Board, may be substituted for the required planting.

F. Open Space - Business Districts - Where a Business District abuts a Residential or Agricultural-Residential District, there shall be at least fifty (50) feet of open space within the Business District along such abutting line, which open space shall include a buffer strip pursuant to the provisions of Subsection E of this Section.

G. Stripping of Top Soil

1. Topsoil, defined for the purpose of this Zoning Law, as the natural surface covering land to a depth of eight (8) inches, shall not be removed from a premise except as hereinafter provided in this Subsection.

2. The provisions of this Subsection shall not apply to the removal or sale of alluvial deposits or of the materials excavated resultant from the establishment of a farm pond or to the excavation or gravel or other fill except that no gravel or fill shall be excavated less than five hundred (500) feet from any public road.

3. An application for a permit for the removal of topsoil or muck shall state the details of the program for the rehabilitation and reconditioning of the land after stripping.

Such program shall include the details of preparation of the surface of the soil and the fertilization, liming and seeding, or for the covering of not less than five inches of topsoil or five inches of tillable muck conditioned, fertilized and seeded. The application shall be subject to review and approval of the Planning Board as to the sufficiency of the program. No permit shall be issued until the application shall have been reviewed by the Planning Board and approved by such Board as being sufficient to restore the land.

4. No permit shall be authorized or issued for an area in excess of five percent of the gross area of the premises during any one calendar year.

5. Subsequent permits shall not be authorized or issued for any premises unless the provisions of this Subsection and the conditions of any previous application have been fulfilled to the satisfaction of the Planning Board.

6. No permit shall be authorized or issued for the stripping of topsoil, muck or from any premises on which any real property taxes have not been paid.

7. The Planning Board for a premises of 20 acres or less in area, may authorize the removal, in any one calendar year, of topsoil in an amount greater than five percent of the area of the premises, but not to exceed ten percent of the gross area of the premises.

H. Excavation During Construction - In any construction, open excavations shall be limited to a maximum of sixty (60) days, with appropriate fencing, barricades or covering.

SECTION 403 LOCATIONS OF ACCESSORY BUILDINGS, STRUCTURES AND OTHER ENCLOSED STORAGE

A. Accessory Buildings are permitted as follows:

1. One-story accessory building having a total floor area of one hundred fifty (150) square feet or less and a building height of not more than nine (9) feet shall not be located closer than eight (8) feet to the rear and side lot lines in the rear yard area. Accessory buildings shall not be located in front of the principal building, i.e. the front yard.

2. The location of accessory buildings having a total floor area greater than one hundred fifty (150) square feet or a building height of greater than nine (9) feet shall be located in compliance with the required yard areas of the respective districts and shall not be located in front of the principal building, i.e. the front yard.

3. Accessory buildings, other than outside solid fuel burning devices, with a total area, as measured on the exterior, of less than 15 sq. ft., such as school bus stations and animal shelters, do not require a zoning permit. School bus stations shall be permitted in the front yard provided they are located a minimum of ten (10) feet from any property line or the edge of any highway right-of-way. All other such accessory buildings shall comply with Section 403. Subsection A, Paragraph 1.

B. Accessory Structures (other than buildings) are permitted as follows:

1. Accessory structures (other than buildings) equal to or less than fifteen (15) feet in height, including satellite dishes with a diameter of forty (40) inches to thirteen (13) feet, shall not be located closer than fifteen (15) feet to the side and/or rear lot line and shall not be located within the minimum required front yard. Satellite dishes less than forty (40) inches in diameter may be located anywhere on a lot and may be installed without the issuance of a zoning permit.

2. Accessory structures (other than buildings) greater than fifteen (15) feet in height, including production model Wind Energy Conservation Systems (windmills), antennas and satellite dishes greater than thirteen (13) feet in diameter, shall be located in compliance with the required yard area of the respective district and shall be located in the rear yard.

C. Other Enclosed Storage Is Permitted As Follows:

Semi-trailers, cargo containers and/or motor vehicles or portions thereof (i.e., truck bodies) may be used for accessory storage purposes related to a permitted principal use in the B District. When used in a B District for a period of more than 60 days, such trailers and/or motor vehicles or portions thereof shall be placed or parked in compliance with the provisions of Subsection A of this Section. Semi-trailers, cargo trailers and/or motor vehicles or portions thereof, shall not be used for storage purposes for longer than 60 days in the A-R, R or MHO Districts. In no instance shall semi-trailers, cargo trailers and/or motor vehicles or portions thereof be placed in such a manner as to interfere with, or pose a hazard to, traffic circulation. Mobile homes shall not be used for storage purposes.

SECTION 404 NONCONFORMING USES, STRUCTURES AND LOTS

A. Lawful Existing Uses or Structures

Except as otherwise provided in this Section, the lawful use of land or structures existing at the effective date of this Zoning Law may be continued, although such use or structure does not conform to the regulations specified in this Zoning Law for the zone in which such land or structure is located, provided, however:

1. That a nonconforming lot shall not be further reduced in size.
2. That a nonconforming building shall not be altered unless such alteration would tend to reduce the degree of nonconformance.
3. That a nonconforming use may not be expanded.
4. No existing conforming use shall be changed to a nonconforming use.

B. Abandonment

A nonconforming use shall be abandoned when there occurs a cessation of any such use or activity and a failure on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuance.

C. Restoration and Repair

Nothing in this Zoning Law shall prevent the restoration and repair or continuation of use of a nonconforming building destroyed or partly destroyed by a disaster, provided that restoration is commenced within eight (8) months after date of destruction and is completed within sixteen (16) months after date of destruction.

D. Reversion

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

E. Alterations

A nonconforming building may not be structurally altered during its life to an extent exceeding, in aggregate cost, fifty percent (50%) of the assessed value of the building unless said building is changed to conform to the requirements of this Zoning Law.

F. District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein or created thereby.

SECTION 405 **USES NOT PERMITTED**

- A. Uses which are not allowed by this Zoning Law are prohibited.
- B. The internment of bodies on private property is prohibited.

SECTION 406 **MINIMUM ENCLOSED LIVING AREA**

- A. One-family dwellings shall have a minimum enclosed living area (not including garage but also not limited to only habitable floor area) of at least nine hundred (900) square feet.
- B. Two-family dwellings shall have a minimum enclosed living area of at least seven hundred twenty (720) square feet for the first unit and the second unit as follows.
- C. Multiple family dwellings shall have a minimum enclosed living area per unit as follows.

<u># of Bedrooms Per Unit</u>	<u>Minimum Square Footage</u>
Efficiency	300
1 bedroom	550
2 bedroom	650
3 bedroom	800
4 bedroom	1,000
5+ bedroom	As determined by Planning Board

SECTION 407 **DWELLING FRONT YARD GRADE**

Surface grade of front yards of dwellings measured at the midpoint of the front wall, shall be at least one foot above the elevation of the road's center line, unless adequate site drainage is provided otherwise and approved by the Town Highway Superintendent.

SECTION 408 **STABLING FARM ANIMALS**

A. There shall be no stabling of farm animals or storage of manure, fertilizer, or similar odor or dust producing substance within the R District. Such stabling or storage shall be permitted in the A-R or B Districts provided the following restrictions are observed:

1. No such stabling or storage shall take place within 500 feet of an R District.
2. No such stabling or storage shall take place within 100 feet of a lot line.

SECTION 409 **HEIGHT MODIFICATIONS**

A. Height Exceptions

1. District building height regulations shall not apply to flagpoles, radio or television antennae, transmission towers or cables, spires or cupolas, chimneys, elevator or stair bulkheads, penthouses, parapets or railings, water tanks or cooling towers, or any similar structures, provided that such structures are located on the roof and in their aggregate coverage occupy no more than ten percent (10%) of the roof area of the building.

2. District building height regulations shall not apply to radio or television antennas and commercial communications towers..

3. Public and quasi-public buildings, schools, churches and other similar permitted uses may exceed the maximum height specified for the zone district provided that the minimum front, side and rear yard setbacks are increased by two (2) feet for each one (1) foot of such additional height up to a maximum height of fifty (50) feet and provided that on-site fire protection facilities approved by the local fire company are installed.

4. The Planning Board may require avoidance lighting on towers and other structures which exceed district height limits, as it deems necessary to protect the public health and safety.

SECTION 410 **MINIMUM DIMENSIONAL CRITERIA**

All one (1) and two (2) family dwelling units located on individual lots shall have a minimum outside width of at least twenty (20) feet. This provision shall not prohibit the construction of smaller additions or projections from larger units (less than twenty (20) feet wide) provided a twenty (20) foot minimum width is clearly established for the overall unit.

SECTION 411 **OUTSIDE SOLID FUEL BURNING DEVICES**

Outside solid fuel burning devices shall not be installed within 500 feet of the municipal boundary of the Village of Elba or within 500 feet of an existing residence in the Town of Elba, outside of the Village. When installed outside the required 500-foot buffer, such units shall be installed and operated in accordance with the manufacturers instructions so as to not allow smoke or fumes to enter buildings on surrounding properties.

ARTICLE V **ZONING DISTRICT REGULATIONS**

SECTION 501 **AGRICULTURAL-RESIDENTIAL DISTRICT A-R**

The Agricultural-Residential District is designed to accommodate primarily agricultural uses in order to preserve the Town's agricultural base and maintain its rural nature, but residential uses are permitted therein. It is recognized, however, that agricultural and residential uses have a number of inherent conflicts between them. Individuals who plan to develop residential uses within the A-R District should be aware of such inherent conflicts and that residences are a secondary use.

A. Permitted Uses

The following uses are permitted in the Agricultural-Residential District:

1. Farm and all usual agricultural operations
2. One and two-family dwelling
3. Single mobile home in accordance with the provisions of Section 701
4. Home occupation I (See Section 617)
5. Church and other places of worship, parish house, convent, rectory and parsonage
6. School, public park, playground, library, municipal building and water system and similar public uses.
7. Farm water supply, conservancy and fire protection pond located not less than one hundred (100) feet from any street or property lines
8. Private stable
9. Vegetable storage and packing facilities
10. Roadside stand (see Section 615)
11. Accessory use and building storage and packing facilities

B. Uses Requiring Special Use Permit

The following uses are permitted in an Agricultural-Residential District upon the issuance of a special use permit:

1. Multi-family dwelling(s)
2. Motel
3. Wind Energy Conversion System-Production Model
4. Outdoor recreation facility
5. Indoor recreation facility
6. Club
7. Airport landing strip
8. Animal Kennel

9. Motor vehicle repair shop (See Section 604)
10. Community center
11. Professional office
12. Nursing home
13. Public utility
14. Public stable
15. Commercial greenhouse
16. Cluster residential development (see Section 608)
17. Temporary mobile home (see Section 701)
18. Animal shelter
19. Adult care facility
20. Animal waste storage facility (see Section 616)
21. Child day care center
22. Self-service storage facility
23. Commercial Excavation (see Section 607)
24. Day treatment center
25. All terrain vehicle, snowmobile, go-kart, motorcycle and motor vehicle race track and course (see Section 612)
26. Commercial communication tower (see Section 614)
27. Home Occupation II (See Section 617)
28. Skilled trade shop (See Section 618)
29. Small engine repair shop (see Section 604)

SECTION 502 RESIDENTIAL DISTRICT - R

The Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 20,000 square feet. The purpose of this district is to encourage residential growth in areas of the town that have existing concentrations of residential uses. The residential district will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A. Permitted Uses

The following uses are permitted in the Residential District:

1. One family dwelling
2. Church and other places of worship, parish house, convent, rectory and parsonage
3. School, public park, playground, library, municipal building and water system and similar public use
4. Farm and all usual agricultural operation, excluding stabling of farm animals
5. Roadside stand (see Section 615)
6. Accessory use and building

B. Uses Requiring Special Use Permit

The following uses are permitted in a Residential District upon issuance of a special use permit:

1. Two family dwelling
2. Multi-family dwelling(s)

3. Wind Energy Conversion System-Production Model
4. Home Occupation I and II (See Section 617)
5. Outdoor recreation facility
6. Temporary mobile home (see Section 701)
7. Professional office
8. Community center
9. Nursing home
10. Public utility
11. Adult care facility
12. Child day care facility
13. Day treatment center
14. Cluster residential development (see Section 608)

SECTION 503 **BUSINESS DISTRICT - B**

The Business District is designed to accommodate commercial, service, and light industrial uses.

A. Permitted Uses

The following uses are permitted in the Business District:

1. Retail use and service
2. Restaurant
3. Motel
4. Commercial greenhouse
5. Animal Kennel
6. Professional office
7. Personal service business
7. Wholesale trade
8. Office, bank
9. Adult Uses (see Section 613)

B. Uses Requiring Special Use Permit

The following uses are permitted in the Business District upon the issuance of a special use permit:

1. Drive-in business
2. Motor vehicle repair shop (see Section 604)
3. Small engine repair shop (see Section 604)
3. Gasoline station (see Section 604)
4. Gasoline station-market (see Section 604)
5. Indoor recreation facility
6. Motor vehicle sales
7. Recreational vehicle and mobile home sales and service
8. Public utility
9. Light industrial uses involving the processing, fabrication, assembly or packaging of previously prepared or refined materials (industrial)
10. Warehousing, storage, or distribution establishment (industrial)
11. Machinery and transportation equipment, sales, service, and repair

12. Freight and/or trucking terminal (industrial)
13. Contractor's yard (industrial)
14. Child day care center
15. Recyclables handling and recovery facility
17. Self-service storage facility
18. Commercial communication tower (see Section 614)
19. Small engine repair shop (see Section 604)
(see Section 604)

C. Area Regulations

For the purpose of determining the appropriate area regulations which are shown in Zoning Schedule A, those uses noted as "industrial" shall meet the "industrial" area requirements. All other areas shall be governed by the "commercial" area requirements.

SECTION 504 MOBILE HOME OVERLAY ZONE - MHO

The purpose of the Mobile Home Overlay Zone is to provide a defined area for the development of quality mobile home parks and for permanent installation of single mobile homes on individual lots and in mobile home subdivisions. The Mobile Home Overlay Zone will provide for these additional uses in that portion of the base Agricultural-Residential zone which it overlays.

A. Permitted Uses

The following uses are permitted in the MHO Zone in addition to those permitted in the base Agricultural-Residential Zone:

1. Single mobile homes on individual lots provided the criteria set forth in Section 701 are met.

B. Uses Requiring a Special Use Permit

The following uses are permitted in the MHO Zone upon issuance of a special use permit, in addition to those permitted in the base Agricultural Residential Zone:

1. Mobile home park in compliance with the criteria set forth in Section 702.

SECTION 505 PLANNED UNIT DEVELOPMENT - PUD

The purpose of the Planned Unit Development District is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities, to provide harmonious land uses which offer a high level of amenities, to permit a mixture of residential and/or non-residential uses, and to preserve natural and scenic qualities of the site during the development process.

A. Procedure for Creation of a PUD District

1. The owner of any tract of land in the Town of Elba consisting of a

minimum of five (5) contiguous acres, may petition the Town Board through the Planning Board to designate the property described in the petition as a PUD District.

2. The petition shall contain the exact name and address of the petitioner and reference records in the office of the Genesee County Clerk at which the deed conveying the property in question to the petitioner is recorded.

3. A PUD District may be created by the Town Board in accordance with the procedures detailed in Subsection B of this Section.

B. Procedure for Approval

1. Pre-Application Conference

Before submission of a preliminary application for approval as a Planned Unit Development, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of his application before entering into any binding commitments or incurring substantial expenses of site plan preparation.

2. Preliminary Plan (Rezoning)

a. Planning Board Review and Approval - A preliminary plan application shall be submitted to the Planning Board at least 15 days prior to a regularly scheduled meeting. Within forty-five (45) days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board. Failure by the Planning Board to act within the required time period shall constitute approval and the application shall be forwarded to the Town Board.

b. Submission Requirements - The applicant shall submit four (4) sets of such plans, and drawings. These four (4) sets shall be submitted to the Zoning Enforcement Officer.

The preliminary plans shall be accompanied by a detailed justification for the proposal including such maps, charts and written material necessary for the Board to make an impartial judgement on the suitability and impact of the proposed PUD on the Town. Such material shall include, but not be limited to, the following:

(1) A mapped preliminary development plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multi-family housing areas, commercial and open space areas, etc.), the number of residential structures and dwelling units within each residential area, the approximate square footage of non-residential use within each nonresidential area and the amount of open space.

(2) A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall Town development plan and the effect on this Zoning Law.

(3) Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of nonresidential floor area including the approximate selling and/or rental price,

the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.

(4) Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the Town. Such material shall include, but not be limited to: the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the applicant intends to provide needed facilities, a fiscal impact statement including a summary of new costs and revenues to the Town due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.

c. Review Considerations - In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by this Zoning Law, and the protection of the established and permitted uses in the area. It shall consider: the location of main and accessory buildings and their relation to one another; the circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental effects of the proposed development on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the Town; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.

d. Town Board Review and Approval - Upon receipt of the Planning Board's recommendation, the Town Board may, after a public hearing and forwarding the proposed zone change to the County Planning Board for review, amend the Zoning Law so as to establish and define the boundaries of the Planned Unit Development. If the rezoning request is approved to the PUD, such action does not authorize improvements to the rezoned land.

3. Final Plan

a. Ownership - Before final approval of the PUD, the applicant must show evidence of the full legal ownership in the land.

b. Planning Board Review and Approval - Upon approval of the zone change, the applicant has one year in which to submit a final plan to the Planning Board for review and recommendation to the Town Board. This submittal must be presented at least fifteen (15) days prior to the next regularly scheduled meeting of the Planning Board. Within forty-five (45) days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board.

c. Submission Requirements - The applicant shall submit detailed site plans comparable to the requirements for final approval of a subdivision plat.

d. Town Board Review and Approval - The Town Board shall make final approval in accordance with official Town development policies and may impose reasonable conditions relating to that plan.

C. Design Standards

1. Area Requirements

Area, yard, coverage, height, density and supplementary regulation requirements shall be comparable to minimum requirements in appropriate zoning districts for each specific use, except where the Planning Board finds that it is in the public interest to modify these requirements.

2. Traffic and Circulation

All proposed public roads should meet municipal design and construction specifications.

Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.

3. Common Open Space

All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:

- a. Public dedication
- b. Establishment of a Home Owners Association
- c. Retention of responsibilities, control and maintenance by the developer

4. Performance and Maintenance Bonds

Performance and maintenance bonds may be required at the discretion of the Town Board.

SECTION 506 FLOOD PLAIN OVERLAY ZONE - FPO (Information Only)

The Flood Plain Overlay Zone is shown on the zoning map of the Town of Elba for information purposes only to identify potential areas of special flood hazard, to insure coordinated review of zoning and flood damage prevention regulations, and to minimize the threat of flood damages. Exact boundaries of the special flood hazard areas can be found on the Federal Emergency Management Agency's (FEMA) most current Flood Insurance Rate Map (FIRM), or equivalent map for the Town of Elba (Community Number 361120B).

In addition to the Zoning Law, areas within special flood hazard areas are regulated by the Town of Elba's Flood Damage Prevention Local Law which is administered by the Zoning Enforcement Officer or other designee of the Town Board. These requirements are in addition to those contained in the underlying zoning district.

There is hereby established a Flood Plain Overlay Zone (FPO), the boundaries of which are delineated on the Zoning Map. This section provides additional special requirements for areas within the defined Flood Plain Overlay Zone. These requirements are in addition to those contained in the underlying zoning district.

ARTICLE VI SUPPLEMENTARY REGULATIONS

SECTION 601 OFF-STREET PARKING SPACE REQUIREMENTS

For every building hereafter erected, altered or changed in use, there shall be provided at least the minimum number of off-street parking spaces set forth under this Section. All off-street parking shall be designed in such a manner as to allow vehicles to exit onto a road without backing out onto it.

A. Residential Uses

1. One and two-family dwellings: Two (2) parking spaces for every dwelling unit.
2. Multiple family dwelling: Five (5) parking spaces for every three (3) dwelling units.
3. Home occupations: The number of parking spaces required of the existing residential uses (see above), plus three (3) spaces and one (1) space for each 100 (one hundred) square feet of space used for the home occupation.

B. Motel

Three (3) parking spaces, plus one (1) space for every guest room.

C. Places of Public Assembly

One (1) parking space for every five (5) seats or one (1) parking space for every one hundred (100) square feet of floor area.

D. Professional Offices

Two (2) parking spaces, plus one (1) space for every two hundred (200) square feet of office space.

E. Commercial

One (1) parking space for every motor vehicle used directly in the business, plus one (1) parking space for every two hundred (200) square feet of commercial area.

F. Restaurant, Eating and Drinking Establishment (other than drive-in)

One (1) parking space for every one hundred (100) square feet of floor area.

G. Industrial, Wholesale, Warehouse, Storage, Freight, and Trucking Uses

One (1) parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.

H. Unspecified Uses

As required by the Planning Board, based upon use intensity, turnover, customers, employees and vehicles used.

SECTION 602 **OFF-STREET LOADING SPACE REQUIREMENTS**

Every building occupied for the purpose of commercial or industry shall provide adequate space for off-street loading and unloading of vehicles.

SECTION 603 **MODIFICATION OF PARKING AND LOADING REQUIREMENTS**

The Planning Board may modify requirements for parking and loading spaces.

SECTION 604 **GASOLINE STATION, GASOLINE STATION/MARKET, MOTOR VEHICLE REPAIR SHOP, DRIVE-IN BUSINESS AND SMALL ENGINE REPAIR SHOP**

A. Gasoline station, gasoline station/market, motor vehicle repair shop, drive-in business and small engine repair shops shall comply with the following:

1. Lots containing such uses shall not be located within three hundred (300) feet of any lot occupied by a school, playground, library or religious institution. Measurement shall be made between the nearest respective lot lines.

2. Lot size shall be at least forty thousand (40,000) square feet.

3. Lot frontage shall be at least two hundred (200) feet.

4. Lot depth shall be at least one hundred fifty (150) feet.

5. Pumps, other service devices, and fuel and oil storage shall be located at least thirty (30) feet from all lot lines.

6. Automobile parts and dismantled vehicles are to be stored within the building and no major repair work is to be performed outside the building.

7. There shall be no more than two (2) access driveways from any street. Maximum width of each access driveway shall be thirty (30) feet.

SECTION 605 **PUBLIC UTILITY FACILITY**

Public utility installations shall comply with the following:

A. Such facility shall be surrounded by a fence approved by the Planning Board.

- B. The facility shall be landscaped in a manner approved by the Planning Board.
- C. To the extent practicable, equipment shall be stored so as not to be visible from surrounding properties.
- D. Any other requirements as determined by the Planning Board.

SECTION 606 SIGNS

A. General Standards

Every sign shall be designed, attached, supported, and located in such a manner as to:

1. Not impair public safety.
2. Not restrict clear vision between a sidewalk and street.
3. Not be confused with any traffic sign or signal.
4. Not prevent free access to any door, window, or fire escape.

Signs may be illuminated by a steady light provided that lighting does not illuminate adjacent property. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare.

B. Off-Premise Signs

Off-premise advertising signs are not permitted in any district.

C. Exempt Signs (Require No Permits)

1. Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material; and emblems installed by governmental agencies, religious or nonprofit organizations not exceeding six (6) square feet.
2. Flags and insignia of any government, except when displayed in connection with commercial promotion.
3. On-premise directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits and similar signs, internally illuminated or nonilluminated, not exceeding four (4) square feet per face and six (6) feet in height. Business names and advertising messages shall not be allowed.
4. Non-illuminated warning, private drive, posted or no trespassing signs, not exceeding two (2) square feet per face.
5. Number and name plates identifying residents, mounted on house, apartment or mailbox, not exceeding one (1) square foot in area.
6. Lawn signs identifying residents, not exceeding one (1) square foot (per

side). Such signs are to be nonilluminated except by a light which is an integral part of a lamp post if used as a support, with no advertising message thereon.

7. Private-owner merchandise sales signs for garage sales and auctions, not exceeding four (4) square feet for a period not exceeding seven (7) days.

8. Temporary nonilluminated "For Sale", "For Rent", real estate signs and signs of similar nature, concerning the premises upon which the sign is located. In a residential or agricultural-residential zoning district, one sign not exceeding four (4) square feet per side and located not less than ten (10) feet from a lot line. In a commercial or industrial zoning district, one sign not exceeding thirty-two (32) squared feet set back at least fifteen (15) feet from all property lines. All such signs shall be removed within three (3) days after the sale, lease or rental of the premises.

9. One (1) sign identifying a farm not exceeding twenty (20) square feet in area and located not less than ten (10) feet from a lot line.

10. One (1) sign identifying a school, church, public park or public building, not exceeding forty (40) square feet in area on any one side and located not less than ten (10) feet from a lot line.

11. Signs necessary for public safety or welfare.

12. Temporary Signs - A sign used on a temporary basis to identify or announce an activity or function such as a construction project and the specialists concerned, elections, sporting events, carnivals, meetings, etc. Such signs shall not exceed sixteen (16) square feet and shall not be located closer than five (5) feet to any lot line. Temporary signs shall be removed within ten (10) days after the activity or function ends.

13. Christmas holiday decorations, including lighting.

14. Signs required by Federal, State, County or Town regulations (i.e. NYS registered motor vehicle shop and NYS inspection stations).

D. Signs Permitted in Residential and Agricultural-Residential Districts

The following signs are permitted in R and A-R Districts upon issuance of a zoning permit.

1. One (1) home occupation sign not exceeding sixteen (16) square feet in area and located no closer than ten (10) feet to any lot line.

2. Two (2) farm product signs not exceeding sixteen (16) square feet in area and located no closer than ten (10) feet to any lot line.

3. One (1) sign identifying a mobile home park, not exceeding twenty (20) square feet in area and not located less than ten (10) feet from any lot line.

4. One (1) sign identifying an apartment complex or nonresidential use allowed by special use permit as listed in Section 501-B and 502-B. The sign shall not exceed twenty (20) square feet in area and shall not be located closer than ten (10) feet to any lot line.

E. Signs Permitted in Business Districts

The following signs are permitted in B Districts upon issuance of a zoning permit.

1. Two (2) on-premise signs, one of which may be free-standing, shall be allowed for each permitted use. If attached, such signs shall not exceed a total area of one hundred (100) square feet or an area equal to ten (10) percent of the wall area of the building or portion thereof devoted to such use or activity, whichever is less. No sign shall project more than one (1) foot from the facade of the building.

2. Free-standing signs shall be permitted. Such signs shall conform to the following provisions relating to their number and size.

a. Each commercial or industrial use may have one free-standing sign. Such free-standing sign shall have an area of not more than twenty-five (25) square feet nor be more than twenty-five (25) feet in height, and located not less than ten (10) feet from any lot line.

b. In a shopping center or industrial park there may be one (1) directory sign at any location thereon which shall not exceed five (5) square feet in area for each acre of land in the shopping center or industrial park provided that no such sign shall exceed thirty (30) square feet in area. No individual free-standing sign shall be allowed in a shopping center.

3. Off-premises directional signs not exceeding four (4) square feet in size and limited to two (2) signs per use shall be permitted.

F. Non-Conforming Signs

1. Non-conforming signs shall be removed at the expense of the owner when any use of the property on which the sign is located is discontinued. This shall include both temporary and permanent signs.

2. Non-conforming signs may not be enlarged, extended, relocated or altered in any way, except to make them conform to provisions of this Zoning Law. This provision shall not restrict routine maintenance of non-conforming signs involving replacement of electrical parts and repainting.

G. Prohibited Signs

The following types of sign are prohibited and shall not be permitted, erected, or maintained in any zoning district and the owner thereof shall upon written notice of the Zoning Enforcement Officer forthwith, in the case of immediate danger and in any case within not more than 10 days, make such sign conform with the provisions of this chapter or shall remove it. If within ten (10) days the order is not complied with, the Zoning Enforcement Officer may cause said sign to be removed at the expense of the owner.

1. Any sign which by reason of its size, location, content, coloring or manner of illumination, constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstruction or detraction from the visibility of any traffic control device on public streets and roads shall be prohibited.

2. No person shall erect or maintain a sign which obstructs free ingress to or egress from a required door, window, fire escape or other required exit way.

3. Signs which make use of words such as "STOP", "LOOK", "DANGER", and other words, phrases, symbols, or character in such a manner as to interfere with, mislead or confuse traffic shall be prohibited.

4. Any sign which has any visible moving part, visible revolving parts or visible mechanical movement of any description (except time and temperature revolving signs as allowed) or other apparent visible movement achieved by electrical or kinetic means, including intermittent electrical pulsations, or by action of normal wind current shall be prohibited.

5. It shall be unlawful for any person to display upon a sign or other exterior advertising structure any obscene, indecent, or immoral matter.

SECTION 607 COMMERCIAL EXCAVATION

Except when incidental to the construction of a building on the same lot, or the construction of a farm pond, the excavation, processing or sale of topsoil, earth, sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation, hereafter, may be permitted as a special permit use in the Agricultural-Residential District upon the approval of a special use permit by the Planning Board.

In its consideration of an application for a permit for a special use permit the Planning Board shall find that such excavation will not endanger the stability of adjacent land or structures or constitute a detriment to public health, safety, convenience, or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition. In granting a permit the Board shall specify any reasonable requirement including the following:

A. State Permit

The applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law when applicable.

B. Minimum Lot Area

The minimum lot area for any such case shall be ten (10) acres.

C. Minimum Setback Requirements

All buildings shall be located not less than one hundred (100) feet from any street or property line. The toe of the slope of all excavation operations shall be located or shall occur not less than one hundred (100) feet from any street or property line. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one (1) public notice sign identifying the use of the property, fencing, berms, buffers, access roads and parking.

D. Slope

During mining the banks of all excavations shall be maintained at a slope not to exceed the normal angle of repose of such material.

E. Drainage

All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc. from flowing on to public roads to adjacent property or into any stream. Excavation areas shall be planned and graded to avoid spasmodic collection of stagnant water.

F. Dust

All storage areas, yards, service roads, or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust or other wind blown air pollutants.

G. Roadside Landscape

Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented for the depth of the roadside setback for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back over-burden around the perimeter of the excavation site to create a "berm" for the purpose of screening and noise reduction. No berm shall be constructed within twenty-five (25) feet of any right-of-way line or other property boundaries.

H. Fencing

Fencing may be required depending upon the existence of an earthen berm, the nature of the operations, distance from developed area, distance from property lines, depth of pit water and slope of pit walls.

I. Topsoil

All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the restoration plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams, or adjacent property. This provision shall be applied to all operations except that of topsoil removal.

J. Erosion

The applicant shall include a plan for the control of soil erosion.

K. Hours of Operation

All operations shall be conducted between the hours of seven o'clock in the morning (7:00 a.m.) and six o'clock in the evening (6:00 p.m.) with no Sunday or holiday operations, except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.

L. Required Plans

The applicant shall submit the following three plans:

1. Life of Mine Plan: means the applicant's plan for the ultimate use of the entire site.
2. Mining Plan: means the applicant's proposal for mining, including a graphic and written description of the mine, the affected land and the mining method.
3. Reclamation Plan: means the applicant's proposal for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation.

Where feasible, restoration shall be a continuing operation. Grading, topsoil replacement and replanting of the area designated for restoration shall continue during the permit period. All reclamation work shall be complete within one (1) year after the termination of operations, at the expense of the operator.

M. Performance Bond

A performance bond or some other financial guarantee shall be required to assure that the conditions stipulated in the approval of the special use permit are carried out. This requirement may be waived if the NYS Department of Environmental Conservation requires a performance bond for the same operation.

N. Duration of Permit

The permit for operation of the excavation area shall be for a period of one year, subject to annual review and recertification by the Planning Board based on a written request for continuance.

If no on-site mining or processing operations are carried out for one year, the site shall be considered abandoned, and, prior to any further excavation or processing, a new permit shall be required.

SECTION 608 **CLUSTER RESIDENTIAL DEVELOPMENT**

Cluster residential development of one-family dwellings may be permitted, as specified in the New York State Cluster Enabling Act, Chapter 963 of the Laws of 1963, in the A-R and R Districts of the Town provided that a special use permit has been issued and the following conditions are observed:

- A. The project shall encompass a minimum land area of ten (10) acres.
- B. The developer shall dedicate to permanent open space no less than twenty-five (25) percent of the total project area.
- C. The developer shall have received informal conditional approval of the Planning Board of the design and arrangement of streets, lots, open spaces, and other elements of the

project prior to filling the special use permit application.

D. The requirements of this Zoning Law insofar as overall density, minimum front, side and rear yard areas for the outer boundaries of the entire project, maximum building height and maximum lot coverage are as specified in the zoning schedule of this Zoning Law. All other area requirements of this Zoning Law may be modified by the Planning Board.

SECTION 609 SWIMMING POOLS

A. Permit

Before any swimming pool is erected, constructed or installed upon any property in the Town, a zoning permit shall be obtained. A zoning permit shall be required for any enlargement or other major alteration of any existing swimming pool.

B. Location

Swimming pools and any attached decks and/or patios shall not be located within the front yard area or within the minimum required side or rear yard areas.

C. Fencing

Fencing shall be erected in conformance with the New York State Uniform Fire Prevention and Building Code.

D. Drainage

When draining a swimming pool such activity shall be conducted in a manner which will not be injurious to surrounding properties.

SECTION 610 JUNKYARDS

A. Establishment

No person shall operate, establish, or maintain a junkyard until he has obtained a special use permit in compliance with Section 808.

B. Location Requirements

Said use shall not be located within one hundred (100) feet from any highway right-of-way, body of water or property line; or five hundred (500) feet from any existing dwelling, church, school, hospital, public building, or place of public assembly.

In reviewing this special use application, the Planning Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

C. Aesthetic Considerations

The Planning Board shall also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the Planning Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barrier protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junkyard.

D. Fencing

Such use shall be completely surrounded with a fence which substantially screens said area and shall have a suitable gate which shall be closed and locked except during the working hours of said use. Such fence shall not be erected nearer than one hundred (100) feet from the right-of-way of a public highway. All materials stored or deposited at the site shall be kept within the enclosure of the fence and below the top of the fence, except during transportation of same in the reasonable course of business. All storage shall be accomplished within the area enclosed by the fence.

Where the topography, land forms, natural growth of trees or other considerations accomplish the purpose of this Section in whole or in part, the fencing requirements hereunder may be reduced by the Zoning Board of Appeals upon the issuance of an area variance, provided, however, that such natural barrier conforms with the purpose of this Section.

E. Existing Junkyards

All junkyards existing at the time of adoption of this Zoning Law shall be limited to the size, area, and scale of the present use and operation unless a permit is authorized in accordance with these regulations.

SECTION 611 RECREATIONAL VEHICLES AND CAMPGROUNDS AND/OR RECREATIONAL VEHICLE PARKS

A. Recreation Vehicles

1. Recreation vehicles may be occupied as a dwelling only as follows:
 - a. As provided in Subsection 611-B of this Zoning Law.
 - b. For not more than two separate periods, per year, not exceeding two weeks each, one recreational vehicle may be used as temporary lodging while parked on the same lot with a dwelling.
 - c. With a temporary permit, issued by the Planning Board, one recreational vehicle may be used for a period of six (6) months each and subject to the following conditions:
 - (1) Approval shall be granted by the Genesee County Health Department.
 - (2) Any connections must be removed and the recreational

vehicle moved to an approved parking location upon expiration of such permit.

2. One unoccupied recreational vehicle may be stored on a lot and then only in the side or rear yard areas of a lot no closer than five (5) feet from any lot line. When so stored, no connections shall be permitted.

B. Campgrounds/Recreational Vehicle Parks

1. Location

A campground/recreational vehicle park shall be located and maintained only in an A-R District upon issuance of a special use permit and in accordance with the standards set forth in this Zoning Law.

2. Existing Campgrounds/Recreational Vehicle Parks

All existing campgrounds/recreational vehicle parks of record shall be exempt from this Zoning Law, except that they shall comply with this Section whenever they are sold or any addition, expansion or alteration of the use or operation is proposed. Within six (6) months after the adoption of this Zoning Law, the Zoning Enforcement Officer shall notify existing campgrounds/recreational vehicle parks of this provision.

3. Standards and Requirements for the Construction of Campgrounds and/or Recreational Vehicle Parks

Before a special use permit for a campground/recreational vehicle park is issued under Section 808, the Planning Board shall determine that the proposed use is designed and arranged in accordance with the following standards.

(a) Site

The campground/recreational vehicle park shall be located on a well-drained site which is properly graded to insure rapid drainage and be free at all times from stagnant pools of water.

(b) Lots

Each campground/recreational vehicle park shall be marked off into lots. The total number of lots in such campground/recreational vehicle park shall not exceed twelve (12) per gross acre. Each lot shall have a total area of not less than two thousand five hundred (2,500) square feet with a minimum dimension of thirty (30) feet. Only one recreational vehicle or tent shall be permitted to occupy any one lot.

(c) Setbacks

All recreational vehicles or tents shall not be located nearer than a distance of:

- Twenty-five (25) feet from an adjacent property line, except residential property.

- One hundred (100) feet from any adjacent residential property line.

- One hundred (100) feet from the right-of-way of a public street or highway.

- Ten (10) feet from the nearest edge of any roadway located within the park.

(d) Recreational Vehicle/Tent Site

Each residential vehicle/tent site shall have a stand of sufficient size and durability to provide for the placement and removal of recreational vehicles and for the retention of each recreational vehicle in a stable condition. The stand shall be suitably graded to permit rapid surface drainage.

(e) Accessibility

Each campground/recreational vehicle park shall be easily accessible from an existing public road with entrances and exits designed and strategically located for the safe and convenient movement into and out of the campground/recreational vehicle park and with minimum conflicts with the movement of traffic on a public road. All entrances and exits shall be at right angles to existing public roads and all entrances and exits shall be of sufficient width to facilitate the turning movements of recreational vehicles.

(f) Street System

(1) Each campground/recreational vehicle park shall have improved streets to provide convenient access to all lots and other important facilities within the campground/recreational vehicle park.

(2) The street system shall be so designed to permit safe and convenient vehicular circulation within the campground/recreational vehicle park.

(3) All streets shall have the following minimum width:

- One-way traffic movement - twelve (12) feet.

- Two-way traffic movement - twenty (20) feet.

(4) Except in cases of emergency, no parking shall be allowed on such streets.

(5) Adequate access shall be provided for each lot. Such access shall have a minimum width of nine (9) feet.

(g) Utilities

All sewer and water facilities provided in each campground/recreational vehicle park shall be in accordance with the regulations of the Genesee County Department of Health and the New York State Department of Environmental Conservation.

(h) Open Space

Each campground/recreational vehicle park designed for twenty (20) or more sites shall provide a common open area suitable for recreation and play purposes. Such open space shall be conveniently located. The open space area shall be at least ten (10) percent of the gross land area of the campground/recreational vehicle park but not less than one (1) acre.

(i) Improvements

Lighting, landscaping and buffer areas may be required by the Planning Board and shall be in keeping with surrounding development, the unique features of the site and the health and safety of occupants of the campground/recreational vehicle park.

(j) Management

Every campground/recreational vehicle park shall be managed from an office located on the premises. The management shall maintain the campground/recreational vehicle park in such a manner so as to protect the health, safety and comfort of all persons accommodated in the campground/recreational vehicle park in a clean and attractive manner.

(k) Removal of Wheels

Unless special consent be given by the Planning Board, it shall be unlawful to remove wheels from any recreational vehicle or otherwise permanently affix such recreational vehicle to the ground. Such removal shall be grounds for the revocation of the permit for such campground/recreational vehicle park.

(l) Campground/Recreational Vehicle Park Special Use Permits

(1) Pursuant to Article VIII, the Zoning Enforcement Officer shall inspect at least annually the operation of a campground/recreational vehicle park to make sure it complies with provisions of this Zoning Law and any and all conditions prescribed by the Planning Board when issuing the special use permit.

(2) Before receiving a special use permit for a campground/recreational vehicle park, the owner thereof shall make an adequate showing that the subject property complies with the provisions of this Section.

SECTION 612 ALL TERRAIN VEHICLES, SNOWMOBILES, GO-KARTS, MOTORCYCLES, AND MOTOR VEHICLE RACE TRACKS AND COURSES

A. Establishment

No person shall establish or operate a race track or course for all terrain vehicles, snowmobiles, go-karts, motorcycles, dirt bikes, or motor vehicles until he has obtained a special use permit in compliance with Section 808.

B. Definitions

1. Race Track or Course - Shall mean any ground, area, track, or course upon which vehicles are used for conducting races, contests, or demonstrations of skill or stunts, or engine/vehicle testing for the paid or unpaid enjoyment or entertainment of the public or for the gratification of the contestants.

2. Track or Course Operator - Shall mean any person who allows the paid or unpaid use of real property by vehicles.

3. Vehicles - Shall mean all terrain vehicles, snowmobiles, dirt bikes, go-karts, motorcycles, or other vehicles propelled by a force other than human energy.

C. Location Requirements

1. Said use shall not be located within two hundred (200) feet from any highway right-of-way, body of water or property line; or one thousand feet (1,000) from any existing dwelling, church, school, hospital, public building, or place of public assembly.

2. In reviewing this special use application, the Planning Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, dust, fumes, smoke, odors, traffic, erosion, siltation, or other conditions.

D. Minimum Lot Area

The minimum lot area shall be five (5) acres.

E. Operation of Race Track or Course

1. No person shall operate or permit the operation of a trace track or course in such manner as to cause unreasonably loud or disturbing noises of such a character, intensity, or duration as to be detrimental to the peace, welfare, or good order of the people of the Town of Elba or in such a manner as to cause disturbing, noisy, riotous, or tumultuous conduct within the Town. Loud speakers, announcing devices, horns, and other noise producing devices shall not at any time be operated in such manner as to disturb the occupants of the premises in the vicinity of the race track and shall be so toned down, muffled or subdued that the sound therefrom shall not carry more than 2,500 feet from the perimeter of the track in all directions.

2. No person shall operate or allow to be operated a race track or course in

such a manner as to allow the creation and dispensing through the air to the adjoining areas of the town of noxious odors, fumes, smoke, or dust of such density or concentration as to be detrimental to the health, peace, welfare, and good order of the people of the Town or as to hurt, destroy, or deface the property of the inhabitants of the Town. If any event is being conducted at any time upon a race track when the ground or surface of the track or of the approaches thereto is so dry as to cause dirt or dust to be stirred up either by the racing vehicles or by vehicles transporting spectators to or from the race track or course and to be blown or to drift to adjacent areas, the operator shall sprinkle the track and its approaches with water or other substance so as to settle such dust or dirt.

F. Operation of Vehicles on Race Tracks or Courses Prohibited During Certain Hours

1. No person shall operate and no owner of a vehicle shall permit the operation thereof on a race track or course before the hour of nine o'clock in the morning of any day, except Sunday, when no person shall operate or permit to be operated vehicles on a race track or course within the Town of Elba before the hour of one o'clock in the afternoon.

2. No person shall operate a vehicle on a race track or course after the hour of nine o'clock in the evening on any day, except on Friday and Saturday, when no person shall operate a vehicle on a race track after the hour of eleven in the evening within the Town of Elba.

3. No owner of real property and no race track or course operator shall permit real property owned by him or under his control to be used for operation of a vehicle after the hour of nine o'clock in the evening of any day, except Friday and Saturday when no vehicle shall be permitted to be operated after the hour of eleven o'clock in the evening within the Town of Elba.

G. Operation of Vehicles Without Mufflers Prohibited

1. No person shall operate, allow to be operated, or lease or rent a vehicle for operation on property within the Town of Elba unless it is equipped with an adequate muffler properly maintained to prevent any excessive or unusual noise.

2. No owner of real property and no vehicle track or course operator owning or having control of real property in the Town of Elba shall permit the operation of a vehicle thereon without a muffler in constant operation adequate to prevent any excessive or unusual noise.

H. Duration of Permit

The permit for operation of the race track or course shall be for a period of one (1) year, subject to annual review and recertification by the Planning Board based on a written request for continuance.

SECTION 613 **ADULT USES**

A. Purposes

The Town of Elba conducted a study of the potential secondary affects posed by adult establishments. This study, along with other similar studies, has shown buildings and establishments operated as adult establishments pose secondary effects which may have a detrimental and harmful to the health, safety, morals and general welfare of a community. In order to promote the health, safety, morals and general welfare of the residents of the Town of Elba, this Section is intended to control those secondary affects of adult establishments by restricting such uses to non-residential areas of the Town, and otherwise regulating their operation.

B. Definitions

As used in this Section, the following terms shall have the meanings indicated:

1. Adult Establishment - A commercial establishment including but not limited to adult book store, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:

a. An adult bookstore is a bookstore which has as a substantial portion (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined any one or more of the following:

(1) Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of a specified sexual activities or a specified anatomical area; or,

(2) Photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of a specified sexual activities or a specified anatomical areas.

b. An adult eating or drinking establishment is an eating or drinking establishment that regularly features any one or more of the following:

(1) Live performances which are characterized by an emphasis upon the depiction or description of a specified anatomical areas or a specified sexual activities; or,

(2) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description

of a specified sexual activities or a specified anatomical areas, and

(3) Employees who as part of their employment regularly expose to patrons a specified anatomical areas, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

c. An adult theater is a theater that regularly features one or more of the following:

(1) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of a specified sexual activities or a specified anatomical areas; or,

(2) Live performances which are characterized by an emphasis upon the depiction or description of a specified anatomical areas or a specified sexual activities, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.

d. An adult motel is a motel which makes available to its patrons in their room films, slide shows, video tapes or other visual representations with an emphasis on matter depicting, describing or related to specified sexual activities or specified anatomical areas.

e. An adult massage establishment is any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barber shops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

f. A nude model studio is any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of New York State.

g. Any other adult commercial establishment is a facility - other than an adult bookstore, adult eating or drinking establishment, adult theater, adult motel, adult

massage establishment, nude model studio or commercial studio, or business or trade school - which features employees who as part of their employment, regularly expose to patrons specified anatomical areas and which is not customarily open to the general public during such features because it excludes minors by reason of age.

For the purpose of defining adult establishments, specified sexual activities are: (i) human genitals in a state of sexual stimulation or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

Specified anatomical areas are: (i) less than completely and opaquely concealed (a) human genitals, pubic region, (b) human buttock, anus or (c) female breast below a point immediately above the top of the areola; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

For the purpose of determining whether a substantial portion of an establishment includes an adult bookstore the following factors shall be considered: (1) the amount of floor area and cellar space accessible to customers and allocated to such uses; and (2) the amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment.

For the purpose of determining whether a bookstore has a substantial portion (equal to or greater than 25%) of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered: (1) the amount of such stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area and cellar space accessible to customers containing such stock; and (3) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.

2. Person - A person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

3. Substantial - For the purposes of the Section the term substantial shall mean an amount equal to or greater than 25 percent of the total

C. Restrictions Affecting Adult Uses

Adult uses, including but not limited to adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, and adult entertainment cabaret shall be permitted subject to the following restrictions: (All distance separations shall be measured as specified below):

1. No such adult use shall be located in any zoning district except the

Business (B) District and such use shall require a zoning permit and site plan review.

2. No such adult use shall be located within five hundred (500) feet of a pre-existing school, place of worship, playground, park, or community center. This distance separation shall be measured from the respective property lines.

3. No such adult use shall be located within five hundred (500) feet of a pre-existing residence. This distance separation shall be measured from the residence structure to the property line(s) of the proposed adult use.

4. No such adult uses shall be within one hundred (100) feet of another existing adult use. This distance separation shall be measured from the respective property lines.

D. Prohibition Regarding Public Observation

No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

E. Special Use Permit

No use as described in this Section shall be established until the issuance of a special use permit by the Planning Board. Application for such a special use permit shall be in writing to the Planning Board and shall consist of a description of the premises for which the permit is sought, a plain and concise statement of the use which is proposed and such additional information as shall be required by the Planning Board.

SECTION 614 **COMMERCIAL COMMUNICATION TOWERS**

No commercial communication tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

A. Shared Use of Existing Towers and/or Structures

At all times, shared use of an existing tower and/or structure (i.e., another Commercial communications tower, water tower, building, etc.) shall be preferred to the construction of a new commercial communication tower. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower. The installation of a commercial communications antenna(s) on an existing structure located within the A-R and B Districts shall be considered a permitted accessory use not subject to Site Plan Review, provided the following criteria are met:

The existing structure is not increased in height or otherwise modified so as to

change its visual appearance,

The antenna(s) do not extend above such structure more than twenty (20) feet, and

The applicant provides the necessary documentation to the Zoning Enforcement Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code (or its successor).

4. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.
5. The applicant must demonstrate that the operation of any new antenna will not interfere with the telecommunications transmissions of other carriers or public safety officials.
6. Any additional structures proposed will be located within any existing fence line so as not to be in direct view from any public right of way or neighboring property.

B. New or Altered Towers and/or Structures

The Planning Board may, in its sole discretion, consider a new or altered (including tower or structure which are modified, reconstructed, or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

The applicant shall be required to submit a site plan in accordance with Section 808 for all commercial communication towers that are proposed to be erected, moved, reconstructed, changed or altered. Site Plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section. In addition to Section 808, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

Where shared usage of an existing tower or other structure is found to be impractical, as determined in the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower or other structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection B of this Section. Any new commercial communication tower approved for a site with an existing tower or other structure site shall be subject to the standards of Subsections F through N of this Section.

E. New Tower at a New Location

The Planning Board may consider a new commercial communication tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the Planning Board, and submits a report as described in Subsection B of this Section.

F. Future Shared Usage of New Towers

The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived provided that the applicant demonstrates, in the sole discretion of the Planning Board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

1. The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
2. The kind of tower site and structure proposed;
3. The number of existing and potential licenses without tower spaces;
4. Available spaces on existing and approved towers; and
5. Potential adverse visual impact by a tower designed for shared usage.

G. Setbacks for New Towers

All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

1. All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this paragraph may be increased in the sole discretion of the Planning Board, or it may be decreased, again in the sole discretion of the Planning Board, in those instances when the applicant has submitted plans for a tower designed

in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Town Engineer and the Planning Board.

2. Accessory structures must comply with the minimum setback requirements in the underlying district.

H. Visual Impact Assessment

The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to those guidelines and criteria listed below that the Planning Board, in its sole discretion, deems appropriate at the pre-submission conference:

1. Assessment of "before and after" views from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately-owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers.

2. Assessment of alternative tower designs and color schemes, as described in Subsection I below.

3. Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

I. New Tower Design

Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:

1. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.

2. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae).

3. The Planning Board may request a review of the application by the Town Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.

4. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

5. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.

6. The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.

7. Space on communication towers shall be made available for public safety purposes (i.e., Genesee County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of (4) feet off the ground) shall take place prior to approval of the special use permit. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

K. Screening

Deciduous or evergreen tree plantings suitable to the local climate and soil conditions may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

L. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking

Parking shall be provided in accordance with Section 601. No parking space shall be located in any required yard.

N. Fencing

Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the Planning Board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.

O. Maintenance and/or Performance Bond

Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

P. Removal of Obsolete/ Unused Facilities

Approval of a new commercial communication tower facility shall be conditioned upon the applicant=s agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

SECTION 615 **ROADSIDE STANDS**

1. Roadside stands may be located in the A-R, R and B Districts.
2. Goods sold shall primarily be home grown.
3. There shall be a front yard setback of at least twenty (20) feet and side yard setbacks of at least twenty-five (25) feet each.
4. Stands shall be of a portable nature and must be removed when not in use.
5. Off-street parking shall be provided for a minimum of three (3) vehicles with additional provisions if traffic warrants.
6. Two signs of not more than twelve (12) square feet each may be permitted, located not less than ten (10) feet from a lot line.

SECTION 616 **ANIMAL WASTE STORAGE FACILITIES**

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation (GCSWCD) or US Natural Resources Conservation Service (NRCS) for their review and determination as to acceptability. If a proposal is acceptable to GCSWCD or NRCS then the Planning Board will consider the

potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

SECTION 617 **HOME OCCUPATIONS**

A. Purpose

The purpose of this provision is to allow for home occupations that are compatible with the neighborhoods in which they are located.

Some home occupations by the extent of the investment required therefore and/or the nature of their operation, have a tendency of increasing beyond the scope of a home occupation and thereby violating the use provisions of the zoning district in which such home occupation exists and adversely affecting surrounding property values.

B. Process

An applicant shall apply to the Zoning Enforcement Officer for a determination as to whether his/her proposed home occupation is a category I or II. A Home Occupation I shall require the issuance of a zoning permit by the Zoning Enforcement Officer. A Home Occupation II shall require the issuance of a special use permit. Expansion of an existing Home Occupation I use to a Home Occupation II shall require the issuance of a special use permit by the Planning Board.

C. Conditions

The following conditions are intended to insure both that the home occupation is secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. The home occupation shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.
3. Individuals not residing in the residence shall not be employed in any Home Occupation I and no more than two (2) nonresident persons shall be employed actually on-site at the residence in a Home Occupation II.
4. Not more than 25% of the floor area of the principal dwelling may be used for the home occupation and the total floor area to be utilized (not including accessory buildings and structures) shall not exceed 500 sq. ft.
5. There shall be no exterior advertising of the home occupation, except for a

sign no larger than four (4) square feet for which a permit has been obtained pursuant to the provisions of Section 606.

6. There shall be no exterior storage of materials used in the home occupation.

7. No home occupation shall result in:

a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

b. Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or ground water.

c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

8. Adequate parking shall be provided as set forth in Section 601. Such off-street parking shall be located not less than ten (10) feet from any property line.

9. No residential lot shall contain more than one (1) home occupation. No residential lot shall contain a home occupation together with a skilled trade shop or any other non-residential use requiring a special use permit.

SECTION 618 SKILLED TRADE SHOP

The purpose of this provision is to allow for residents within the A-R District who are self-employed skilled trades persons to operate a shop for fabrication of fixtures or cabinets for installation by them at their various job sites. It is recognized that operation of such shops without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

A. Process

An applicant may apply to the Planning Board for a special use permit to establish a skilled trade shop in an A-R District.

B. Conditions

The following conditions are intended to insure both that the skilled trade shop is

secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. The skilled trade shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.

2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.

3. No more than one (1) nonresident person shall be employed in the skilled trade shop.

4. Not more than 25% of the floor area (with a maximum of 500 sq. ft.) of the principal dwelling may be used for the skilled trade shop. Occupation of accessory buildings to be utilized shall not exceed 2,000 sq. ft.

5. There shall be no exterior advertising of the skilled trade shop, except for a sign no larger than four (4) square feet for which a permit has been obtained pursuant to the provisions of Section 606.

6. There shall be no exterior storage of materials used or products/fixtures made in the skilled trade shop.

7. No skilled trade shop shall result in:

a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

b. Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or ground water.

c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

8. Adequate parking shall be provided as set forth in Section 601. Such off-street parking shall be located not less than ten (10) feet from any property line.

9. No residential lot shall contain more than one (1) skilled trade shop. No residential lot shall contain a skilled trade shop together with a home occupation or any other non-residential use requiring a special use permit.

10. The Planning Board may require as a condition of the special use permit that the applicant install and maintain a buffer strip and/or fencing between the proposed skilled trade shop and

neighboring residential uses if the Board determines such condition is a reasonable mitigation factor.

ARTICLE VII **MOBILE HOMES AND MOBILE HOME PARKS**

SECTION 701 **MOBILE HOMES**

A. Mobile Home - Permanent Residence

1. Criteria

A mobile home may be placed and permanently occupied as a one (1) family residence (non-farm, see Subsection B below) on any lot in an A-R District provided it complies with Section 406 (Minimum Enclosed Living Area), Section 410 (Minimum Dimensional Criteria), and the following criteria are met and a zoning permit is issued:

a. The mobile home unit shall comply with the NYS Uniform Code Parts 606 and 1221.1(or its successor) and be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Department of Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

b. Placement of the mobile home must comply with the minimum area requirements for a one (1) family dwelling in the respective zoning district, including, but not limited to: lot size and width, yard areas, parking and finished grade.

c. The mobile home shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code (or its successor) including foundation requirements and skirting, and shall be protected from ground frost heaves.

d. The water supply system and wastewater treatment system shall be approved by the Genesee County Health Department.

B. Mobile Home - Temporary Residence

1. Restrictions

A mobile home may be placed and temporarily occupied as a one (1) family residence on any lot where the appropriate permit(s) (zoning and/or building permit) have been issued for the construction or repair of a residence, for a maximum period of two (2) years under the following circumstances, upon the issuance of either a temporary use permit or

emergency housing permit as required.

a. Home Building - If the owner of a vacant lot in either the A-R District has been issued an active, valid zoning permit by the Town of Elba for the construction of a dwelling on the lot in question (a temporary use permit is required).

b. Fire or Other Disaster - The existing dwelling on the lot has been damaged in such a manner as to make it uninhabitable (an emergency housing permit is required, see Section 803, Subsection C).

2. Criteria

Mobile homes occupied as temporary residences are not required to comply with Section 306 (Minimum Enclosed Living Area) or Section 410 (Minimum Dimensional Criteria); however, the following criteria must met:

a. The mobile home units shall comply with the NYS Uniform Code Parts 606 and 1221.1 (or its successor) and be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

b. Placement of the mobile home must comply with the minimum yard area requirements (setbacks from property lines) for a one (1) family dwelling in the respective zoning district.

c. The water supply system and wastewater treatment system shall be approved by the Genesee County Health Department.

C. Mobile Home - Replacement of an Existing Unit

1. An existing mobile home which is occupied as a one (1) family dwelling on any lot in any District may be replaced with another mobile home. The proposed replacement unit is not required to comply with Section 306 (Minimum Enclosed Living Area) or Section 410 (Minimum Dimensional Criteria); however, where the replacement unit does not meet Sections 306 and 410 it shall not be smaller than the existing unit (either width or overall size) and the following criteria must be met:

a. The replacement mobile home unit shall be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

b. The location of the replacement mobile home shall not increase the

degree of nonconformity other than unit size or square footage relative to the yard area requirements including setbacks from property lines and other bulk requirements that existed with the current mobile home.

c. The mobile home shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code (or its successor) including foundation requirements and skirting, and shall be protected from ground frost heaves.

d. The water supply system and wastewater treatment system for the mobile home shall be approved by the County Health Department.

SECTION 702 **MOBILE HOME PARKS**

A mobile home park may be located in a Mobile Home Overlay (MHO) District provided the following criteria are met and a special permit is issued.

A. Standards and Requirements for the Construction of Mobile Home Parks

Condition of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the mobile home park occupants. The site shall not be exposed to objectionable smoke, dust, noise, odors or other adverse influences, and no portion subject to predictable sudden flooding or erosion and shall not be used for any purpose which would expose person or property to hazards.

1. Site, Size, Density and Setback Requirements

a. The minimum size for mobile home parks shall be ten (10) acres.
b. The maximum number of mobile home spaces shall not exceed five (5) per gross acre.

c. Each mobile home park shall set aside ten (10) percent of the total acreage of the site as open space and recreation area.

d. A setback of seventy-five (75) feet shall be observed from the right-of-way of any public road bordering the site to any mobile home in the park.

e. A setback of fifty (50) feet shall be observed from any property line excluding the right-of-way of any public road to any mobile home in the park.

f. The site shall be located and laid out so that no mobile home shall be closer than five hundred (500) feet to any existing single family or two family dwelling.

2. Lot Size, Density and Setback Requirements

a. The minimum lot in a mobile home park shall be eight thousand (8,000) square feet, with a minimum width of seventy (70) feet and a minimum depth of one

hundred (100) feet.

b. A mobile home having a width of 24 feet or more shall be located on a lot having an area of at least ten thousand (10,000) square feet with a minimum width of eighty (80) feet.

c. No mobile home shall be closer than thirty (30) feet to another mobile home or other structure in the park.

d. Each mobile home located in a mobile home park shall have a front yard, a rear yard and two side yards. No side yard or rear yard space shall be less than fifteen (15) feet in depth and no front yard shall be less than twenty-five (25) feet in depth.

e. There shall be a minimum setback of twenty-five (25) feet observed from an abutting park street to any mobile home in the park.

f. Maximum height for buildings shall be thirty-five (35) feet.

3. Site Layout and Design Requirements

The layout and design of the mobile home park shall conform with the following requirements:

a. Streets

(1) All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means. Each mobile home space in a park shall have direct access to a street.

(2) All mobile home parks containing twenty (20) or more mobile home sites shall have access from two points along a single public road, or if bordering on two roads, access can be one for each road, as long as such access points are separated by at least one hundred (100) feet.

(3) Entrances to mobile home parks shall have direct connections to a public road and shall be designed to allow free movement of traffic on such adjacent public road. No parking shall be permitted on the entrance street for a distance of one hundred (100) feet from its point of beginning.

(4) The street system should provide convenient circulation by means of minor streets and properly located collector streets. Dead-end streets shall be limited in length to five hundred (500) feet and their closed end shall be provided with an adequate turn around sixty-five (65) feet in diameter cul-de-sac.

(5) Each mobile home space in a park shall have direct access to a roadway which roadway meets the minimum standards established by the Town Highway Superintendent or Town Engineer.

(6) Grades of all streets shall be sufficient to insure adequate surface drainage, but should not be more than eight (8) percent.

(7) Street intersections should generally be at right angles and in no case shall any angle or intersection be less than seventy-five (75) degrees.

(8) Park entrances and exits shall be so located to provide a minimum of sight distance on the adjacent public road in both directions from the interior road at the point of intersection of not less than three hundred (300) feet.

(b) Parking

(1) Two (2) car parking spaces shall be provided for each mobile home to meet the needs of occupants of the mobile home park and their guests without interference with normal movement of traffic.

(2) At least one parking space shall be situated on each unit, and the remainder may be located in adjacent parking bays along the park streets.

(3) Parking may be in tandem.

(4) Each parking space shall have dimensions of at least ten (10) feet by twenty (20) feet and shall have all weather surfacing.

(c) Storm Water Drainage

(1) All mobile home parks shall be well drained and constructed so as to eliminate the accumulation of standing surface water for extended periods of time. The drainage system shall consist of buried corrugated steel pipe to carry storm water only or a series of well-constructed and properly maintained open ditches to carry surface runoff to off-site drainage channels or on-site drywells.

(2) The drainage system shall be designed to adequately handle at least that storm water generated by the site during a ten (10) year storm as determined by the U.S. Army Corps of Engineers. It must be certified by the Genesee County Soil and Water Conservation District Office that the off-site downstream drainage system is capable of handling the run-off generated by the park during a ten (10) year storm.

(d) Buffer Zone

(1) There shall be provided a buffer area of at least ten (10) feet in width from any property line. Such buffer area shall be primarily clear of obstructions other than trees and other natural landscape and shall not be used for any above ground structures.

(2) All mobile home parks, located adjacent to industrial or commercial land uses, shall be provided with screening such as fences or natural growth along the property boundary line separating the park and such adjacent nonresidential uses.

(e) Recreation Area

(1) Not less than ten (10) percent of the gross site area shall be devoted to recreation facilities, generally provided in a location or locations convenient to all.

(2) Recreation areas may include space for community use facilities, such as indoor recreation areas, swimming pools, hobby and repair shops and service buildings.

(3) Where compliance with Section 702(A)(1)(a) provisions result in undue hardship and/or individual lot areas are substantially above minimum standards and provide for sufficient outdoor recreation, an area variance may be granted by the Zoning Board of Appeals to an extent that an absolute minimum of one hundred (100) s.f. per lot be considered sufficient for the site of a centralized recreation area, and provided that no recreation area shall contain less than five thousand (5,000) s.f.

(f) Landscaping

Mobile home parks shall be landscaped to provide an attractive setting for mobile homes and other improvements, to provide adequate privacy, and pleasant outlooks for living units, to minimize reflected glare, and to afford summer shade. Such landscaping shall include the planting and maintenance of at least the following:

(1) Trees and shrubs at suitable intervals along park streets, within recreation areas, and around park borders.

(2) Special planting to screen objectionable views such as garbage and trash collection stations, nonresidential uses, and any unsightly objects or conditions on adjacent properties.

(3) Lawns on all areas which are not paved or used as sites for mobile homes or buildings.

4. Lot and Mobile Home Requirements

a. Each lot shall front on an approved interior street.

b. Interior lots shall not be permitted to front on more than one street.

c. No more than one (1) mobile home may be placed on any lot.

d. No mobile home shall be located within a park except in an authorized space.

e. All mobile homes shall comply with the current Construction and Safety Standards as set forth by the United States Department of Housing and Urban Development and have a minimum habitable floor area of six hundred (600) square feet, exclusive of any porches, additions or other extensions .

f. Mobile homes shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code.

g. No addition shall be made to a mobile home except for a canopy and/or porch open on three sides.

h. One (1) accessory building, not to exceed one hundred (100)

square feet in dimension, may be located on each lot.

I. Each lot shall be provided with approved connections for water and sewer in accordance with the regulations of the Genesee County and New York State Departments of Health.

j. All utilities shall be underground.

k. No front yard shall be used for storage.

5. Required Site Improvements

a. Water Supply System - All water supply systems shall be approved by the Genesee County Health Department.

b. Sewerage Disposal and Treatment - All sewerage disposal systems shall be approved by the Genesee County Health Department.

6. Electrical Systems

a. Except as otherwise permitted or required by this standard, all electrical installations in mobile home parks shall be underground, residential distribution designed and constructed in accordance with local electric utility and with the National Electrical Code. The point of the electrical connection for the mobile home shall be within the area of the mobile home stand.

b. The mobile home park secondary electrical distribution system to mobile home lots shall be single phase, 120/240 nominal.

c. For the purpose of this Section, where the park service exceeds two hundred forty (240) volts, transformers and secondary distribution panel boards shall be treated as services.

Mobile home lot feeder circuit conductors shall have adequate capacity for the load supplied, and shall be rated at not less than one hundred (100) amperes at 120/240 volts.

d. Provisions may be made for connecting a mobile home power supply assembly by a permanent wiring method, and the mobile home service equipment may provide for installation for at least one (1) fifty (50) ampere receptacle.

Mobile home service equipment may also be provided with a means for connecting a mobile home accessory building or structure or additional electrical equipment located outside a mobile home by a permanent wiring method.

7. Gas Distribution System

Gas equipment and installations within a mobile home park shall be designed and constructed in accordance with the applicable codes adopted by the local utility. Where the state or other political subdivision does not assume jurisdiction, such installations shall be designed and constructed in accordance with the appropriate provisions of the current

edition of the American National Standard-National Fuel Gas Code.

8. Fuel Oil Distribution System

Distribution systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.

9. Bulk Fuel Storage

A mobile home park shall be provided with facilities for the safe and efficient storage of required bulk fuels. Such facilities shall be in accordance with applicable codes and regulations.

10. Lighting

Artificial lighting shall be provided to illuminate walks, driveways and parking spaces for the safe movement of pedestrians and vehicles at night.

11. Service Buildings

a. Each park shall make available community service buildings to house laundry and other sanitary facilities.

b. Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a mobile home lot.

c. Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the New York State Sanitary Code and/or all applicable Zoning Laws and statutes regulating buildings, electrical installations, and plumbing and sanitation systems enacted or adopted by the Town.

B. Mobile Home Park Maintenance Standards

1. Refuse Disposal

a. The park owner is responsible for provision of refuse pickup and disposal.

b. The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to create no health hazard, rodent harborage, insect breeding areas, accident or fire hazards or air pollution.

c. No refuse or other organic material shall be placed, stored or dumped in other than refuse containers anywhere in the park. The existence of any refuse or rubbish outside a container for more than twenty-four (24) hours shall be a violation of this Zoning Law.

2. Fire Protection

a. Mobile home parks shall be kept free of litter, rubbish and other flammable materials.

b. Fire shall be made only in stoves and other equipment intended for such purposes.

3. Responsibilities of the Park Owner and Management

a. The person to whom a license for a mobile home park is issued shall operate the park in compliance with this Zoning Law and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.

b. The park management shall supervise the placement of each mobile home on its mobile home stand and the installation of all utility connections.

c. The owner of a mobile home park shall develop a regular program of park maintenance which shall attend to such items as grass cutting, maintained buffer zones and open drainage ditches, roadway and parking area repairs, cleaning and maintenance of service buildings, and whatever regular maintenance operations are required by the water supply system, sewerage system, and other services provided by the park. This maintenance program shall be presented to the Planning Board at the time the special use permit is applied for under Section 808 of this Zoning Law and, once approved, a copy thereof filed with the Town Clerk and Zoning Enforcement Officer. A copy shall also be furnished to all residents of the park and be posted in conspicuous places throughout the park.

4. Responsibilities of Park Occupants

Park occupants shall comply with all applicable requirements of this Zoning Law and regulations issued hereunder and shall maintain their mobile home lot, its facilities and equipment in good repair and in a clean and sanitary condition.

5. Temporary Living Units

No occupied travel trailers, recreational vehicles or other form of temporary type living units shall be permitted in a mobile home park except in compliance with Section 611. Unoccupied travel trailers and recreational vehicles shall be stored in areas designated for the storage of such units.

C. Mobile Home Park Special Use Permits

1. Annual Inspection

Pursuant to Section 808, the Zoning Enforcement Officer shall inspect at least annually the operation of a mobile home park to make sure it complies with the provisions of this Zoning Law and any and all conditions prescribed by the Planning Board when issuing the special use permit.

2. Compliance With Regulations

Before receiving a special use permit for a mobile home park, the owner thereof shall make an adequate showing that the subject property complies with the provisions of this Section.

ARTICLE VIII

ADMINISTRATION AND ENFORCEMENT

SECTION 801 ENFORCEMENT

The duty of the administering and enforcing the provisions of this Zoning Law is hereby conferred upon the Zoning Enforcement Officer, who shall have such powers as are conferred upon him by this Zoning Law and as reasonably may be implied. He shall be appointed by the Town Board and shall receive compensation as the Town Board shall determine.

SECTION 802 DUTIES OF THE ZONING ENFORCEMENT OFFICER

A. Inspection and Review. It shall be the duty of the Zoning Enforcement Officer, or his duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this Zoning Law. He shall have the right to enter any building or premises during reasonable hours in the course of his duties with the permission of and in the presence of the owner or manager.

B. Violations and Written Orders. Where the Zoning Enforcement Officer, in the course of his duties, determines that any plans, buildings or premises are in violation of the provisions of this Zoning Law, he shall order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered, and may specify the time permitted for such action, the penalties and remedies which may be invoked by the Town and the violator's rights of appeal, all as provided by this Zoning Law.

C. Appearance Ticket. The Zoning Enforcement Officer may issue an appearance ticket to any person who fails to respond to a notice of violation and written order to correct the violation.

D. Revocation of Certificate of Compliance. On the serving of notice by the Zoning Enforcement Officer to the owner of any violation of any of the provisions of this Zoning Law, the Certificate of Compliance for such buildings or use shall be held null and void. A new Certificate of Compliance shall be required for any further use of such building or premises.

E. Records. The Zoning Enforcement Officer shall maintain a permanent record of all matters considered and all action taken by him. Such records shall form a part of the records of his office and shall be available for the use of the Town Board and other officials of the Town. The records to be maintained shall include at least the following:

1. Application File. An individual permanent file for each application for a permit provided for by this Zoning Law shall be established at the time the application is made. Said file shall contain one (1) copy of the application and all supporting documents and plans; notations regarding pertinent dates and fees, and the like; as appropriate, one (1) copy of the resolution of the Planning Board and/or Zoning Board of Appeals in acting on the application; and the date the permit applied for was issued or denied by the Zoning Enforcement Officer.

2. Monthly Report. The Zoning Enforcement Officer shall prepare a monthly report for the Town Board. Said report shall cite all actions taken by the Zoning Enforcement Officer, including all referrals made by him; all permits and certificates issued and denied; and all complaints of violations received and all violations found by him, and the action taken by him consequent thereon. A copy of this monthly report shall also be transmitted by the Zoning Enforcement Officer to the Tax Assessor, Planning Board and Board of Appeals at the same time

it is transmitted to the Town Board.

SECTION 803 CERTIFICATES AND PERMITS

The certificates and permits enumerated herein are hereby established for the equitable enforcement and administration of the provisions of this Zoning Law.

A. Zoning Permit. The Zoning Enforcement Officer is hereby empowered to issue a zoning permit for any plans regarding the construction or alteration of any building or structures or part of any building, or the change in the use of any land or building or part thereof, where he shall determine that such plans are not in violation of the provision of this Zoning Law.

B. Temporary Use Permit. Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue a temporary use permit. A temporary use permit shall only be effective for a period not to exceed twelve (12) months; such permit may be extended by the Zoning Enforcement Officer not more than once for an additional period not to exceed six (6) months.

C. Emergency Housing. The Zoning Enforcement Officer may grant a non-renewable temporary housing permit for a period of time not exceeding ninety (90) days in conformance with Section 701.B.1.b.

D. Special Use Permit. Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue any special use permit provided for by this Zoning Law.

E. Certificate of Compliance. The Zoning Enforcement Officer is hereby empowered to issue a certificate of compliance which shall certify that all provisions of this Zoning Law have been complied with in respect to the location and use of the building, structure or premises in question.

SECTION 804 APPLICATION PROCEDURES

A. Application. Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be built upon, the size and location of all buildings or structures proposed as well as those that shall remain, the intended use of each building or structure, and any such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this Zoning Law. Three (3) copies of applications, together, with a layout sketch shall be submitted. The Zoning Enforcement Officer shall carefully consider the application and supporting documents for compliance with this Zoning Law and either issue or deny the zoning permit applied for.

B. Issuance of Zoning Permit. The Zoning Enforcement Officer shall issue a zoning permit only after all required variances and special use permits have been obtained.

C. Installation of Foundation. The Zoning Enforcement Officer shall be notified that the site is prepared for installation of the foundation of a structure, and shall inspect the site to check the location of the structure.

D. Initiation of Construction. If a zoning permit is not obtained by the applicant within ninety (90) days after final approval, such approval shall be void.

E. Completion of Construction. A permit shall be void if construction is not substantially completed within a period of one year from the date of said permit. The Zoning Board of Appeals may issue a six-month extension of a permit for good cause shown. Two such extensions of a permit will be allowed.

F. Location of Permit. The zoning permit shall be located in a place readily visible to the public during construction activities.

SECTION 805 FEES FOR PERMITS, AMENDMENTS, VARIANCES, AND SPECIAL USE PERMITS

Fees may be charged for permits issued, and processing of applications for amendments, variances, and special use permits. The fee shall be set by resolution of the Town Board and may be changed from time to time in the same manner.

SECTION 806 CERTIFICATES OF COMPLIANCE

No land shall be used or occupied and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of compliance has been issued by the Zoning Enforcement Officer in accordance with the provisions of this Zoning Law.

SECTION 807 BOARD OF APPEALS

A. Organization

The Town Board shall appoint members to the Zoning Board of Appeals as authorized by the provisions of Section 267 of the Town Law. The Town Board shall also designate the Chairperson thereof. In the absence of a chairperson the Board of Appeals may designate a member to serve as Acting Chairperson. The present Board of Appeals consists of five (5) members, any future changes by the Town Board to the number of members shall comply with the provisions of NYS Town Law Section 267 and/or any other applicable laws.

B. Meetings, Minutes and Records

Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals 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, decisions and other official actions.

C. Filing Requirements

Every rule, regulation, amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record.

D. Hearing Appeals

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the Zoning Enforcement Officer. The concurring vote of a majority of the entire Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer, or to grant a use or area variance. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire ZBA is necessary to override a County Planning Board recommendation of disapproval or approval with modification. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.

E. Time of Appeal

Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer or Town Clerk. The cost of sending or publishing any notice relating to such appeal shall be borne by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer, from whom the appeal is taken, certifies to the Board of Appeals, after notice of appeal shall have been filed with the Zoning Enforcement Officer, that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Enforcement Officer from whom the appeal is taken and undue cause shown.

F. Public Hearing Notice and Referrals

A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal. Such public hearing shall be advertised by publication in a paper of general circulation within the Town of a notice of such hearing at least five (5) days prior to the date thereof. When required by the provisions of Section 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.

At least thirty (30) days before the date of the public hearing unless such time limit is waived by the Planning Board, the secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing and all pertinent information for those appeals involving a use variance. The Planning Board shall inform the Zoning Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify no recommendation on the application.

The Zoning Board of Appeals shall send, by regular mail, a copy of the notice of hearing to all owners of property situated within five hundred (500) feet of the property, at least ten (10) days before the date of the hearing.

G. Time of Decision

The Zoning Board of Appeals shall decide upon an appeal within sixty-two (62) days after the conduct of the public hearing. Prior to rendering its decision the Board shall first complete the SEQR process. Said time of decision may be extended by mutual consent of the applicant and Zoning Board of Appeals. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision.

H. Filing of Decision and Notice

The decision of the Zoning Board of Appeals on an appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant by regular mail.

I. Permitted Action by the Zoning Board of Appeals

1. Interpretations, Requirements, Decisions and Determinations

The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determinations as in its opinion ought to have been made.

2. Use Variances

The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this Zoning Law.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every use allowed under the zoning regulations for the particular district where the property is located:

a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

d. That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary

hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area Variances

The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of this Zoning Law.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- c. Whether the requested area variance is substantial;
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
- e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of Conditions

The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

J. Solar Access

Pursuant to Chapter 742 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Zoning Law the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

K. Rehearing

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reviewed may be made by any members of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

SECTION 808 **PLANNING BOARD**

A. Organization

The Planning Board shall consist of five (5) members appointed by the Town Board as provided for in Section 271 of the Town Law. The Town Board shall designate a member of said Planning Board to act as chairperson thereof, and upon its failure to do so, the Planning Board shall elect a chairperson from its own members. The Planning Board shall elect such other officers as necessary to conduct its business.

B. Powers and Duties

1. Site Plan Review

Review of site plans in accordance with NYS Town Law Section 274-a as set forth in Subsection C of this Section, for any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings unless otherwise required by this Zoning Law (i.e. special use permit).

2. Special Use Permits

Granting of special use permits in accordance with NYS Town Law Section 274-b as set forth in this Zoning Law based upon the criteria set forth in Subdivision D.8 of this Section.

3. Review Use Variances

Review use variance applications referred to the Planning Board in accordance with Section 807.F and make a recommendation to the Zoning Board of Appeals.

4. Temporary Uses and Structures

Grant permits for temporary uses and structures only as follows.

a. Except as otherwise provided in Section 803.C, the Planning Board may direct the Zoning Enforcement Officer to issue a temporary use permit for a period of time not exceeding twelve (12) months, for incidental nonconforming uses and structures as follows:

- (1) Temporary uses incidental to a construction project.

(2) Temporary real estate sales office incidental to a subdivision.

(3) Other similar temporary incidental uses which:

(a) Do not have a detrimental effect upon the lawful use of land and activities normally permitted in the district in question, and

(b) Contribute materially to the welfare and well-being of the Town.

b. Temporary use permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.

c. Temporary use permits may be reissued only once for an additional consecutive period not exceeding six (6) months.

C. Site Plan Review

The Planning Board, at a regular or special meeting, shall review and approve, approve with modifications, or disapprove a site plan in connection with any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings.

1. Notice and Public Hearing

The Planning Board may, in its sole discretion, hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for site plan review is received by it and public notice thereof shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least ten (10) days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property situated within five hundred (500) feet of the property, at least ten (10) days before the date of the hearing. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

2. Submission of Site Plan and Data

The applicant shall submit to the Town Clerk ten (10) copies of a site plan and supporting data in a form satisfactory to the Planning Board, including, but not limited to, the following information presented in graphic form and accompanied by a written text.

a. Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, rights-of-way, zoning and ownership of surrounding property.

b. Layout sketch showing proposed lots, blocks, building locations and land use area.

c. Traffic circulation, parking and loading spaces, and pedestrian

walks.

d. Landscaping plans including site grading, landscape design, open space and buffer zone.

e. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.

f. Preliminary engineering plans, street improvements, exterior lighting schemes, storm drainage, water supply and sanitary sewer facilities and fire protection.

g. Engineering feasibility study of any anticipated problem which may arise from the proposed development, as required by the Planning Board.

h. Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.

i. Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.

j. Together with any other information requested by the Planning Board.

3. Site Plan Review Criteria

The Town Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:

a. Harmonious relationship between proposed uses and existing adjacent uses.

b. Maximum safety of vehicular circulation between the site and street including emergency vehicle access.

c. Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.

d. Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.

e. Adequacy of municipal facilities to serve the proposal including streets, water supply and wastewater treatment systems, storm water control systems, and fire protection.

4. Area Variances

Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one (1) or more features which do not comply with the zoning regulations, applications may be made to the Zoning Board of Appeals for an area variance pursuant to NYS Town Law Section 274-a, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

5. Modifications and Conditions

The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making the changes or additions.

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.

6. Waiver of Requirements

The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

7. Reservation of Park Land on Site Plans Containing Residential Units

a. Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Planning Board or Zoning Law, a park or parks suitably located for playground or other recreational purposes.

b. Land for park, playground or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.

c. In the event the Planning Board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board in lieu of

land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

d. Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to NYS Town Law Section 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of park land or money donated in lieu thereof.

8. Performance Bond or Letter of Credit as a Condition of Site Plan Approval

The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.

9. Performance Standards

In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may in its discretion reject any uses if it determines that insufficient evidence has been submitted to show compliance with these environmental standards. However, final responsibility for compliance with all environmental laws and regulations lies with the applicant.

10. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Article are submitted to the Town Clerk. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQOR process. In those instances where due to the location of the affected property, a site plan review is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

11. Changes and Revisions

Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

D. Special Use Permit

The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those which are compatible with the general spirit of the Zoning Law if certain standards and conditions are met. Each such use is listed in this Zoning Law as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Law shall be followed and the Planning Board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the Planning Board as set forth in Paragraph 4 of this Subsection.

1. Application

Applications for special use permits shall be made in writing on the appropriate form obtained from the Zoning Enforcement Officer. Four (4) copies of each application, including site plan, shall be submitted to the Zoning Enforcement Officer, who shall review the application for completeness prior to forwarding it to the Town Clerk and the Planning Board. One (1) copy shall be retained by the Zoning Enforcement Officer. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this Zoning Law.

2. Area Variance

Where a proposed special use permit contains one (1) or more features which do not comply with the Zoning Law, application may be made to the Zoning Board of Appeals for an area variance pursuant to Section 274-b of Town Law, without the necessity of a decision or determination of the Zoning Enforcement Officer.

3. Notice and Public Hearing

The Planning Board shall hold a public hearing as part of the site plan review process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for a special use permit is received by it and public notice thereof shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least ten (10) days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property situated within five hundred (500) feet of the property which is the subject of the application, at least ten (10) days before the date of the hearing. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

4. Conditions

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said special use permit, any such conditions must be met in connection with the issuance of the special use permit by the Zoning Enforcement Officer.

5. Waiver of Requirements

The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

6. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the public hearing. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a special use permit request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

7. Abandonment of Special Use Permit

A special use permit shall expire when there occurs a cessation of such use or activity, for which said special use was originally issued, for a period of one (1) year. Upon evidence that a special use permit has been abandoned the Zoning Enforcement Officer shall issue a notice of abandonment to the owner of record for the property by registered mail. If after sixty (60) days the owner has not provided satisfactory proof that the special use did not cease, the Planning Board shall revoke the special use permit.

8. Standards Applicable for all Special Use Permits

The Planning Board may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this Zoning Law.

a. The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous and shall be in harmony with the orderly development of the district.

b. The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.

c. The operation of any such use shall not be more objectionable to nearby properties than would be operation of any permitted use.

d. The proposed use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact on adjacent properties.

e. When a commercial or industrial special use abuts a residential property the Planning Board may find it necessary to require screening of sufficient height and density (i.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.

f. Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.

g. The proposed use shall meet the off-street parking and loading requirements of similar uses.

h. Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.

i. Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards.

j. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a minimum.

k. A special use permit shall not be issued for a use on a lot where there is an existing violation of this Zoning Law unrelated to the use which is the subject of the requested special use permit, as determined by the Planning Board.

l. As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.

m. In addition to the general standards for special permits as set forth herein, the Planning Board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements, it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this Zoning Law.

n. The above standards are not intended to apply to uses whose regulation has been preempted by the State or Federal government, i.e., mining.

9. Annual Review By Zoning Enforcement Officer

The Zoning Enforcement Officer shall at least annually inspect the use of the property in question to insure compliance with conditions which have been imposed by the Planning Board in issuing such special use permit and other applicable provisions of this Zoning Law.

SECTION 809 VIOLATION AND PENALTY

A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any building, structure or land or part thereof in a manner not permitted by an approved zoning permit or certificate of compliance.

B. It shall be unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.

C. It shall be unlawful for any owner, builder, architect, tenant, contractor, sub-contractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, repair or use of any building to violate any of the applicable provisions of this Zoning Law, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.

D. Any violation of this Section and/or this Zoning Law shall be punishable by a fine as set forth in Section 268 of Town Law as amended.

E. The Zoning Enforcement Officer may, with permission of the Town Supervisor, request that the Town Attorney initiate the legal action to enforce provisions of this Zoning Law.

F. In addition to the foregoing remedies, the Town of Elba may maintain an action for injunction to restrain, correct or abate any violation of this Zoning Law and/or maintain an action at law for damages sustained as a result of any violation of this Zoning Law. Damages may include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

SECTION 810 COMPLAINT OF VIOLATION

Whenever a violation of this Zoning Law occurs, any person may file a complaint in regard thereto. The Zoning Enforcement Officer shall properly record such complaint and immediately investigate it and take appropriate action.

SECTION 811 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

A. The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above mentioned activities.

B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Town is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified as follows:

Zoning text amendments	- Town Board
Zoning district amendment	- Town Board
Special use permits	- Zoning Board of Appeals
Zoning permit (if necessary)	- Planning Board
Variances	- Zoning Board of Appeals

When a project involves two or more separate zoning actions, the board (agency) having final (last) approval would typically be the lead agency. Nothing in this Section shall be interpreted to override the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete until a determination of no significance has been made or until a draft environmental impact statement is completed.

ARTICLE IX AMENDMENTS

SECTION 901 INITIATING AMENDMENTS

A. Initiating Amendments

The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Zoning Law.

B. Petitions

Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner and filed in triplicate, accompanied by the required fee.

C. State Environmental Quality Review (SEQR)

Amendments of the Zoning Law may be subject to the State Environmental Quality Review process (SEQR). The Town Board should identify the type of action the zone change is according to SEQR regulations. Depending on the size of the zone change and several other factors it may be a TYPE I or an UNLISTED action. To make a decision, the Board should consult Part 617 of Article 8 of Environmental Conservation Law (New York).

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed.

SECTION 902 REFERRAL OF PROPOSED AMENDMENTS TO THE TOWN PLANNING BOARD AND COUNTY PLANNING BOARD

A. Referral to Town Planning Board

All proposed amendments other than those requested by the Planning Board shall be referred to the Planning Board for its recommendation thereon. The Planning Board shall submit its report prior to the public hearing. Failure of the Planning Board to report within the required time shall be deemed to be approval of the proposed amendment.

B. Referral to County Planning Board

Where required by Section 239m of the General Municipal Law or other applicable statute a proposed amendment shall be referred to the Genesee County Planning Board, which Board shall report its recommendations to the Town Board within thirty (30) days from the date of such referral. Failure of the Genesee County Planning Board to report within thirty (30) days may be construed to be approval by the Board. In the event that the Genesee County Planning Board disapproves the amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such contrary action.

SECTION 903 HEARING ON PROPOSED AMENDMENT

Before adopting any amendments to this Zoning Law the Town Board shall give notice of hearing thereon to such persons and in such manner as is required by Section 264 of the Town Law for the amendment of a Zoning Law and shall hold a hearing thereon pursuant to such notice.

SECTION 904 PETITION PROTESTING AMENDMENT

In case of a protest against such change signed by the owners of twenty per centum or more, either of the area of the land included in such proposed change, or of that immediately adjacent extending one hundred feet therefrom or of that directly opposite thereto, extending one hundred feet, from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the Town Board.

SECTION 905 PERIODIC REVIEW BY PLANNING BOARD

From time to time, at intervals of not more than three (3) years, the Planning Board shall re-examine the provisions of the Zoning Law and the location of district boundary lines and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

ARTICLE X LEGAL STATUS PROVISIONS

SECTION 1001 PROVISIONS ARE MINIMUM REQUIREMENTS

In their interpretation and application, the provisions of this Zoning Law shall be considered as the minimum requirements to promote and to protect public health, safety, comfort, convenience, prosperity, and other aspects of the general welfare, and in particular:

A. To promote the purposes set forth in the preamble to this Zoning Law and in the statements of legislative intent for the respective districts or groups of districts.

B. To provide a gradual remedy for existing conditions which are detrimental

thereto.

SECTION 1002 CONFLICT WITH OTHER LAWS

Whenever any provision of this Zoning Law and any other provision of law, whether set forth in this Zoning Law or in any other law, Zoning Law, or resolution of any kind, impose overlapping or contradictory regulations over the use of land, or over the use or bulk of buildings or other structures, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

SECTION 1003 EXISTING ZONING PERMITS

In all cases where:

A. A zoning permit has been lawfully issued on the basis of an application showing complete plans for the proposed construction of a new building or other structure, or for an enlargement of an existing building or other structure which requires construction of foundation, and

B. The adoption of this Zoning Law or for any subsequent amendment thereto, would make the completed building or other structures nonconforming or noncomplying construction may nevertheless be continued in accordance with the zoning permit and a certificate of compliance may be issued for such nonconforming or noncomplying building or other structure.

SECTION 1004 EXISTING PRIVATE AGREEMENTS

This Zoning Law is not intended to abrogate or annul any easement, covenant, or any other private agreement.

SECTION 1005 SEPARABILITY CLAUSE

It is hereby declared to be the legislative intent that, if any provision or provisions of this Zoning Law or the application thereof to any building or other structure, or tract of land, are declared by a court of competent jurisdiction to be invalid or ineffective in whole or in part, or to be inapplicable to any person or situation, the effect of such decision shall be limited to the provision or provisions which are expressly stated in the decision to be invalid or ineffective, or the zoning lot, building or other structure, or tract of land immediately involved in the controversy. All other provisions of this Zoning Law shall continue to be separately and fully effective, and the application of any such provision to other persons or situations shall not be affected.

SECTION 1006 REPEALER

The ordinance entitled "The Zoning Ordinance for the Town of Elba", adopted on September 27, 1966 together with all changes and amendments thereto, is hereby repealed and declared to be of no effect.

SECTION 1007 **EFFECTIVE DATE**

This Zoning Law was adopted by the Elba Town Board on April 14, 1988 and shall take effect upon its filing with the Secretary of State.

TOWN OF ELBA Zoning Schedule A									
ZONING DISTRICT	PERMITTED USES	MINIMUM LOT SIZE	MINIMUM FRONTAGE (FEET)	MINIMUM YARDS (FEET)			MAX.⁴ HEIGHT (FEET)	MAXIMUM LOT (%) COVERAGE	SITE PLAN REQ.
				FRONT	REAR	SIDE³			
A-R	SINGLE-FAMILY ²	40,000	150	75	50	25	35	20	NO
	TWO-FAMILY ²	40,000	150	75	50	25	35	20	NO
	MULTI-FAMILY ^{1,2}	+4,000	200	75	60	35	35	20	YES
	NON-RESIDENTIAL	80,000	200	75	60	50	35	15	YES⁵
R	SINGLE-FAMILY ²	20,000	100	50	35	15	35	30	NO
	TWO-FAMILY ²	30,000	150	50	35	20	35	30	NO
	MULTI-FAMILY^{1,2}	+4,000	200	60	40	35	35	30	YES
	NON-RESIDENTIAL	40,000	200	60	40	35	35	20	YES⁵
B	COMMERCIAL	40,000	200	75	35	40	35	30	YES
	INDUSTRIAL	100,000	300	75	40	50	35	40	YES
MHO	MOBILE HOME OVERLAY Refer to Section 504								
PUD	PLANNED UNIT DEVELOPMENT Refer to Section 507								
FPO	FLOOD PLAIN OVERLAY Refer to Section 506								
NOTES: ¹ Two Family minimum lot size plus 4,000 sq. ft. per family for each additional family over two. ² Residential accessory buildings and structures refer to Section 403. ³ The side yard at a corner lot adjacent to a street shall be considered as a front yard. ⁴ Building height limit is for those structures which are habitable or will be used for public assembly. ⁵ Agricultural uses (farms) shall be exempt except for animal waste storage facilities.									

Village of Oakfield Zoning Laws



**Amended through
September 14th, 2015**

First Adoption:
August 24, 1987

Amended:
September 28th, 1992 (Local Law #3 of 1992)
June 13th, 1994 (Local Law #3 of 1994)
June 5th, 1996 (Local Law #2 of 1996)
May 13th, 2002 (Local Law #2 of 2002)
March 10th, 2003 (Local Law #1 of 2003)
July 16th, 2007 (Local Law #1 of 2007)
April 27th, 2009 (Local Law #2 of 2009)
August 9, 2010 (Local Law #2-2010)
November 8, 2010 (Local Law #3-2010)
September 14th, 2015 (Local Law #1-2015)

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ARTICLE I
ENACTING CLAUSE, TITLE, PURPOSES, APPLICATION AND DEFINITIONS

SECTION 101 **ENACTING CLAUSE**

Pursuant to the authority conferred by Article 7 of the Village Law of the State of New York, the Village Board of the Village of Oakfield hereby adopts and enacts as follows.

SECTION 102 **TITLE**

This Local Law shall be known as the "Zoning Law of the Village of Oakfield".

SECTION 103 **PURPOSES**

The purposes of this Zoning Law and zoning districts as outlined on the zoning map are to provide for orderly growth and development, to lessen congestion in streets, to secure safety from fire, flood and other dangers, to provide adequate light and air, to prevent overcrowding, to avoid undue concentration of population, to conserve, enhance and perpetuate special historic sites, places and buildings, to facilitate the adequate provision of transportation, sewer, sewerage, schools, parks and other public requirements, and to promote the health, safety, morals or general welfare of the public.

The Zoning Law has been made with reasonable consideration, among other things, to the character of each district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land.

SECTION 104 **APPLICATION OF REGULATIONS**

No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purpose except in conformity with this Local Law, with the exception of the performance of necessary repairs which do not involve material alteration of structural features, and/or plumbing, electrical or heating/ventilation systems. Such necessary repairs shall include, for example, the replacement of siding and roofing materials. No building, structure or premises shall be used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind, that is noxious or offensive by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the comfort, peace, enjoyment, health or safety of the community, or tends to its disturbance, inconvenience, discomfort or annoyance.

In interpreting and applying this Local Law, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public health, safety, morals and general welfare. This Local Law shall not be deemed to affect in any

manner whatsoever any easements, covenants or other agreements between parties provided, however, that where this Local Law imposes a greater restriction upon the use of buildings or land, or upon the creation, erection, construction, establishment, moving, alterations or enlargement of buildings than are imposed by other ordinances, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, then the provisions of this Local Law shall prevail.

This Local Law shall not apply to uses which were legal, prior, existing, nonconforming uses as defined herein.

Nothing herein contained shall require any change in plans or construction of a building for which a building permit has been issued.

All buildings under construction at the time this Local Law is adopted shall conform to the Zoning Ordinance in effect at the time construction was commenced.

SECTION 105 **VALIDITY**

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any court to be invalid, or void, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 106 **NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE**

No provision of this Local Law shall be construed to repeal, modify or constitute an alternative to the New York State Uniform Fire Prevention and Building Code (hereafter referred to as the Uniform Code). Village residents and other individuals using these zoning regulations should make sure they refer to the Uniform Code in order to determine its' applicability to their specific project.

SECTION 107 **DEFINITIONS**

Except where specifically defined herein, all words used in this Zoning Law shall carry their customary meanings. Words used in the present tense shall include the future tense and the plural includes the singular; the word "lot" includes the word "plot", the word "buildings" includes the word "structure", the word "shall" is always mandatory; the words "occupied" or "used" shall be construed to mean and shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied".

The following terms are specifically defined. As used in this Zoning Law the following words shall have these meanings:

Accessory Apartment: A dwelling unit that has been added on to, or created within, an owner occupied one family dwelling.

Accessory Use: Use of buildings customarily incidental and subordinate to the principal use or buildings, and located on the same lot.

Adult Care: The provision of temporary or long term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29, and 31 of the Mental Hygiene Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

Adult Care Facility: A facility other than a Family Type Home, which provides adult care. For the purposes of this Zoning Law an Adult Care Facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult-care facility as defined by NYS Department of Social Services Chapter II, Subchapter D, Part 485.

Alley: Narrow supplementary thoroughfare for the public use of vehicles or pedestrians, affording access to abutting property.

Alteration: Structural change, rearrangement, change of location, addition to, or deletions from a building, other than repair and modification in building equipment systems (i.e. heating, cooling, electrical, etc.).

Animal Kennel: Building used for the housing, grooming, breeding, or training of 3 or more domestic animals, including dogs and cats, that operates for commercial purposes. This definition does not include Animal Shelters.

Arcade: Any establishment having three (3) or more video or pinball games.

Area Variance: The authorization by the Zoning Board of Appeals to grant variances from the area or dimensional requirements of this Zoning Law.

Bio Remediation: The use of a bio remediation process for the treatment of petroleum contaminated soils.

Board of Zoning Appeals: That board appointed by the Village Board, specifically to hear all appeals as provided by these regulations and other duties specifically set forth in this Local Law or as assigned to it by the Village Board.

Boarding House: Owner-occupied dwelling wherein more than two people are sheltered for profit.

Buffer Zone: A continuous strip of trees and/or shrubs not less than fifteen (15) feet in depth and not less than six (6) feet in height densely planted to provide a physical screen preventing visual access from one use to another and to reduce the escape and/or intrusion of litter, fumes, dust, smoke, noise or other noxious or objectionable elements. This requirement may be modified by the Planning Board through the site plan review process.

Building: A structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof, affording shelter to persons, animals or property.

Building Accessory: A building, subordinate to the principal building on the lot and used for purposes customarily incidental to that of said main building.

Building, Front Line Of: The line of that face of the building nearest the street line, or if there are street lines on two or more sides of the building, it is the line of that face of the building frontage on that street line where the principal entrance is located. This face includes covered porches whether enclosed or unenclosed, but does not include steps.

Building, Height Of: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof.

Building, Temporary: A "temporary building" or "temporary structure" is one erected, constructed or placed upon the premises, to exist there for a brief or temporary duration of time, not exceeding six months. All other buildings or structures shall be deemed and considered as permanent for the purposes of this Local Law.

Certificate of Compliance: A certificate issued by the zoning officer upon completion of construction, alteration or change in occupancy or use of a building or land. Said certificate shall acknowledge compliance with all the requirements of this Zoning Law only and such adjustment thereto granted by the Board of Appeals and/or the Planning Board.

Club Membership: A group of persons organized in accordance with the Not-For-Profit Corporation Law for social and/or recreational purposes (example - fish and game clubs).

Child Day Care: Shall mean care for a child on a regular basis provided away from the child's residence for less than 24 hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity of the parents or stepparents of such child.

Child day care does not refer to care provided in:

- (1) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;
- (2) A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation;
- (3) A facility providing day services under an operating certificate issued by the department;
- (4) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or
- (5) A kindergarten, pre-kindergarten or nursery school for children three years of age or older, or a program for school-age children three years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

Child Day Care Center: Shall mean a program or facility in which child day care is provided on a regular basis to more than six children for more than three hours per day per child for compensation or otherwise, except those programs operating as a group family day care home, a family day care home, or school-age child care program, as defined in this Section.

Commercial Communication Tower: A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

Commercial School: Commercially operated schools such as providing education and/or instruction (see also definition of “School”) including, but not limited to driving schools, beauty schools, dance studios, cooking lessons, music lessons, martial arts academy, pre-school programs, aerobic classes, trade schools and learning/tutorial centers.

Community Center: Any meeting hall, place of assembly, museum, art gallery or library, not operated primarily for profit.

Community Residence: A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than fourteen (14) individuals and provides client supervision on a 24-hour basis. For the purposes of this Local Law an approved community residence as defined herein is considered a one-family dwelling.

Contractor's Yard: Businesses engaged in construction of buildings and structures, remodeling and repairs to existing buildings and structures, electrical services, plumbing services, excavation and grading services, roofing and siding services, masonry services, paving services, well drilling, sewage disposal system installation and services, and other similar services.

Convalescent Home, Nursing Home or Extended Care Facility: See Hospital.

Coverage: That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

Development: Any man-made change to improve or unimproved real estate, including, but not limited to, buildings or other structures, utilities, mining, dredging, filling, grading, paving, excavation, or drilling operations, which would lead to increased flood damage, excluding normal maintenance to farm roads.

Disposal Transfer Station: A solid waste management facility, other than a recyclables handling and recovery facility exclusively handling non-putrescible recyclables, that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

Domestic Animal: Animals commonly kept as household pets including, but not limited to: dogs, cats, caged birds, rabbits, guinea pigs, non-poisonous snakes, fish, turtles, frogs, mice, and ferrets. Species of animals that are considered harmful or poisonous to humans shall not be considered domestic animals for the purposes of this Zoning Law. Questions as to whether any specific animal will be considered a “domestic animal” will be decided by the Village Zoning Board of Appeals as provided for in Section 207 of this Zoning Law.

Drive-In Service: Building or use where a product is sold to, or a service performed for customers while they are in or near their motor vehicle including, but not limited to, fast food restaurants, drive-up bank tellers, film processing service booths, etc.

Dwelling: A detached building designed or used exclusively as living quarters for one or more families; the term shall not be deemed to include automobile court, motel, boarding or rooming house, mobile home, recreation vehicle, tourist home or tent.

Dwelling, One Family: A dwelling containing one dwelling unit only.

Dwelling, Two Family: A dwelling containing two dwelling units only.

Dwelling, Multi-Family: A dwelling containing three or more dwelling units.

Dwelling Unit: A building, or portion thereof, providing complete housekeeping facilities for one family.

Educational Institution, Private: Any non-public school or other organization or institution conducting a regularly scheduled curriculum of study similar to that of the public schools and operated under the Education Law of New York State and recognized by the appropriate educational authorities.

Factory - Manufactured Home (Modular Home): A factory-manufactured home incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site. Such home shall be constructed and installed in accordance with the requirements of Subchapter B of the State Fire Prevention and Building Code and shall bear an Insignia of Approval issued by the State Fire Prevention and Building Code Council. Factory-manufactured homes shall be deemed to be one or two-family or multiple dwellings.

Family: One or more persons who live together in one dwelling unit and maintain a common household. May consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

Family Day Care Home: Shall mean a family home that is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, as provided for and registered by the NYS Department of State. The name, description or form of the entity that operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered

Family-Type Home: Adult care operated and provided for the purpose of providing long-term residential care, room, board and personal care, and/or supervision to four (4) or fewer adult persons unrelated to the operator. For the purposes of this Zoning Law a family-type home shall be considered a home occupation.

Farm Animal: Animals other than those customarily kept as domestic household pets.

Floor Area of a Building: The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding basement or cellar floor areas and not devoted to habitable use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Floor, Lowest: Lowest level including basement, cellar, crawl space, or garage of lowest enclosed area.

Frontage: The extent of a building or a lot along one public street as defined herein.

Garage, Private: An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit herein nor space therein for more than one car is leased to a nonresident of the premises.

Garage, Public: Any garage, other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, adjusting or equipping of automobiles or other motor vehicles.

Gasoline Station: Any building or land or any part thereof used for sale of motor fuel, oil and motor vehicle accessories, and which may include facilities for lubricating, washing or servicing vehicles, but not including painting or body repairs.

Gasoline Station-Market: A gasoline station which provides one or more additional commercial services such as a restaurant, dairy bar, beverage market, or food market or such a commercial use which also provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

Group Family Day Care Home: Shall mean a family home that is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise, as provided for and registered by the NYS Department of State. The name, description or form of the entity that operates a group family day care home does not affect its status as a group family day care home. For the purposes of this Zoning Law, a group family day care home shall be considered an accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered.

Habitable Floor Area: Any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation or combination thereof. A floor used only for storage purposes is not "habitable".

Home Occupation: An occupation or profession which: (A) Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, and (B) Is carried on by a member of the immediate family residing in the dwelling unit, and (C) Is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and (D) Which conforms to the following additional conditions:

(1) The occupation or profession is carried on wholly within the principal building or within a building or other structure accessory thereto.

(2) No more than one (1) person outside the immediate family is employed in the home occupation.

(3) There is no exterior display, no freestanding sign, no attached exterior sign that is larger than two (2) square feet, no exterior storage of materials and no exterior indication of the home occupation or variations of the residential character of the principal building.

(4) No offensive noise, vibration, smoke, dust, odors, heat, or glare is produced, nor does the home occupation result in:

a. Dissemination of noise, vibration, odor, dust, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

b. Hazard or fire explosion or other physical hazard to any person, building or vegetation.

c. Radiation or interference with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

(5) Adequate parking is provided as set forth in Section 501.

In particular, a home occupation may include, but is not limited to, the following: art studio, barber shop and beauty parlors (when limited to two work stations), cook, day nursing, draftsman, dress maker, electrical/radio/television repair, family-type home, laundering, musician, photographer, professional office of a physician, dentist, lawyer, engineer, architect or accountant, upholsterer, teaching or tutoring or real estate offices, within a dwelling occupied by the same.

However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and kennels, restaurants.

Garage sales, yard sales and other similar sales conducted for cumulative total of more than 15 days, either consecutive or non-consecutive, within a calendar year, shall be considered a home occupation.

Hospital: Hospital, sanitarium, clinic, rest home, nursing home, convalescent home, home for aged, and any place for diagnosis and treatment of human ailments, except a doctor's office.

Hospital, Animal: An establishment for the medical and/or surgical care of sick or injured animals.

Hotel/Motel: A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room may be provided within the building or in an accessory building.

Junk: Shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, scrapped, ruined, dismantled or wrecked motor vehicles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material, tires, lumber, pallets and other wood debris.

Junkyard: Outside storage or deposit, whether in connection with another business or not, where one (1) or more unregistered, old, or secondhand vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts there from, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles and/or material defined as junk by this Zoning Law which, taken together equal in volume one hundred (100) cubic feet. A junkyard shall include any land or structure used for collecting, storage, sale or disposal of junk, scrap metal, or other discarded materials. Not included is a single motor vehicle intended, maintained and used on a seasonal basis (i.e., motorcycles and winter or summer cars) provided such vehicle is intact and has a NYS Motor Vehicle Inspection sticker which was issued within the previous 12 months or a recreational car (i.e., a race car), provided such vehicle is stored in other than the front yard.

Laundromat: A business premise equipped with individual clothes washing machines for the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment house or an apartment hotel.

Light Industrial: The processing, fabrication, assembly or packaging of previously prepared or refined materials and/or service, repair or refinishing applications which do not involve the use of high hazard (see NYS Uniform Code Section 703.4) materials or processes, or result in the generation of noxious or annoying fumes, odors, noise or other disturbances.

Lot: Land occupied or which may be occupied by a building and its accessory uses, together with required open space, having not less than minimum area, width and depth required for a lot in the district in which such land is situated; and having frontage on a street, or other means of access as may be determined by the Planning Board to be adequate as a condition for issuance of a zoning permit.

Lot Area: Total area within property lines.

Lot Corner: A lot located at the junction of and fronting on two or more intersecting streets (Also see definition "Lot Line Front").

Lot Depth: Mean horizontal distance from street right-of-way line of the lot to its opposite rear line measured at right angles to building line.

Lot Width: The horizontal distance between the side lot lines, measured at right angles to the lot depth.

Lot Lines: The property lines bounding a lot as defined herein.

Lot Line, Front: In the case of a lot abutting upon only one street, the line separating the lot from the street right-of-way; in the case of a lot abutting more than one street, each street line shall be considered a front lot line.

Lot Line, Rear: The lot line which is generally opposite the front lot line, if the rear lot line is less than ten (10) feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line, not less than ten (10) feet long, lying wholly within the lot and farthest from the front lot line.

Lot Line, Side: The property line or lines extending from the front lot line to the rear lot line.

Mobile Home: A structure, whether occupied or not, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. For the purpose of this Local Law, an unoccupied mobile home shall be considered the same as an occupied unit.

Mobile Home Park: A parcel which has been improved for the rental or lease of two or more lots and the provision of services for mobile homes for nontransient residential use.

Motel: See "Hotel".

Motor Vehicle Repair Shop: Any building or structure used for the repair or servicing of motor vehicles or small gas-powered engines for profit or as a part of a commercial operation.

Nonconforming Use: A use of a building or of land that does not conform to the regulations as to use and area in the district in which it is situated, which was lawful under any applicable preceding ordinances or laws at the time the use was established, or if established before 1964 was lawful before such date and in either event has not been extended after becoming a nonconforming use or otherwise been rendered an illegal use pursuant to provisions of any prior law or ordinance.

Nursing Home or Convalescent Home: See "Hospital".

Owner: An individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

Outdoor Solid Fuel Burning Device: A solid fuel burning device designed and intended for installation outside of the primary building on a lot, and used to produce heat for transfer to the primary or accessory building(s) on such lot.

Parking Space: An off-street space available for the parking of one motor vehicle on a transient basis and having a width of ten (10) feet, and an area of not less than two hundred (200) square feet, exclusive of passageways and driveways, and having direct usable access to a street.

Pond: A body of water (other than a swimming pool or landscaping pond) created through construction or other similar method, having a depth of two (2) or more feet. A small pond used for landscaping having a depth not exceeding 28 inches and a surface not exceeding 150 square feet, shall not require a zoning permit.

Professional Office: An office used by a duly New York State licensed/registered architect, attorney, dentist, certified counselor, certified public accountant (CPA), chiropractor, engineer, insurance broker or salesman, message therapist, optometrist, physician or surgeon, physical therapist, psychologist, real estate broker or salesperson, surveyor, teacher or veterinarian.

Recreation, Indoor: Includes, but is not limited to, bowling alley, theater, table tennis, and pool hall, skating rink, gymnasium, swimming pool, hobby workshop, arcade, and similar places of indoor recreation.

Recreation, Outdoor: Includes, but is not limited to, golf courses, golf driving range, trap, skeet, and archery range, swimming pool, skating rink, riding stable, tennis court, recreation stadium, skiing facility, hunting preserve, and similar places of outdoor recreation.

Recreation Vehicle: A vehicular type portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreation, camping and travel use and including, but not limited to, travel trailers, truck campers, camping trailers and self-propelled motor homes.

Recyclables Handling and Recovery Facility: A solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected.

Religious Institution: Church, temple, parish house, convent, seminary and retreat house.

Retail Store/Service: Enclosed store for sale of retail goods and services including, but not limited to, the following: barber, beauty, dry clean, personal service shop, department store and restaurant/tavern. Retail store/service shall not be interpreted to include the following: drive-up service, freestanding retail stand, gasoline station, gasoline station-market, motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service.

School: Parochial, private and public school, college, university and accessory uses operated under the Education Law of the State of New York and recognized by the appropriate educational authorities; and shall exclude commercially operated schools of beauty, culture, business, dancing, driving, music and similar establishment.

School-age Child Care Program: Shall mean a program or facility providing school-age child care (care provided on a regular basis to more than six school-age children under 13 years of age or who are incapable of caring for themselves) during the school year to an enrolled group of children before and/or after the period children enrolled in such program are ordinarily in school or during school lunch periods and may also include such care during school holidays and those periods of year when school is not in session, including summer vacation.

Self-Service Storage Facility: A building or group of buildings divided into separate units or compartments used to meet the temporary storage needs of businesses and residential users. A warehouse operated for a specific commercial or industrial establishment shall not be considered a self storage facility.

Sign: Any material, structure or device, or part thereof, composed of lettered or pictorial matter which is located out-of-doors, or on the exterior of any building, or indoors as a window sign, displaying an advertisement, announcement, notice or name, and shall include any declaration, demonstration, display, representation, illustration or insignia used to advertise or promote the interests of any persons or business or cause when such is placed in view of the general public.

(1) Awning Sign: Any visual message incorporated into an awning attached to a building.

(2) Copy-Change Sign: A sign on which the visual message may be periodically changed.

(3) Directional Sign: A sign limited to providing information on the location of an activity, business or event.

(4) Freestanding Sign: Any sign not attached or part of any building but separate and permanently affixed by any other means, in or upon the ground. Included are pole signs, pylon signs and masonry wall-type signs.

(5) Illuminated Sign: Any sign illuminated by electricity, gas or other artificial light either from the interior or exterior of the sign, and which includes reflective and phosphorescent light.

(6) Off-Premise Sign: A sign unrelated to a business or a profession conducted, or to a commodity or service sold or offered, upon the premises where such sign is located.

(7) Portable Sign: A sign, whether on its own trailer, wheels, or otherwise, designed to be movable and not structurally attached to the ground, a building, a structure or another sign.

(8) Projecting Sign: A sign which is attached to the building wall or structure and which extends horizontally more than fifteen (15) inches from the plane of such wall, or a sign which is perpendicular to the face of such wall or structure.

(9) Representational Sign: A three-dimensional sign built so as to physically represent the object advertised.

(10) Temporary Sign: A sign related to a single activity or event having a duration of no more than thirty (30) days.

(11) Wall Sign: A sign which is painted on or attached to the outside wall of a building with the face of the sign in the plane parallel to such wall, and not extending more than fifteen (15) inches from the face of such wall.

(12) Window Sign: A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material, or located inside within four feet of the window, but not including graphics in connection with customary window display of products.

Sign Directory: A listing of two or more business enterprises, consisting of a matrix and sign components.

Sign Structure: The supports, uprights, bracing and framework for the sign. In the case of a sign structure consisting of two (2) or more sides where the angle formed between any two of the sides or the projections thereof exceeds thirty (30) degrees, each side shall be considered a separate sign structure.

Sign Surface Area: The entire area within a single, continuous perimeter enclosing all elements which form an integral part of the sign. The structure supporting a sign shall be excluded unless the structure is designed in a way to form an integral background for the display.

Site Plan: A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

Specially Permitted Use: A specifically designated use that would not be appropriate generally without restriction in a zoning district, but which, if controlled as to number, area, location, relation to the neighborhood, or otherwise, in the opinion of the Planning Board, promotes the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity and/or the general welfare. Special Use Permits are approved by the Planning Board and then issued by the Zoning Enforcement Officer once the conditions or other requirements are met and necessary fees paid.

Special Use: A specifically designed use that would not be appropriate generally or without restrictions throughout the zoning district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare.

Street: Public way for vehicular traffic which affords principal means of access to abutting properties.

Street Line: Right-of-way line of a street as dedicated by a deed of record. If no such deed exists, then by any other record establishing such right-of-way line of a street.

Structure: A combination of materials to form a construction for use, occupancy or ornamentation, including, but not limited to, buildings, mobile homes, towers, wind energy conservation systems (WECS), antennas, satellite dishes, or gas or liquid storage tanks, that are principally above ground.

Substantial Improvement: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred.

For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (a) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Swimming Pool: A structure intended for bathing, swimming or diving purposes, made of concrete, masonry, metal or other impervious materials, provided with a re-circulating and/or controlled water supply, of one thousand (1,000) gallons or more and a depth of greater than two (2) feet.

Temporary Use: An activity conducted for a specified limited period of time that may not otherwise be permitted by the provisions of this Zoning Law. Examples of such uses are buildings incidental to new construction that are removed after the completion of the construction work. Temporary Use Permits are approved by the Planning Board and then issued by the Zoning Enforcement Officer once the conditions or other requirements are met and necessary fees paid.

Tourist Home: Owner-occupied dwelling in which overnight accommodation, with or without meals, is provided for transient guests for profit. Term includes "bed and breakfast" establishments.

Trailer: Any vehicle which may be towed and used for carrying or storing goods, equipment, machinery, construction materials, snowmobiles, boats, all terrain cycles (ATC), motor vehicles or as a site office.

Use Variance: The authorization by the Zoning Board of Appeals for use of land for a purpose which otherwise would not be allowed or would be prohibited by this Zoning Law.

Utility, Public: Any person, firm, corporation or governmental subdivision, duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television.

Veterinary Facility: Any structure or premises in which animals are kept, boarded, bred or trained for commercial gain.

Yard: An unoccupied space, open to the sky, on the same lot with the building and structure.

Yard, Front: An open unoccupied space on the same lot with the building, situated between the front line of the building and the street line and extending the full width of the lot.

Yard, Rear: The area of the lot extending across the entire rear of the lot, bounded by the real property lot line and the rear building line and between the two side lot lines.

Yard, Side: The area between the side building line and the related side lot line and between the front yard and the rear yard.

ARTICLE II

ADMINISTRATION

SECTION 201 **ENFORCEMENT**

The duty of administering and enforcing the provisions of this Local Law is hereby conferred upon the Zoning Enforcement Officer, who shall have such powers as are conferred upon him by this Local Law and as reasonably may be implied there from. He shall be appointed by the Village Board and shall receive compensation as the Village Board shall determine. The Zoning Enforcement Officer shall have such other and further duties as may be assigned by the Village Board pursuant to this Local Law or otherwise.

SECTION 202 **DUTIES OF THE ZONING ENFORCEMENT OFFICER**

A. Inspection and Review

It shall be the duty of the Zoning Enforcement Officer, or his duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this Local Law.

The Zoning Enforcement Officer and all his duly authorized assistants shall be entitled to enter any building or premises (which includes the internal premises such as basement, etc.) for the purpose of inspection, observation, measurement, testing and records examination in performing his duties set forth in this Local Law, and for the further purpose of ascertaining whether the provisions of this Local Law are being met and all requirements are being complied with. Persons or occupants of premises to be entered shall allow the Zoning Enforcement Officer and/or his assistants ready access at all reasonable times to all parts of the premises to carry out the actions specified herein. Where any owner or occupant has security measures in force which would require proper identification and clearance before entry into their premises, the owner or occupant shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the Village will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

The Zoning Enforcement Officer or any of his duly authorized assistants seeking to enter private property pursuant to the provisions of this Local Law may enter such property on the consent of the owner or occupant. In the event such consent is denied or if said Zoning Enforcement Officer or assistant determines that it is preferable to obtain a search warrant without first seeking such consent, said Zoning Enforcement Officer or assistant shall be entitled to obtain a search warrant pursuant to the applicable provisions of law from a court

of competent jurisdiction to compel the owner or occupant to permit immediate entry and inspection.

Notwithstanding the provisions contained in the immediately preceding paragraph, in the event an emergency situation exists, said Zoning Enforcement Officer and/or assistants shall be entitled to immediately enter upon any private property for the purposes set forth in this Local Law either with or without a search warrant.

B. Violations and Written Orders

Where the Zoning Enforcement Officer, in the course of his duties, determines that any plans, buildings or premises are in violation of the provisions of this Local Law, he shall order the responsible party in writing to remedy such conditions. Said written order shall comply with the provisions of this Local Law.

C. Revocation of Certificate of Compliance

On the serving of notice and failure to comply with the time limits specified in such notice by the Zoning Enforcement Officer to the owner of any violation of any of the provisions of this Local Law, any Certificate of Compliance previously issued for such buildings or use shall be held null and void. A new Certificate of Compliance shall be required for any further use of such building or premises.

D. Records

The Zoning Enforcement Officer shall maintain a permanent record of all matters considered and all action taken by him. Such records shall form a part of the records of his office and shall be available for the use of the Village Board and other officials of the Village. The records to be maintained shall include at least the following:

(1) Application File

An individual permanent file for each application for a permit provided for by this Local Law shall be established at the time the application is made. Said file shall contain one (1) copy of the application and all supporting documents and plans; notations regarding pertinent dates and fees, and the like; as appropriate, one (1) copy of the resolution of the Planning Board and/or Zoning Board of Appeals in acting on the application if such action is required; and the date the permit applied for was issued or denied by the Zoning Enforcement Officer as well as a copy of any permit issued by the Zoning Enforcement Officer and any correspondence sent or received by the Zoning Enforcement Officer regarding such application.

(2) Monthly Report

The Zoning Enforcement Officer shall prepare a monthly report for the Village Board. Said report shall cite all actions taken by the Zoning Enforcement Officer, including all referrals made by him; all permits and certificates issued and denied; and all complaints of violations received and all violations found by him, and the action taken by him consequent thereto. A copy of this monthly report shall also be transmitted by the Zoning Enforcement Officer to the Tax Assessor, Planning Board and Board of Appeals at the same time it is transmitted to the Village Board.

SECTION 203 **CERTIFICATES AND PERMITS**

The certificates and permits enumerated herein are hereby established for the equitable enforcement and administration of the provisions of this Local Law.

A. Zoning Permit

The Zoning Enforcement Officer is hereby empowered to issue a zoning permit for any plans regarding the construction or alteration of any building or structures or part of any

building, or the change in the use of any land or building or part thereof, where he shall determine that such plans are not in violation of the provisions of this Local Law.

B. Temporary Use Permit

Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue a temporary use permit. A temporary use permit shall only be effective for a period not to exceed twelve (12) months; such permit may be extended by the Zoning Enforcement Officer not more than once for an additional period not to exceed six (6) months.

C. Special Use Permit

Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue any special use permit provided for by this Local Law.

D. Certificate of Compliance

The Zoning Enforcement Officer is hereby empowered to issue a certificate of compliance which shall certify that all provisions of this Local Law have been complied with in respect to the location and use of the building, structure or premises in question.

SECTION 204 **APPLICATION PROCEDURES**

A. Application

Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be built upon, the size and location of all buildings or structures proposed as well as those that shall remain, the intended use of each building or structure, and any such other information with regard to the lot and neighboring lots, buildings and/or structures as the Zoning Enforcement Officer may in his discretion deem necessary to determine and provide for the enforcement of this Local Law. Applications, together, with a layout sketch shall be submitted in triplicate. The Zoning Enforcement Officer shall carefully consider the application and supporting documents for compliance with this Local Law and either issue or deny the zoning permit applied for. When the application is for any nonresidential use within the Village the Zoning Enforcement Officer shall, prior to the issuance of any permit, refer one (1) copy of such plans, drawings and statements to the Planning Board for site plan review (See Article IV).

B. Issuance of Zoning Permit

The Zoning Enforcement Officer shall issue a zoning permit only after the site plan, if required, has been approved by the Planning Board and all required variances and special use permits have been obtained.

C. Installation of Foundation

The Zoning Enforcement Officer shall be notified that the site is prepared for installation of the foundation of a structure, and shall inspect the site to check the location of the structure.

D. Initiation of Construction

If a zoning permit is not obtained by the applicant within ninety days after final approval, such approval shall be void.

E. Completion of Construction

A permit shall be void if construction is not substantially completed within a period of one year from the date of said permit. The Zoning Enforcement Officer may issue a six-month extension of a permit for good cause shown. Two such extensions of a permit will be allowed.

F. Location of Permit

The zoning permit shall be located in a place readily visible to the public during construction activities.

SECTION 205 **FEES FOR PERMITS, AMENDMENTS, VARIANCES, AND SPECIAL USE PERMITS**

Fees may be charged for permits issued, and processing of applications for amendments, variances, and special use permits. The fee shall be set by resolution of the Village Board and may be changed from time to time in the same manner.

SECTION 206 **CERTIFICATES OF COMPLIANCE**

No land shall be used or occupied and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of compliance has been issued by the Zoning Enforcement Officer in accordance with the provisions of this Local Law.

SECTION 207 **BOARD OF APPEALS**

A. Organization

The Village Board of Trustees shall appoint a five member Board of Appeals and shall designate the chairperson thereof. In the absence of a chairperson the Board of Appeals may designate a member to serve as acting chairperson. Membership and terms of office for the Board of Appeals shall be as set forth in Village Law.

B. Meetings, Minutes and Records

Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals 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. Filing Requirements

Every rule, regulation, amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in 5 business days in the office of the Village Clerk and shall be a public record.

D. Hearing Appeals

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the Zoning Enforcement Officer or other administrative official. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer, or to grant a use or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Village.

E. Time of Appeal

Such appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Village Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer or Village Clerk. The cost of sending or publishing any notice relating to such appeal shall be born by the appealing party and shall be paid to the Village Clerk prior to the hearing of such appeal.

F. Hearing An Appeal

A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal. Such public hearing shall be advertised by publication in a paper of general circulation within the Village of a notice of such hearing at least five days prior to the date thereof. When required by the provisions of Section 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.

When considering an application for a use variance, at least thirty (30) days before the date of the public hearing, unless such time limit is waived by the Planning Board, the secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing. The Planning Board shall inform the Zoning Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify a recommendation for approval of the application.

The Zoning Board of Appeals shall send, by regular mail, a copy of the notice of hearing to all owners of property situated within (200) feet of the property which is the subject of the application at least seven (7) days before the date of the hearing.

G. Time of Decision

The Zoning Board of Appeals shall decide upon an appeal within 62 days after the conduct of the public hearing.

H. Filing of Decision and Notice

The decision of the Zoning Board of Appeals on an appeal shall be filed in the office of the Village Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

I. Compliance With State Environmental Quality Review Act (SEQR)

The Zoning Board of Appeals shall comply with the provisions of SEQR under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of NYCRR. The SEQR process may extend the time limits set forth in this Article, specifically those set forth in Section 307.

J. Permitted Action by the Zoning Board of Appeals

1. Interpretations, Requirements, Decision and Determinations

The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determinations as in its opinion ought to have been made.

2. Use Variance

The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this Zoning Law.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that:

- (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (b) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (c) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (d) That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area Variances

The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of the Zoning Law.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (c) Whether the requested area variance is substantial;
- (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
- (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of Conditions

The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

K. Rehearing

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reviewed may be made by any members of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

L. Solar Access

Pursuant to Chapter 74-2 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Local Law the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

SECTION 208 **PLANNING BOARD**

A. Organization

The Planning Board shall consist of five members including a chairman and a deputy chairman all of whom shall be appointed by the Mayor subject to the approval of the Village Board whose term shall be governed by the applicable provisions of New York Village Law. If the Mayor fails to designate a chairman, the Planning Board may then itself select one.

B. Powers and Duties

1. Site Plan Review

Review of site plans as set forth in NYS Village Law Section 7-725-a and this Zoning Law as set forth in Subsection C of this Section for any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings, or for the installation of projecting horizontal features and signs to an existing commercial building or structure in the Commercial (C-2) District that conform to the rules and regulations set forth in this Zoning Law.

2. Special Use Permits

Granting of special use permits based upon the criteria set forth in paragraph G of this Section.

3. Review Use Variances

Review use variance applications referred to the Planning Board as set forth in Section 207 and make a recommendation to the Zoning Board of Appeals.

4. Temporary Uses and Structures

Grant permits for temporary uses and structures.

- (a) The Planning Board may direct the Zoning Enforcement Officer to issue a temporary use permit for a period of time not exceeding twelve (12) months, for incidental nonconforming uses and structures as follows:
 - (1) Temporary uses incidental to a construction project.
 - (2) Temporary real estate sales office incidental to a subdivision.
 - (3) Other similar temporary incidental uses which:

-Do not have a detrimental effect upon the lawful use of land and activities normally permitted in the district in question, and

-Contribute materially to the welfare and well-being of the Village.

- (b) Temporary use permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.
- (c) Temporary use permits may be reissued only once for an additional consecutive period not exceeding six (6) months.

C. Site Plan Review

The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove a site plan in connection with any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings, or for the installation of projecting horizontal features and signs to an existing building or structure in the Commercial (C-2) District that conform to the rules and regulations set forth in this Zoning Law.

1. Notice and Public Hearing

The Planning Board may at its discretion hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for site plan review and public notice thereof shall be published in a newspaper of general circulation in the Village at least five (5) days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least ten (10) days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred (200) feet of the property affected at least ten (10) days before the date of the hearing. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

2. Submission of Site Plan and Data

The developer shall submit to the Village Clerk ten (10) copies of a site plan and supporting data in a form satisfactory to the Planning Board, including, but not limited to, the following information presented in graphic form and accompanied by a written text.

- (a) Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, rights-of-way, zoning and ownership of surrounding property.
- (b) Layout sketch showing proposed lots, blocks, building locations and land use area.
- (c) Traffic circulation, parking and loading spaces, and pedestrian walks.
- (d) Landscaping plans including site grading, landscape design, open space and buffer zone.
- (e) Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.
- (f) Preliminary engineering plans, street improvements, storm drainage, water supply and sanitary sewer facilities and fire protection.

- (g) Engineering feasibility study of any anticipated problem which may arise from the proposed development, as required by the Planning Board.
- (h) Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
- (i) Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
- (j) Together with any other information requested by the Planning Board.

3. Site Plan Review Criteria

The Village Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:

- (a) Harmonious relationship between proposed uses and existing adjacent uses.
- (b) Maximum safety of vehicular circulation between the site and street including emergency vehicle access.
- (c) Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.
- (d) Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.
- (e) Adequacy of municipal facilities to serve the proposal including streets, water supply and wastewater treatment systems, storm water control systems, and fire protection.

4. Area Variances

Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one (1) or more features which do not comply with the zoning regulations, applications may be made to the Zoning Board of Appeals for an area variance pursuant to NYS Village Law Section 7-712-b, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

5. Modifications and Conditions

The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making the changes or additions.

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the village.

6. Performance Bond or Letter of Credit as a Condition of Site Plan

Approval

The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with

accepted plans. Any such bond must be in a form acceptable to the Village Attorney for an amount approved by the Village Board.

7. Performance Standards

In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may in its discretion reject any uses if it determines that insufficient evidence has been submitted to show compliance with these environmental standards. However, final responsibility for compliance with all environmental laws and regulations lies with the applicant.

8. Decision

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Article are submitted to the Village Clerk. Such time may be extended by mutual consent of the Planning Board and the developer. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Village Clerk within five (5) working days and a copy mailed to the applicant by regular mail.

9. Changes and Revisions

Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

D. Required Plan for Special Use Permit

Four sets of the application and site plan shall be submitted to the Zoning Enforcement Officer to portray clearly the intentions of the applicant. These documents shall become part of the record. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this Local Law.

E. Special Use Permit

A special use permit may be issued for a use not usually and ordinarily permitted within a district when such use is listed as a use permitted with a special use permit within that specific district. Such special use permit may be issued only when authorized by the Planning Board after considering those factors set forth herein, provided that such use is not inconsistent with the public convenience and welfare. Such use shall be subject to conditions and safeguards which may be imposed by the Planning Board to protect the use of neighboring properties. Such special use permit shall not be granted if it substantially changes the characteristics of the neighborhood in which the subject property is located. The Zoning Enforcement Officer, at least yearly, shall review the use of the property to determine compliance with any conditions which have been prescribed by the Planning Board in issuing such special use permit. Violation of said conditions shall require a review

of the permit by the Planning Board which shall have the discretion to revoke said special use permit.

F. Standards Applicable for all Special Use Permits

The Planning Board may issue a special use permit only after it has found that all the following standards and conditions have been satisfied.

1. The location and size of the use and all structures, the nature and intensity of the operations involved, the size of the site in relation to the use, and the location of the site with respect to streets giving access, are such that the use will be in harmony with the orderly development of the district.
2. The location, nature and height of buildings, walls, and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.
3. The operations of any special use shall not be more objectionable to nearby properties than would be operations of any permitted use.
4. No radio or television antenna or tower, water or cooling tower, oil or gas holder, elevator bulkhead, or similar structure may be erected in excess of district height limits unless an area variance has been issued therefore.
5. No special use permit shall be issued for a use on a property where there is an existing violation of this Local Law.

SECTION 209 **VIOLATION AND PENALTY**

A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any land, building or structure or part thereof in a manner not permitted by an approved zoning permit or certificate of compliance.

B. Any person violating any provision of this Local Law shall be served by the Zoning Enforcement Officer with a written Notice of Violation and Correction Order stating the nature of the violation found to exist, the remedy ordered and providing a time limit for the satisfactory correction thereof. Unless a different time limit is provided by this Local Law for the correction of any violation, which alternate time limit shall prevail, said Notice of Violation and Correction Order shall provide a time limit of thirty (30) days for the satisfactory correction of the violation. The Notice of Violation shall further inform the violator of his right to appeal the Zoning Enforcement Officer's interpretation to the Zoning Board of Appeals.

Service of the Notice of Violation/Correction Order shall be sufficient if directed to the owner, operator or occupant of a residence, commercial or industrial facility, as the case may be, violating this Local Law. Service of said Notice of Violation/Correction Order shall be made personally upon the alleged violator, if said violator can be found with due diligence; otherwise, service of said Notice of Violation/Correction Order shall be sufficient if service is completed by delivering the same to a person of suitable age or discretion at the actual residence, commercial or industrial facility at which said violation is occurring and by mailing the Notice to the person to be served at his last known residence or business

address; or, where service cannot otherwise be made with due diligence, by affixing said Notice of Violation/Correction Order to the door of the residence, commercial or industrial facility at which said violation is occurring and by mailing said Notice to such person at his last known residence or place of business. It shall be unlawful for any person to fail to comply with a written Notice of Violation/Correction Order of the Zoning Enforcement Officer within the time fixed for compliance therewith.

C. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, repair or use of any land, building or structure to violate any of the applicable provisions of this Local Law, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.

D. Any violation of this section and/or the Zoning Local Law of the Village of Oakfield shall be punishable by a fine of not greater than three hundred and fifty (\$350) dollars. Each and every week, (7 days), such violation continues shall be deemed a separate and distinct violation.

E. The Zoning Enforcement Officer may, with permission of the Village Board, institute court action to enforce the provisions of this Local Law, or may refer the matter to the Village Board for its action.

F. Any person violating any provision of this Local Law shall be liable to the Village for any and all losses, damages and expenses incurred by the Village or for which the Village may be held liable as a result of said violation. The Village or Zoning Enforcement Officer shall have the right to obtain reimbursement for any loss, damage or expense incurred by it as a result of any violation of this Local Law including, but not limited to, attorney's fees and court costs incurred as a result of any legal proceedings brought hereunder.

Nothing contained in this Local Law shall prevent the Village or Zoning Enforcement Officer, either alone or in conjunction with the foregoing penalties from maintaining an action or proceeding in the name of the Village or Zoning Enforcement Officer in any court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any provision of this Local Law.

SECTION 210 **COMPLAINT OF VIOLATION**

Whenever a violation of this Local Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, signed, and shall be filed with the Zoning Enforcement Officer who shall properly record such complaint and immediately investigate it. Where the Zoning Enforcement Officer finds such violation, he shall take appropriate action and/or submit the results of his investigation in writing to the Village Board if action by them is required.

SECTION 211 **PROCEDURE FOR AMENDMENT**

A. The Village Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Local Law after official notice has been given and a public hearing has been held by the Village Board as required by law.

B. Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner and filed in triplicate, accompanied by the required fee.

C. Every such proposed amendment shall be referred to the Planning Board for a report prior to any public hearing.

D. Prior to adoption by the Village Board, a proposed amendment may, in the proper case, have to be referred to the County Planning Board pursuant to law.

E. In case of a protest against such change signed by the owners of twenty per centum or more, either of the area of the land included in such proposed change, or of that immediately adjacent extending one hundred (100) feet there from or of that directly opposite thereto, extending one hundred feet, from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the Village Board.

SECTION 212 REMEDIES

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is divided into lots, blocks or sites in violation of this act, or of any local law or other regulation made under authority conferred thereby, the proper local authorities of the village, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. All issues in any action or proceeding for any of the purposes herein stated shall have preference over all other civil actions and proceedings.

SECTION 213 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above mentioned activities.

B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Village is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified on the following page:

- Zoning text amendmentVillage Board
- Zoning district amendmentVillage Board
- Special permit.....Planning Board
- Zoning permit (if necessary)Planning Board
- VarianceZoning Board of Appeals

When a project involves two or more separate zoning actions, the board (agency) having the final (last) approval would typically be the lead agency. Nothing in this Section shall be

interpreted to override the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

ARTICLE III

ZONING DISTRICT REGULATIONS, ZONING MAP

SECTION 301 GENERAL REGULATIONS

The provisions of this Local Law shall be subject to such exceptions, additions, or modifications as herein provided by the following general supplementary regulations. The dimensional requirements and restrictions set forth in Schedule "A" annexed hereto are incorporated herein and made a part of this Local Law. No building or structure shall be erected and no land used in violation of those dimensional requirements and restrictions.

A. Buildings, Uses and Lots

1. One Principal Building and Use Per Lot

There shall not be more than one principal structure and one principal use on any lot in the residential districts (R-1, R-2).

2. Yard and Open Space for Every Building

No part of any yard or other open space required about any building or structure for the purpose of complying with the provisions of this Local Law shall be included as part of the yard or other open space similarly required for another structure. Also, no yard or other open space on one lot shall be considered as a yard or open space for a building or structure or any other lot.

3. Subdivision of a Lot

Where a lot is hereafter formed from part of a lot already occupied by a building, such separation shall be effected so as not to violate any of the requirements of this Local Law with respect to the existing building, including yards and other required spaces in connection therewith. No zoning permit shall be issued for the erection of a building on the new lot thus created unless there is full compliance with all the provisions of this Local Law.

4. Irregularly Shaped Lots

Where a question exists as to the proper application of any of the requirements of this Local Law to a particular lot or parcel, the matter shall be referred to the Zoning Board of Appeals and dealt with in accordance with the applicable provision of Section 207.

5. Required Street Frontage

No zoning permit shall be issued for any structure unless the lot which that structure is to be built upon has the required frontage on a street, as defined herein, which frontage provides the actual access to such structure, and which street shall have been suitably improved to Village Board standards or a bond posted therefor to the satisfaction of the Village Board and Planning Board.

6. Parts of Lot Not Counted Toward Area Requirements

No part of any lot less in width than one-half of the minimum requirements for the district in which it is located shall be counted as part of the minimum lot area.

7. Adjacent Lots

Where two or more adjacent lots are at the time of the effective date of this Local Law in the same ownership, they shall not be considered a single lot, unless they are described as one parcel in a deed recorded at the Genesee County Clerk's Office.

8. Supplementary Yard Regulations

(a) Porches

No unroofed structure shall be considered part of a building insofar as yard requirements are concerned. A porch shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

(b) Projecting Horizontal Architectural Features

Architectural features, such as window sills, belt courses, chimneys, cornices, eaves or bay windows, shall not project more than three feet into any required yard.

(c) Visibility at Intersections

On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three feet in height shall be erected, placed or maintained within the triangular area formed by the intersecting street lines and a straight line joining said street lines at points which are twenty (20) feet distant from the point of intersection, measured along said street lines. This paragraph shall not apply to existing trees, provided that no branches are closer than six (6) feet to the ground.

(d) Swimming Pools

All swimming pools as defined by this Local Law shall be considered accessory uses to principal residential uses located on the same lot and shall be located only within side and rear yard areas with a minimum set back from side or rear lot lines of at least five (5) feet. Pools shall be fenced and protected by an appropriate gate as set forth in the New York State Uniform Fire Prevention and Building Code. Temporary wading pools, those pools less than two (2) foot in height and holding less the 1,000 gallons of water, may be placed in any yard area.

(e) Buffer Strip

Wherever a buffer strip is required by this Local Law (see also Section 504) it shall meet the following standards:

- (1) Be at least ten (10) feet in width along any commercial industrial lot line abutting a lot in a residential district.
- (2) Be of evergreen planting of such type, height and spacing as, in the judgment of the Planning Board, will screen the activities on the lot from

view of a person standing at street level on the adjoining lot. The plan and specifications for such planting shall be filed with the approved plan for the use of the lot.

(3) A wall or fence of location, height, and design approved by the Planning Board may be substituted for the required planting.

(f) Waste Containers/Dumpsters

The location of all waste containers and/or dumpsters for multifamily and nonresidential uses shall be determined by the Planning Board through the Site Plan Review process. Relocation of existing waste containers and/or dumpsters shall also be subject to review and approval by the Planning Board. The Planning Board may require screening of waste containers/dumpsters. This provision shall not apply to the temporary placement of garbage cans awaiting collection or the temporary use of dumpsters or "roll-offs" during a cleaning, moving or construction projects.

9. Open Space - Industrial Districts

Where an industrial district abuts a residential district, there shall be at least one hundred (100) feet of open space within the industrial district along such abutting line, which open space shall include a buffer strip.

10. Excavation

In any construction, open excavations shall be limited to a maximum of thirty (30) days, with appropriate fencing, barricades, or covering.

B. Location of Accessory Building, Structures, and Satellite Dishes

1. Accessory Buildings are Permitted as Follows

(a) A one story accessory building having a total floor area of one hundred fifty (150) square feet or less and a building height of not more than nine (9) feet shall not be located closer than three (3) feet of the rear and side lot lines in the rear yard areas.

(b) The location of accessory buildings having a total floor area greater than one hundred fifty (150) square feet or a building height of greater than nine (9) feet shall be located in compliance with the required yard areas of the respective district and shall not be located in front of the principal building, i.e., the front yard.

2. Accessory Structures (other than buildings) are permitted as follows:
(for fences see Section 508)

(a) Accessory structures (other than buildings) equal to or less than fifteen (15) feet in height, including satellite dishes with a diameter of forty (40) inches to thirteen (13) feet, shall not be located closer than three (3) feet to the side and/or rear lot line and shall not be located within the minimum required front yard. Satellite dishes less than forty (40) inches in diameter may be located anywhere on a lot provided they do not project over property

lines. Zoning permits are not required for satellite dishes less than forty (40) inches in diameter.

(b) Accessory structures (other than buildings) greater than fifteen (15) feet in height, including production model Wind Energy Conservation Systems (windmills), antennas and satellite dishes greater than thirteen (13) feet in diameter, shall be located in compliance with the required side and/or rear yard area of the respective district and shall not be located in the front yard.

C. Nonconforming Uses, Structures and Lots

1. Lawful Existing Uses or Structures

Except as otherwise provided in this Section, the lawful use of land or structures existing at the effective date of this Local Law may be continued, although such use or structure does not conform to the regulations specified in this Local Law for the zone in which such land or structure is located, provided, however:

- (a) That no nonconforming lot shall be further reduced in size.
- (b) That no nonconforming building be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance.
- (c) That no nonconforming use may be expanded.
- (d) No existing conforming use shall be changed to a nonconforming use.

2. Abandonment

A nonconforming use shall be adjusted or abandoned when there occurs a cessation of any such use or activity and a failure on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuance.

3. Restoration and Repair

Nothing in this Local Law shall prevent the restoration and repair or continuation of use of a nonconforming building destroyed or partly destroyed by a disaster, provided that restoration is commenced within six (6) months after date of destruction and is completed within twelve (12) months after date of destruction.

4. Reversion

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

5. Alterations

A nonconforming building may not be structurally altered during its life to an extent exceeding, in aggregate cost, fifty percent (50%) of the assessed value of the building unless said building is changed to conform to the requirements of this Local Law.

6. District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein or created thereby.

D. Uses Not Permitted

Uses which are not specifically allowed by this Local Law are prohibited.

E. Minimum Enclosed Living Area

1. One (1) family dwellings shall have a minimum enclosed living area (not including garage but also not limited to only habitable floor area) of at least seven hundred and fifty (750) square feet.

2. Two (2) family dwellings shall have a enclosed living area of at least seven hundred fifty (750) square feet per unit.

3. Multiple family dwellings shall have a enclosed living area per unit as follows:

<u># of Bedrooms Per Unit</u>	<u>Minimum Square Footage</u>
Efficiency	300
1 bedroom	550
2 bedroom	650
3 bedroom	800
4 bedroom	1,000
5+ bedroom	As determined by Planning Board based upon proposed occupancy

F. Stabling Farm Animals and Storage of Fertilizer, Agricultural Chemicals and Manure

1. There shall be no stabling of farm animals or storage of manure with the Village.

2. There shall be no storage of bulk quantities of fertilizer, pesticides, and/or herbicides, or similar odor or dust producing or hazardous substances within the Residential or Commercial Districts. Bulk storage of such substances within the Industrial District is permitted only after site plan approval.

G. Minimum Dimensional Criteria

All one (1) and two (2) family dwelling units located on individual lots shall have a minimum outside width of at least 18 feet. This provision shall not prohibit the construction of smaller additions or projections from larger units (less than 18 feet wide) provided a 18 foot minimum width is clearly established for the overall unit.

H. Harboring of Animals

Only domestic animals as defined by this Zoning Law or through successful appeal to the Zoning Board of Appeals, shall be harbored within the Village.

SECTION 302 ZONING MAP AND DISTRICT CLASSIFICATION

The Village of Oakfield is hereby divided into the following zoning districts which are shown, defined and bounded on the zoning map accompanying this Zoning Law which map is made a part of this Zoning Law. The zoning map is hereby made a part of this Zoning Law and shall be on file in the Village Clerk's Office.

- R-1 Residential 1 District
- R-2 Residential 2 District
- C-1 Neighborhood Commercial
- C-2 Central Commercial District
- I Industrial District
- PUD Planned Unit Development

SECTION 303 NEWLY ANNEXED LANDS

In order to promote orderly development and the general welfare of the community, where land is newly annexed but before legislative action can be taken to zone said land designating said land as being in one of the districts referred to in Section 302 of this Article, such newly annexed land shall not be improved or developed in any manner, including the erection of any buildings or other structures or alteration of any existing buildings or other structures thereon or change of any use with respect thereto until such legislative action is taken; provided, however, that if such legislative action is not taken and such designation is not made within one hundred eighty (180) days of the effective date of the annexation, the restrictions contained in this Section shall no longer apply.

SECTION 304 INTERPRETATION OF ZONING DISTRICT BOUNDARIES

A. Questions concerning the exact location of district boundary lines as shown on the zoning map shall be resolved by the Zoning Enforcement Officer with the option of appeal of such determination to the Zoning Board of Appeals pursuant to the provisions of Section 207 of this Local Law.

B. Where a district boundary line divides an existing lot of record, the regulations for the less restricted part of such lot shall extend to this lot line in the more restrictive district or fifty (50) feet or whichever is less, provided the lot has frontage on a street in the less restricted district.

SECTION 305 EXISTING LOTS OF RECORD

A single family dwelling and/or customary accessory buildings may be placed on any lot of record existing prior to the effective date of this Local Law and having a minimum of fifty (50) feet in width and six thousand (6,000) square feet in area. This provision shall apply even though such lot fails to meet the requirements for area, width or yard size, provided that the yard requirements of this Section and the other requirements of this Local Law are met. The minimum yard requirements for single family dwelling on existing lots shall be as follows:

1. Front.....twenty (20) feet.
2. Side.....eight (8) feet
3. Rear.....thirty-five (35) feet

SECTION 306 **RESIDENTIAL R-1**

The R-1 District is designed to accommodate primarily single-family residential uses on lots with a minimum area of 10,000 square feet. The primary purpose of this district is to encourage quality residential development in those newly developed or still undeveloped areas of the Village.

A. The following uses are permitted in R-1 Districts:

1. Single family dwelling
2. Accessory building

B. The following uses are permitted in the R-1 District upon the issuance of a special use permit:

1. Two family dwelling
2. Multifamily dwelling
3. School
4. Church, rectory
5. Volunteer fire department/ambulance service
6. Home occupation
7. Boarding house
8. Child Day Care Center
9. School-age Child Care Program
10. Community Center

SECTION 307 **RESIDENTIAL R-2**

The R-2 District is designed to accommodate primarily single and two family dwellings on lots with a minimum area of 6,000 and 8,000 square feet, respectively. The primary purpose of this district is to encourage the retention of a positive community character within those developed residential areas of the Village.

A. The following uses are permitted in R-2 Districts:

1. Single family dwelling
2. Two family dwelling
3. Accessory buildings

B. The following uses are permitted in R-2 Districts upon the issuance of a special use permit:

1. Multifamily dwelling
2. School
3. Church, rectory
4. Volunteer fire department/ambulance service

5. Funeral home
6. Social organization
7. Boarding House
8. Home occupation
9. Child Day Care Center
10. School-age Child Care Program
11. Community Center
12. Adult Care Facility

SECTION 308 **NEIGHBORHOOD COMMERCIAL C-1**

The C-1 District is designed to accommodate primarily commercial uses on lots with a minimum area of 8,000 square feet. The primary purpose of this district is to provide areas for small to medium sized commercial uses. Site plan review is required of all uses in C-1 Districts.

A. The following uses are permitted in C-1 Districts:

1. Bakeries
2. Retail stores/services
3. Warehouse/storage (enclosed, no hazardous materials)
4. Funeral homes
5. Business and professional offices
6. Restaurants
7. Accessory buildings

B. The following uses are permitted in C-1 Districts upon the issuance of a special use permit.

1. Gasoline station
2. Gasoline station-market
3. Drive-in establishments
4. Motor vehicle sales and service
5. Residential uses
6. Night club/taverns
7. Child Day Care Center
8. School-age Child Care Program
9. Self-Service Storage Facility
10. Community Center
11. Adult Care Facility
12. Enclosed Light Industrial
13. Commercial School

SECTION 309 **CENTRAL COMMERCIAL C-2**

The C-2 District is designed to accommodate primarily concentrated commercial development. Site plan review is required of all uses in C-2 Districts.

A. The following uses are permitted in C-2 Districts:

1. Retail store/service

2. Business and professional office
3. Restaurant
4. Hotel, motel
5. Funeral home
6. Bank
7. Club
8. Medical/veterinary facility
9. Museums (*Amended 11/10*)

B. The following uses are permitted in C-2 Districts upon the issuance of a special use permit.

1. Drive-in establishments
2. Arcade
3. Indoor recreation
4. Motor vehicle sales and service
5. Night club/tavern
6. Residential uses, except on the ground floor (first floor) that would result in the removal of commercial space.
7. Commercial School

SECTION 310 **INDUSTRIAL DISTRICT I**

The I District is designed to accommodate industrial uses. Site plan review is required of all uses in the I District.

A. The following uses are permitted in I Districts:

1. Enclosed manufacturing industry
2. Enclosed warehouse or wholesale use
3. Public utility
4. Enclosed service and repair
5. Machinery and transportation equipment, sales, service and repair
6. Enclosed industrial processes and service
7. Freight or trucking terminal
8. Contractor's yard
9. Public garage
10. Accessory building and use

B. The following uses are permitted in I Districts upon the issuance of a special use permit:

1. Manufacturing use (not enclosed)
2. Warehouse or wholesale use (not enclosed)
3. Service and repair (not enclosed)
4. Other industrial uses upon the finding that such use is of the same general character as those permitted and will not be detrimental to other uses within the district or to adjoining land uses.
5. Adult uses
6. Self-Service Storage Facility
7. Child Day Care Center
8. Disposal Transfer Station
9. Recyclables Handling and Recovery Facility

SECTION 311 **PLANNED UNIT DEVELOPMENT - PUD**

A. Purpose

The purpose of the Planned Unit Development District is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities; to provide for both individual building sites and common property which are planned and developed as a unit; to provide harmonious land uses which offer a high level of amenities; to permit a variety of residential types and/or nonresidential uses; and to preserve natural and scenic qualities of the site during the development process.

B. General Requirements

1. Minimum Area

The minimum area required to qualify for a Planned Unit Development shall be two (2) contiguous acres of land.

2. Ownership

The tract of land for a Planned Unit Development may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner, or jointly by owners, of all property included in a project. In the case of multiple ownership, the approved Planned Unit Development plan is binding on all owners.

3. Location

The Planned Unit Development District shall be applicable to any zoning district or parts of zoning districts where the applicant can demonstrate that the characteristics of his holdings and plan will meet the objectives of this Section.

4. Common Open Space

Common open space in a Planned Unit Development may be one (1) or more sites for use in common by all of the occupants within the project area or by the residents of the Village as a whole, depending upon dedication of such sites. Such common open space may be retained in private ownership or received in dedication by the Village. If the open space remains in private ownership, arrangements for the operation, maintenance, improvement and liability of such common property and facilities must be approved by the Village Board. No common open space, so designated by the proposal and approved by the Village Board, may be thereafter developed or disposed of except with the approval of the Village Board.

5. Permitted Uses

Any uses identified as permitted uses or uses allowed by special permit as set forth in this Zoning Law and mobile home parks (see Section 511) may be permitted in a Planned Unit Development.

6. Mix of Uses

The mix of permissible uses shall be determined by the Village Board.

C. Application Procedure and Approval Process

1. Conceptual Review

Before submission of a petition for rezoning as a Planned Unit Development, the developer is encouraged to meet with the Village Planning Board to determine the feasibility and suitability of his proposal before entering into any binding commitments or incurring substantial expenses of site plan preparation and the required documentation.

2. Rezoning Procedure

(a) Submission of Petition

All petitions for the establishment of Planned Unit Development districts shall be submitted to the Village Clerk (see Paragraph d. of this Subsection).

(b) Notification and Referral

Within five (5) working days, the Village Clerk shall notify the Village Board of the petition and shall refer the petition and all supporting documentation to the Village Planning Board for their review and recommendations.

(c) Planning Board Review

Within sixty (60) days of receipt of the application, the Village Planning Board shall review the petition and shall recommend approval, approval with modifications or disapproval. Failure to act within 45 days or such longer period as may be consented to shall cause such application to be forwarded to the Village Board without a recommendation.

(d) Submission Requirements

The applicant shall submit a minimum of four (4) sets of such plans, and drawings (additional sets may be required). These four (4) sets shall be submitted to the Village Clerk. The preliminary plans shall be accompanied by such maps, charts and written material necessary for the Boards to make a preliminary judgment on the suitability and impact of the proposed Planned Unit Development on the Village. Preliminary plans should include the following:

(1) A preliminary site plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multifamily housing areas, commercial and open space areas, etc.); the number and type of residential structures and dwelling units within each residential area; the approximate square footage of nonresidential use within each nonresidential area; the amount of open space; traffic circulation; and the surrounding land uses.

(2) A written preliminary description of the proposal including the total number of acres in the site; the estimated number and type of housing units; the estimated residential and nonresidential density; the major planning assumptions and objectives; the probable effect on adjoining properties; and the effect on the overall Village development plan and the effect on this Zoning Law.

(e) Review Considerations

In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by the Zoning Law, and the impact on the established land uses in the area, overall density of development, traffic circulation, the provision of open spaces, and the effect on schools and other municipal facilities.

(f) Village Board Review and Approval

Upon receipt of the Planning Board's recommendation, the Village Board may, after a public hearing and review of the proposed zone change by the County Planning Board, amend the Zoning Law so as to establish and define the boundaries of the Planned Unit Development. If the rezoning request is approved for the Planned Unit Development, such action does not authorize improvements to the rezoned land.

3. Final Plan

(a) Ownership

Before final approval of the Planned Unit Development, the applicant must show evidence of the full legal ownership in the land.

(b) Submission of Final Plan

Upon approval of the zone change, the applicant has one (1) year in which to submit a final plan to the Village Clerk.

(c) Notification and Referral

Within five (5) working days, the Village Clerk shall notify the Village Board of the petition and shall refer the petition and all supporting documentation to the Village Planning Board for their review and recommendation.

(d) Planning Board Review

Within sixty (60) days of receipt of the application, the Village Planning Board shall review the petition and shall recommend approval, approval with modifications or disapproval. Failure to act within 45 days or such longer period as may be consented to shall cause such application to be forwarded to the Village Board without a recommendation.

(e) Submission Requirements

The applicant shall submit a minimum of four (4) complete sets of the final plan and drawings (additional sets may be required). These four (4) sets shall be submitted to the Village Clerk. The applicant shall submit detailed site plans comparable to the requirements for final approval of a subdivision plat. The final plan shall be accompanied by a detailed justification for the proposal including such maps, charts and written material necessary for the Village to make an impartial judgment on the

suitability and impact of the proposed Planned Unit Development on the Village. Such material shall include, but not be limited to, the following:

- (1) A mapped development plan of the property covered by the petitions showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multifamily housing areas, commercial and open space areas, etc.), the number of residential structures and dwelling units within each residential area, the approximate square footage of nonresidential use within each nonresidential area and the amount of open space.
- (2) A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall Village development plan and the effect on this Zoning Law.
- (3) Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of nonresidential floor area including the approximate selling and/or rental price, the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.
- (4) Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the Village. Such material shall include, but not be limited to: the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the applicant intends to provide needed facilities, a fiscal impact statement including a summary of new costs and revenues to the Village due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.

(f) Review Considerations

In review of the final plan, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by the Zoning Law, and the protection of the established and permitted uses in the area. It shall consider: the location of main and accessory buildings and their relation to one another; the circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental effects of the proposed development on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the Village; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.

(g) Village Board Review and Approval

Upon receipt of the Planning Board's recommendation, the Village Board may, after a public hearing and review of the final plan by the County Planning Board, approve, approve with modifications or disapprove the final plan. The Village Board shall make final decision in accordance with official village development policies and may impose conditions relating to that plan.

D. Design Standards

1. Area Requirements

Overall area, yard, coverage, height, density and supplementary regulation requirements shall be comparable to minimum requirements in appropriate zoning districts for each specific use, except where the Planning Board finds that it is in the public interest to modify these requirements and the Village Board approves such modifications.

2. Traffic and Circulation

All proposed public roads shall meet the design and construction specifications set forth by the Village. Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.

3. Common Open Space

All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:

- (a) Public dedication
- (b) Establishment of a Home Owners Association
- (c) Retention of responsibilities, control and maintenance by the developer.

4. Performance and Maintenance Bonds

Performance and maintenance bonds may be required at the discretion of the Village Board.

ARTICLE IV
SITE PLAN

SECTION 401 **SITE PLAN REVIEW AND APPROVAL**

Site plan review shall be required of all uses excluding agricultural uses and single family dwellings. Accessory buildings for these two uses are also exempt from site plan review; however, home occupations are not. The Planning Board, at a regular meeting, shall review and approve, approve with modification, or disapprove a site plan in connection with any matter requiring submission of a site plan.

SECTION 402 **SUBMISSION OF SITE PLAN AND SUPPORTING DATA**

A. In addition to the site plan initially submitted by an applicant, the Planning Board may require other data to be presented in graphic form and accompanied by a written text. Such other supporting data may include, but is not limited to, the following:

1. Traffic circulation, parking and loading spaces, and pedestrian walks.
2. Topography and landscaping plans including site grading, landscaping design, open areas and buffer zone.
3. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.
4. Preliminary engineering plans; street improvements, storm drainage, water supply and sanitary sewer facilities.
5. Engineering feasibility studies of any anticipated problem which might arise due to proposed development, as required by the Planning Board.
6. Construction sequence and time schedule for completion of each phase for buildings, parking, and landscaped areas.
7. Description of proposed uses; hours of operation and expected number of employees, volume of business, and volume of traffic generated.

SECTION 403 **SITE PLAN REVIEW**

A. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the County of Genesee for its review prior to taking any final action. The Village Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:

1. Harmonious relationship between proposed uses and existing adjacent uses.
2. Maximum safety of vehicular circulation between the site and street.

3. Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety.

4. Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.

The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making the changes or additions.

Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

SECTION 404 PERFORMANCE BOND OR LETTER OF CREDIT AS A CONDITION OF SITE PLAN APPROVAL

The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. The amount of any such bond must also be approved by the Village Board.

SECTION 405 PERFORMANCE STANDARDS

In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, shall decide whether uses meet these standards.

SECTION 406 OTHER DUTIES NOT IMPAIRED

The provisions of this article shall not be interpreted to limit in any way those powers and duties of the Planning Board as set forth in Article 7 of the New York Village Law.

ARTICLE V

SUPPLEMENTARY REGULATIONS

SECTION 501 **OFF-STREET PARKING SPACE REQUIREMENTS**

For every building hereafter erected, altered or changed in use, there shall be provided at least the minimum number of off-street parking spaces set forth under this Section. All off-street parking for nonresidential and multifamily use shall be designed in such a manner as to allow vehicles to exit onto a street without backing out onto it. Parking areas in a Neighborhood Commercial District (C-1) and Central Commercial district (C-2) shall be surfaced with a suitable dustless, durable hard surface (e.g. asphalt; concrete; or pavers, but not loose stone or gravel). Said surface shall provide adequate drainage.

(Amended 11/10)

A. **Residential Uses**

1. One and two-family dwellings: Two (2) parking spaces for every dwelling unit.
2. Multiple family dwellings: Five (5) parking spaces for every three (3) dwelling units.
3. Home occupation: Three (3) parking spaces, plus one (1) additional parking space for every two hundred (200) square feet of office space or other nonresidential use, in addition to any other required spaces.

B. **Motel**

Three (3) parking spaces, plus one (1) space for every guest room.

C. **Places of Public Assembly**

One (1) parking space for every five (5) seats or one (1) parking space for every one hundred (100) square feet of floor area.

D. **Professional Offices**

Two (2) parking spaces, plus one (1) space for every two hundred (200) square feet of office space.

E. **Commercial**

One (1) parking space for every motor vehicle used directly in the business, plus one (1) parking space for every two hundred (200) square feet of business area.

F. **Restaurant, Eating and Drinking Establishment (other than Drive-In)**

One (1) parking space for every one hundred (100) square feet of floor area.

G. **Industrial, Wholesale, Warehouse, Storage, Freight, and Trucking Uses**

One (1) parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.

(8/2010)

H. Unspecified Uses

As required by the Planning Board, based upon use intensity, turnover, customers, employees and vehicles used.

I. Substitution of On-Street Parking

In determining the number of off-street parking spaces required the Planning Board, at its sole discretion, may allow the substitution of on-street parking spaces in place of the required off-street parking spaces as set forth in Subsection(s) A-H of this Section.

1. If the Planning Board determines that the substitution of on-street parking in place of required off-street parking will not pose an adverse impact upon traffic circulation and access to surrounding land uses, it may, at its sole discretion, allow the substitution of on-street parking spaces in place of the required off-street parking space(s). Whenever a land use is subject to site plan review as provided for in Sections 703, 704 and 708 Subsection C of this Zoning Law, the Planning Board shall reconsider the appropriateness of substitution of on-street parking and may at that time either continue, modify, or eliminate such substitution depending upon proposed changes to the land use under review and the overall parking situation in the area. In considering whether, or not, to allow the substitution of on-street parking space(s) in place of required off-street parking space(s), the Planning Board shall consider the issues listed below.

a. Whether the on-street parking space(s) in question are already considered substitute off-street parking for another use.

b. The actual availability of the parking space(s) in question with respect to the actual use pattern of said parking space(s).

c. Distance between the use under review and the on-street parking space(s) in question. When reviewing such distance the Planning Board shall consider the availability and condition of sidewalks together with highways and driveways that must be crossed.

d. The feasibility of the use under review to provide for the required number of off-street parking through some other means rather than substitution of on-street parking spaces including shared parking, leased parking, or involvement with public parking areas.

SECTION 502 **OFF-STREET LOADING SPACE REQUIREMENTS**

Every building occupied for the purpose of business or industry shall provide adequate space for off-street loading and unloading vehicles.

SECTION 503 **MODIFICATION OF PARKING AND LOADING REQUIREMENTS**

The Planning Board, under its powers of site plan review and approval, may modify requirements for parking and loading spaces.

SECTION 504 **LAND ABUTTING A RESIDENTIAL USE (See also Section 301-A-8e)**

Where in any district a commercial or industrial use is created adjacent to an existing residential use, a buffer strip shall be established by the nonresidential use along the lot line adjacent to the residential use.

SECTION 505 **GASOLINE STATION, GASOLINE STATION-MARKET, MOTOR VEHICLE REPAIR SHOP, MOTOR VEHICLE SALES AGENCY, DRIVE-IN BUSINESS**

A. Gasoline stations, gasoline station-markets, motor vehicle repair shop, motor vehicle sales agencies, and drive-in business shall comply with the following:

1. Lots containing such uses shall not be located within three hundred (300) feet of any lot occupied by a school, playground, library or religious institution. Measurement shall be made between the nearest respective lot lines.
2. Lot size shall be at least forty thousand (40,000) square feet.
3. Lot frontage shall be at least two hundred (200) feet.
4. Lot depth shall be at least one hundred fifty (150) feet.
5. Pumps, other service devices, and fuel and oil storage shall be located at least thirty (30) feet from all lot lines.
6. Automobile parts and dismantled vehicles are to be stored within the building and no major repair work is to be performed outside the building.
7. There shall be no more than two (2) access driveways from any street. Maximum width of each access driveway shall be thirty (30) feet.

SECTION 506 **PUBLIC UTILITY FACILITY**

Public utility installations shall comply with the following:

1. Such facility shall be surrounded by a fence approved by the Planning Board.
2. The facility shall be landscaped in a manner approved by the Planning Board.
3. To the extent practicable, equipment shall be stored so as not to be visible from surrounding properties.

Any other requirements as determined by the Planning Board.

SECTION 507 **SIGNS**

The purpose of this Section is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor advertising signs and outdoor signs of all types. It is intended to protect property values, create a more attractive economic and

business climate, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community. It is further intended hereby to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs improperly overhanging or projecting over public rights-of-way, provide more visual open space, and curb the deterioration of the community's appearance and attractiveness.

This Section is intended to promote attractive signs which clearly present the visual message in a manner that is compatible with its surroundings. The appearance, character and quality of a community are affected by the location, size, construction and graphic design of its signs. Therefore, such sign should convey their messages clearly and simply to enhance their surroundings.

A. Permit Required

It is unlawful for any person to erect or relocate any sign other than those identified as exempt in Subsection B of this Section, within the Village without first obtaining a sign permit and paying the fee therefor as provided in this Local Law .

1. Application Procedure

Applications shall be made in writing to the Zoning Enforcement Officer on forms prescribed and provided by the Village and shall contain the following information:

- (a) Name, address and telephone number of:
 - (1) Applicant
 - (2) Owner of the property

- (b) Location of the building, structure or land upon which the sign now exists or is to be erected.

- (c) If a new sign is to be erected, elevation and plan drawings to scale shall be included. In addition, a full description of the placement and appearance of the proposed sign shall be included and shall cover the following:
 - (1) Location on the premises, specifically, its position in relation to adjacent buildings, structures and property lines.
 - (2) The method of illumination, if any, and the position of lighting or other extraneous devices, and a copy of the NYS Uniform Code permit (if required) related to the electrical connections.
 - (3) Graphic design including symbols, letters, materials and colors.
 - (4) The visual message, text, copy or content of the sign.

- (d) Written consent, or a copy of the contract made with the owner of the property upon which the sign is to be erected, if the applicant is now the owner.

2. Permit

Upon the filing of a completed application for a sign permit and the payment of the required fee, the Zoning Enforcement Officer shall examine the plans, specifications, and other data submitted and the premises on which the sign is to be erected or now exists. If it shall appear that the sign is in compliance with all requirements of this Section, he shall then,

within fifteen (15) days, issue a permit for the erection of the proposed sign or for an existing sign. The issuance of a permit shall not excuse the applicant from conforming to other Federal, State or local laws, ordinances, and/or regulations.

B. Specific Sign Regulations

1. Exempt Signs - (Require No Permits)

(a) Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material; and emblems installed by governmental agencies, religious or nonprofit organizations; not exceeding six (6) square feet.

(b) Flags and insignia of any government, except when displayed in connection with commercial promotion.

(c) On-premises directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits and similar signs, internally illuminated or non-illuminated, not exceeding four (4) square feet per face and six (6) feet in height. Business names and advertising messages shall not be allowed as part of such signs.

(d) Non-illuminated warning, private drive, posted or no trespassing signs, not exceeding two (2) square feet per face.

(e) One on-premises sign, either freestanding or attached, in connection with any residential building in any zoning district, for permitted professional office or home occupation, not exceeding two (2) square feet and set back at least ten (10) feet from the property line. Such sign shall state name and vocation only. Illumination shall not produce a direct glare beyond the limits of the property line.

(f) Number and name plates identifying residents, mounted on house, apartment or mailbox, not exceeding one (1) square foot in area.

(g) Lawn signs identifying residents, not exceeding one (1) square foot (per side). Such signs are to be non-illuminated except by a light which is an integral part of a lamppost if used as a support, with no advertising message thereon.

(h) Private-owner merchandise sale signs for garage sales and auctions, not exceeding four (4) square feet for a period not exceeding four (4) days within a given month

(i) Temporary non-illuminated "For Sale", "For Rent", real estate signs and signs of similar nature, concerning the premises upon which the sign is located. In a residential zoning district, one sign not exceeding four (4) square feet per side. In a commercial or industrial zoning district, one sign not exceeding fifty (50) feet set back at least fifteen (15) feet from all property lines. All such signs shall be removed within three (3) days after the sale, lease or rental of the premises.

- (j) Temporary, non-illuminated window signs and posters not exceeding twenty-five (25) percent of the window surface.
- (k) Christmas holiday decorations, including lighting, are exempt from the provisions of this local law and may be displayed in any district without a permit.
- (l) Temporary directional signs for meetings, conventions, and other assemblies.
- (m) One sign, not exceeding six (6) square feet in the residential districts nor sixteen (16) square feet in the business districts, listing the architect, engineer, contractor and/or owner, on premises where construction, renovation or repair is in progress.
- (n) Political posters, banners, promotional devices and similar signs, not exceeding four (4) square feet in the residential districts nor sixteen (16) square feet in the business districts, providing the names and addresses of the sponsor and the person responsible for removal are identified.
- (o) Signs required by Federal, State, County or Village regulations (i.e., NYS registered motor vehicle shop and NYS inspection stations).

2. Prohibited Signs and Acts

- (a) No off-premise signs shall be allowed other than as permitted under the Exempt Signs provision of this section.
- (b) No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights except to show time and temperature.
- (c) No sign shall impair or cause confusion of vehicular or pedestrian traffic, in its design, color or placement. No such sign shall impair visibility for the motorist at a street corner or intersection.
- (d) No sign or sign supports shall be placed upon the roof of any building.
- (e) No sign shall consist of banners, pennants, ribbons, streamers, spinners or similar moving, fluttering or revolving devices.
- (f) No advertising message shall be extended over more than one sign placed along a street or highway.
- (g) Temporary and/or portable signs, except those installed by the Village and Town of Oakfield, shall not be attached to or placed upon any tree, lamp post, utility pole, hydrant, bridge, fence or other structure located within a public right-of-way.

3. Temporary Signs

All signs of a temporary nature, except as otherwise provided by this Section, shall be

permitted for a period not exceeding six (6) weeks prior to the activity or event. Such signs shall not exceed sixteen (16) square feet in commercial or industrial districts nor eight (8) square feet in residential districts, nor be attached to fences, trees, utility poles, rocks or other facets of the natural landscape, nor be placed in a position that will obstruct or impair traffic or in any manner create a hazard or disturbance to the health, safety and welfare of the general public. Temporary signs covered by this paragraph shall be removed within seven (7) days after the event or activity.

4. Permanent Signs

(a) Residential Districts

1. Signs advertising a use in a Residential District such as public or quasi-public building or buildings used solely for nonprofit, church, school, hospital or other like purposes shall be permitted provided such sign is located on the same premises as the use that it advertises. No such sign shall exceed twelve (12) square feet in area and such sign shall be located not less than ten (10) feet from property lines.

2. For large scale multifamily developments one project identification sign shall be permitted which shall not exceed twenty-five (25) square feet in area and shall be situated not less than ten (10) feet from the property lines. The sign may include only the name of the property, the street address, and the presence or lack of vacancies.

(b) Commercial (C-1) and Industrial (I) Districts

1. The total number of permitted signs on a single business or industrial lot shall not exceed one (1) sign per wall per use and one (1) freestanding for the building.

2. The total cumulative sign area of all signs permitted on such lot shall be calculated at the rate of two (2) square feet of sign area per lineal foot of building frontage, but in no case shall exceed one hundred fifty (150) square feet, whichever is less, except as provided for in subparagraph 5 below. In calculating the total cumulative sign area, only one side, or wall, of a building, shall be used.

3. A minimum total sign area of thirty-two (32) square feet shall be permitted for any use, regardless of building frontage.

4. The surface area of a freestanding sign shall be calculated as follows: freestanding sign area up to twenty-five (25) square feet (per side) shall be deducted from the total sign area permitted on a one to one basis; freestanding sign area between twenty-five (25) and forty (40) square feet (per side) shall be deducted from the total sign area permitted on a four (4) to one (1) basis; freestanding sign area over forty (40) square feet shall be prohibited except as set for in subparagraph 5 below.

5. Where groups of two (2) or more contiguous stores are located together in a shopping center (mall or plaza) or where a lesser number of

stores total not less than twenty thousand (20,000) square feet of gross leasable area, one common freestanding sign denoting the name of the shopping facility shall be permitted, not exceeding fifty (50) square feet (per side) and with bottom panel not less than eight (8) feet above grade. All other signs shall be attached to buildings, of a wall or soffit type, and coordinated in material, shape, lettering, color and/or decorative elements. Total sign area permitted for the entire shopping center shall be calculated at the rate of one (1) square foot of sign per linear foot of building frontage, and such exterior signs shall be permitted upon, and identify only, the uses which allow direct public access from outside the mall building.

6. Representational signs shall not project in any direction more than four (4) feet beyond the principal structure to which they are attached, or extend over a public right-of-way and shall not exceed fifteen (15) square feet. Only one (1) such sign per establishment shall be permitted, with the area of such sign structure deducted from the total sign area permitted.

7. Illuminated signs which indicate the time, temperature, date or similar public service information shall not exceed thirty-two (32) square feet and shall not employ less than sixty (60) percent of the total sign area, each side, for said public service information.

8. Gasoline service stations shall additionally be permitted two (2) price/product (type of gas: i.e., regular, no lead, etc.) signs each, not exceeding six (6) square feet per side, if located on the pump island, or set not closer than ten (10) feet from the edge of the pavement, not exceeding eight (8) feet above grade nor situated so as to impair visibility for pedestrians or motorists. The sign area for these signs shall be deducted from total sign area for that building.

(c) Commercial (C- 2) District

1. Businesses shall utilize a limited combination of wall, awning, and projecting signs. Each business is allowed three signs, one (1) projecting sign, either one (1) wall sign or one (1) awning sign/ graphics, and one window sign.

2. Each sign, depending on its type, shall be limited in size to conform with the existing scale of the buildings they are mounted upon. Wall signs shall not exceed eighteen (18) square feet in area. Projecting signs shall not exceed five (5) square feet in area, and awning signs/graphics shall not be greater than (10) square feet in area. Window signs shall not exceed fifty (50%) percent of the window area or four (4) square feet in area, which ever is greater.

3. In calculating sign area, only one side of the sign shall be used.

4. Projecting signs shall not extend lower than eight (8) feet to the ground to maintain a safe clearance for pedestrians, and shall not extend over a public right-of-way more than two-thirds of the distance between the building and the curb. Projecting Signs shall not extend higher than thirteen (13) feet above ground level.

5. Roof signs, lighted flashing signs, neon signs, pole and freestanding signs are strictly prohibited.

6. Wall signs and Projecting Signs shall not be installed over existing building openings including windows and doorways, and shall not be installed on walls on the second and third floors.

5. Portable Signs

A new business, or a business in a new location, awaiting installation of a permanent sign, may utilize a portable sign for a period of not more than sixty (60) days or until installation of a permanent sign, whichever occurs first. Such a portable sign must meet all the construction standards of the NYS Uniform Fire Prevention and Building Code. A separate permit for such a portable sign shall be required.

6. Nonconforming Signs

A nonconforming sign shall not be enlarged or replaced by another nonconforming sign. Any maintenance, repair or alteration of a nonconforming sign shall not cost more than fifty (50) percent of the current depreciated value of the sign as of the date of alteration or repair. No repair or alteration exceeding fifty (50) percent of the current depreciative value shall be made without making the sign a conforming sign.

7. Removal of Signs

Any sign, existing on or after the effective date of this amendment, which no longer advertises an existing business conducted or product sold on the premises upon which such sign is located, shall be removed. In addition, where the permit for a sign is revoked for any reason, the sign shall be removed immediately.

(a) If the Zoning Enforcement Officer shall find that any sign regulated in this section is not used, does not advertise a current product or service available on the property, is abandoned, unsafe or insecure, or is a menace to the public, the Zoning Enforcement Officer shall give written notice to the named owner of the land upon which it is located, who shall remove or repair the sign within thirty (30) days from the date of the notice. If the sign is not removed or repaired within said time period, the Zoning Enforcement Officer shall revoke the permit issued for such sign and may remove or repair the sign and assess the owner for all costs incurred for such service.

(b) The Zoning Enforcement Officer may cause any sign which is a source of immediate peril to persons or property to be removed immediately and without notice.

8. Construction Standards affecting all Zoning Districts

All signs shall be constructed and installed in conformance with the Code of New York State. In addition, the following standards shall apply:

(a) Wall Signs

1. Wall signs shall not extend beyond the ends or over the top of the walls to which attached, and shall not extend above the level of the second floor of the building. Such signs shall be limited to three (3) feet in height.

2. Wall signs shall not extend more than nine (9) inches from the face of the buildings to which attached, except that copy-change signs may extend fifteen (15) inches.

3. Any part of a sign extending over pedestrian traffic areas shall have a minimum clearance of eight (8) feet.

4. Copy-change wall signs shall be permitted on theaters only.

b. Freestanding Signs

1. No freestanding sign shall be located less than ten (10) feet from the front property line nor less than five (5) feet from the side property line. No freestanding sign may be located less than fifty (50) feet from any other freestanding sign.

2. If for any reason the property line is changed at some future date, any freestanding sign made nonconforming thereby must be relocated within ninety (90) days to conform with the minimum setback requirements.

3. No freestanding sign shall be more than twenty-five (25) feet in height above finished grade. Such height shall be measured vertically from the established average grade directly below the sign or entry level of the building or structure, whichever is less, to the highest point of the sign, including supporting structures.

4. No freestanding sign shall extend over or into the public right-of-way, nor shall it overhang the property lines.

5. Freestanding signs under which a pedestrian walkway or driveway passes must have ten (10) feet vertical clearance.

6. Masonry wall-type signs shall not exceed four (4) feet in height and shall not be placed so as to impair visibility for motorists.

c. Projecting Signs

1. Projecting signs shall not be more than three (3) feet in height. For the purposes of this subsection projecting signs shall be considered those signs, which extend more than nine (9) inches from the face of a building, unless such sign is a copy-change which may extend up to fifteen (15) inches before being considered a projecting sign.

2. The exterior edge of a projecting sign shall extend not more than five (5) feet from the building face, or extend more than two-thirds the distance between the building and the curb over a public right-of-way or property line.

3. No part of a projecting sign shall extend into vehicular traffic areas, and any part extending over pedestrian areas shall have a minimum clearance of eight (8) feet.

4. Projecting signs shall not extend above the level of the first floor of the buildings to which attached, or in any case extend higher than thirteen (13) feet from the ground.

d. Other Signs

1. Windows Signs

(a) The area of a window sign(s) shall not exceed twenty-five (25) percent of the area of the window in the Residential (R-1), Residential (R-2), Industrial (I), or Commercial (C-1) Districts. Window signs shall not exceed fifty (50%) of the area of the window or be greater than four (4) square feet in the Commercial (C-2) District.

(b) Copy-change window signs shall not exceed three (3) square feet.

2. Sign Directories

(a) Sign directories shall contain identification of and direction to several business enterprises, but shall contain no promotion advertising.

3. Awning Signs

(a) Awning graphics may be painted or affixed flat to the surface of the front or sides, and shall indicate only the name and/or address of the enterprise or premises.

(b) No graphics or signs may project horizontally or vertically from the awning.

(c) Graphics and signs may hang below an awning provided that no part of the sign hang lower than eight (8) feet from ground level.

(d) Awning graphics shall be a single line of lettering not exceeding ten (10) inches height.

4. Sandwich Board Signs (Local Law #1-2015: Amended 9/14/15)

(a) Sandwich Board signs shall be permitted in C-1 and C-2 Districts only.

(b) Signs are allowed by permit only, subject to payment of a \$25.00 annual fee.

(c) Permits must be renewed annually through the Village Clerk only if the business is in good standing, relative to payment of real property taxes, water and sewer fees.

(d) The signs must be made of a hard plastic type material so that they can be uniform for all businesses. Plywood signs, other

unsightly signs and any sign that might detract from the overall appearance and safety of the community are prohibited.

(e) The signs shall not exceed 36 inches high and 36 inches wide.

(f) Signs must be placed on the sidewalk near the street so as not to impede pedestrian traffic or public parking.

(g) The sign must be put in front of the existing business.

(h) The sign must be "weighted down" to prevent movement or a knockdown from wind. It will be the business owner's responsibility to use discretion as to whether to put the sign out any particular day.

(i) **Signs can be displayed during business hours only with maximum permitted display from 8 AM to 5PM.**

(j) Only one sign per business is allowed. **No more than two (2) signs per building.**

(k) If there is no sidewalk in front of the business and/or the sidewalk is not wide enough to allow pedestrians to walk safely, no sign will be allowed to be displayed.

(l) The following will be considered infractions of this provision;

(1.) Signs that interfere with pedestrian or vehicle traffic or vehicle parking.

(2.) Signs that are left outside overnight.

(3.) Signs that are repeatedly and habitually blown out into the street or endanger the safety of pedestrians and/or interfere with unobstructed pedestrian travel.

(4.) Signs that do not meet the standards as stated in sections (c) & (d) above.

(5.) Signs that do not have a permit through the Village or its permit has expired.

(6.) Signs that are worn, broken or considered a danger to the public.

(7.) Signs that may be snow covered, obscured or otherwise not visible to the general public.

(l) Infraction Procedures for Sandwich Board Signs

(1.) An initial infraction will result in a verbal warning that will be recorded in the Village Office.

(2.) A second infraction within two years, will result in a formal letter of warning that will be recorded in the Village Office.

(3.) A third infraction that occurs at any time after the second warning *and* occurs within that two year period, will result in revocation of the sign permit **one year**. If this should occur, the business/person **will not** be reimbursed for the application fee.

(4) If a business/person who is cited for one or two infractions but has no further infractions the second year, the two year period will start anew and that third year will be considered as year one.

(m) All Sandwich Board applicants assume sole responsibility for any personal liability, damage or injury resulting from any of the above infractions.

(n) The permit season will run from June 1st to May 31st.

C. Appeal Procedures

Any person aggrieved by a decision of the Zoning Enforcement Officer relative to the provision of this section may appeal such decision in writing to the Board of Appeals as provided in Section 207 and shall comply with all procedural requirements prescribed by the Board of Appeals.

At least thirty (30) days prior to hearing such appeal, the Board of Appeals shall refer the application to the Planning Board for its review and recommendation. The Planning Board shall review such application at a regular meeting and forward its recommendation to the Board of Appeals. Failure on the part of the Planning Board to forward a recommendation within thirty (30) days shall constitute an approval.

In granting any variance for the provision of this section, the Board of Appeals must find that the variance is necessary for the reasonable use of the land or buildings, that granting the variance is in harmony with the general purposes and intent of this section, that such will not be injurious to the neighborhood character or otherwise detrimental to the public welfare, and that denial of the variance would result in practical difficulty or unnecessary hardship to the applicant.

SECTION 508 **FENCES**

The installation, or replacement, of a fence within the Village does not require a permit provided the following criteria are met. Failure on the part of the property owner to maintain his fence in accordance with these provisions shall constitute a violation of this zoning ordinance.

A. All Fencing

1. All fencing must be installed, or replaced, in conformance with the NYS Uniform Fire Prevention and Building Code. Fencing shall be located on an individual's own property and not on adjoining property or directly upon a property line.

2. No fencing shall be installed or replaced which poses a potential hazard to either pedestrians or motorists by restricting vision.

3. The "finished" or "good" side of the fence shall face the adjoining properties.

4. It shall be the responsibility of the property owner whose land contains a fence to maintain that fence so that it remains structurally sound and does not aesthetically detract from neighboring properties.

5. The property owner is responsible to see that any vegetation including grass and weed around a fence is regularly mowed.

B. Fencing - Front Yard

1. Fencing located within front yards shall be located not closer than one (1) foot to the edge of a public sidewalk. In areas where public sidewalks do not exist, front yard fencing shall not be located closer than three feet to the front lot line.

2. Fencing located in the front yard shall not exceed three (3) feet in height for closed fencing, or four (4) feet in height for open fencing. For the purposes of this Section, the term open fencing shall refer to fencing which is at least 75% open including chain link type fencing. Fencing which is less than 75% open shall be considered closed fencing.

3. Fencing, hedges, bushes, and evergreen trees located within 5 feet of a public right of way or road with a sidewalk, or located within 20 feet from the edge of the pavement of a road without a sidewalk, shall not exceed three (3) feet in height.

C. Fencing - Side and Rear Yards

Fencing located in side or rear yards shall not exceed six (6) feet in height.

SECTION 509 EXTERIOR SECURITY LIGHTING

Exterior security lighting (i.e. mercury vapor, high pressure sodium, spot or flood lights) shall not be installed or maintained so as to shine directly in or upon adjoining residential dwellings. Such lighting shall not be installed or maintained so as to pose a hazard for vehicular traffic.

SECTION 510 ADULT USES

A. Purposes

The Village of Oakfield conducted a study of the potential secondary affects posed by adult uses. This study along with other similar studies has shown buildings and establishments operated as adult uses pose secondary effects that have a detrimental and harmful to the health, safety, morals and general welfare of a community. In order to promote the health, safety, morals and general welfare of the residents of the Village of Oakfield, this Section is intended to control those secondary affects of adult uses by restricting adult uses to non-residential areas of the Village, and otherwise regulating their operation.

B. Definitions Specific to Adult Uses

Adult Bookstore: A bookstore that has as a “substantial portion” (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical area”; or,
- (2) Photographs, films, motion pictures, videocassettes, or video reproduction, slides or other visual representations that are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas.”
- (3) Instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities”.

Adult Commercial Establishment: A establishment other than an adult bookstore, adult eating or drinking establishment, adult theater, commercial studio, or business or trade school - which features employees who as part of their employment, regularly expose to patrons “specified anatomical areas” and which is not customarily open to the general public during such features because it excludes minors by reason of age.

Adult Eating or Drinking Establishment: An eating or drinking establishment that regularly features any one or more of the following:

- (1) Live performances which are characterized by an emphasis upon the depiction or description of “specified anatomical areas” or “specified sexual activities”,
- (2) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”,
- (3) Employees who as part of their employment, regularly expose to patrons “specified anatomical areas”, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

Adult Establishment: A commercial establishment including but not limited to adult book store, adult eating or drinking establishment, adult theater, adult motel, adult message establishment, nude model studio or other adult commercial establishment, or any combination thereof.

Adult Massage Establishment: Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barber shops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

Adult Motel: A motel that:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” and/or currently rated X movies; and/or

- (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; and/or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult Theater: A theater that regularly features one or more of the following:

- (1) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”; or,
- (2) Live performances which are characterized by an emphasis upon the depiction or description of “specified anatomical areas” or “specified sexual activities”, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.

Nude Model Studio: Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of New York State.

Sexual Anatomical Areas: Areas that are less than completely and opaquely concealed (a) human genitals, pubic region, (b) human buttock, anus or (c) female breast below a point immediately above the top of the areola; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

Specified Sexual Activities: Includes (i) human genitals in a state of sexual stimulation or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

For the purpose of determining whether a “substantial portion” of an establishment includes an adult bookstore or use the following factors shall be considered: (1) the amount of floor area and cellar space accessible to customers and allocated to such uses; and (2) the amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment. For the purposes of the Section the term “substantial” shall mean an amount equal to or greater than 25 percent of the total.

For the purpose of determining whether a bookstore has a “substantial portion” (equal to or greater than 25%) of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered: (1) the amount of such stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area and cellar space accessible to customers containing such stock; and (3) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.

A person includes a firm, partnership, corporation, association or legal representative, acting individually or jointly.

C. Restrictions Affecting Adult Uses

Adult uses and establishments, including but not limited to an adult book store, adult eating or drinking establishment, adult theater, adult motel, adult message establishment, nude model studio or other adult commercial establishment, or any combination thereof. adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, and adult entertainment cabaret shall be permitted subject to the following restrictions. All distance separations shall be measured from closest property lot line to closest property lot line.

1. No such adult uses shall be within one hundred (100) feet of another existing adult use.

2. No such adult use shall be located within five hundred (500) feet of a pre-existing school, place of worship, playground or park.

3. No such adult use shall be located within one hundred (100) feet of a property under residential use within the boundaries of any Residential Zoning District. The actual dwelling unit must be located in the Residential District. If the property is split between a residential district and a commercial or industrial district, then the home on the property must be located in the residential portion of the property. Otherwise, the adult business does not need to abide by the one hundred (100) foot distance separation from this particular property.

4. No such adult use shall be located in any zoning district except the Neighborhood Commercial or Industrial Districts (C-1, C-2 or I).

5. Only one adult establishment shall be permitted on a zoning lot.

D. Prohibition Regarding Public Observation

No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

SECTION 511 MOBILE HOME PARKS

Mobile home parks may be permitted in a Planned Unit Development District (PUD) provided the following standards and requirements are complied with:

A. Size

The size of all mobile home parks shall be a minimum of ten (10) acres.

B. Construction and Safety Standards

All mobile homes within the park shall comply with the current construction and safety standards set forth by the U.S. Department of Housing and Urban Development.

1. Mobile homes shall have a minimum enclosed living area of seven hundred and fifty (750) square feet.

2. Solid fuel burning devices shall not be permitted within any mobile home in a mobile home park.

C. Layout and Design

1. Double Access

All mobile home parks containing twenty (20) or more units shall have access to a public highway at two (2) points, with such points being separated by at least one hundred (100) feet. This provision may be waived by the Planning Board if the applicant's proposal contains acceptable alternatives for emergency access.

2. Buffer Zone

The site shall be located and laid out so that no mobile home is located within 100 feet of any adjacent public highway right-of way or within 35 feet of any other adjoining property line. Additional buffer areas may be required by the Planning Board if deemed necessary in order to avoid potential conflicts with existing or planned land uses.

1. Sales Area

Commercial areas may be provided for the display and sales of mobile homes within the confines of the mobile home park, except on the frontage established in the buffer zone. Model units shall only be placed upon individual lots, limited to one (1) unit per lot.

4. Other Principal Structures

A private conventional residence may be located within the confines of the mobile home park. Lot location and minimum distances shall be fixed by the Planning Board after due consideration of each case.

5. Interior Roadways

The layout of interior roadways, driveways, and walkways shall be designed and maintained in such a manner as to provide for safe, efficient and orderly vehicular and pedestrian traffic acceptable to the Planning Board. In addition, all interior roadways shall be clearly identified by signs at each intersection. Such signs shall be acceptable to the Planning Board.

6. Roadway (or Driveway) Clear Zone Width

All roadways shall have a minimum clear zone width of forty (40) feet which is completely clear of obstructions to a height of twelve (12) feet.

7. Roadway Grades

The maximum roadway grade shall be seven (7) percent. Entrance gradients shall be less than three (3) percent for a distance of seventy-five (75) feet from the edge of the right-of-way of the public highway.

8. Minimum Radius

The minimum radius of curvature for any street shall be seventy-five (75) feet.

9. Alignment

Roadways shall be laid out so as to intersect as nearly as possible at right angles, and in no case shall any angle or intersection be less than seventy-five (75) degrees. Roadways in four way intersections shall be directly across from one another or offset a minimum of 125 feet.

10. Roadways

Roadway or driveway pavement shall be located in the center of the roadway clear zone and shall be at least twenty (20) feet wide or as designated by the Planning Board. If parking provision is made within the roadway clear zone such parking shall be off the pavement and the clear zone shall be increased accordingly.

11. Parking

Two (2) parking spaces shall be provided for each mobile home lot to meet the needs of occupants of the mobile home park and their guests without interference with normal movement of vehicular or pedestrian traffic. Such parking may be in tandem. Each parking space shall have minimum dimensions of at least ten (10) feet by twenty (20) feet per vehicle and shall have an all weather surfacing.

12. Auxiliary Parking

Auxiliary parking areas for motor vehicles shall be provided at a ratio of one (1) parking space to every five (5) mobile home units. Additional auxiliary parking areas are to be provided for parking trucks, maintenance equipment, boat trailers, utility trailers, and similar such equipment and vehicles.

13. Mobile Home Lot Size

All lots shall be a minimum of eight thousand (8,000) square feet exclusive of any common areas and shall have a minimum dimension of eighty (80) feet across the lot. No common areas such as buffer zones, roadway clear zones, auxiliary parking lots, recreational areas, service buildings and areas, sales areas, etc., shall be counted towards required individual mobile home lot areas.

14. Walkways

Walkways shall be laid out so as to connect service buildings, dry yards, and storage lockers with roadways. Walkways shall also provide access to recreation areas if such areas are not located adjacent to a roadway. Each roadway shall have a walkway running parallel to it, separated from the roadway by a minimum distance of seven (7) feet. Additional walkways may also be placed along the rear of each lot. All walkways shall be a minimum of three (3) feet wide and thickness of four (4) inches and shall be provided with joints so designed as to minimize cracking. All walkways shall be made of concrete or blacktop or other similar material approved by the Planning Board.

15. Recreation Areas

Recreation areas shall be provided in central locations at an amount equal to ten percent (10%) of the total park area. Recreational areas shall include playgrounds for children and separate areas for more passive enjoyment by adults. The playgrounds shall be equipped with play equipment for children under ten (10) years of age and should be away from traffic.

16. Public Telephone

If public telephones are provided within the court, they shall be located directly adjacent to service buildings.

17. Mailboxes

Mailboxes shall be located in compliance with U.S. Postal Service regulations and shall not be placed in any location where they constitute a safety hazard to pedestrians or to vehicles.

18. Trees

All existing trees shall be preserved insofar as possible in the design of the park.

D. Siting of Mobile Homes

Mobile homes shall be so situated within the mobile home park in conformance with the following:

1. The following minimum distances shall be maintained when providing specific locations of mobile homes as related to each other within the park:
 - (a) Laterally - (side of mobile home facing the side of another) thirty (30) feet.
 - (b) Longitudinally - (end of mobile home facing the end of another) twenty (20) feet.
 - (c) Perpendicularly - (end of one mobile home facing the side of another) twenty-five (25) feet.
2. In cases of irregularly shaped lots the Planning Board shall determine the application of the above listed provisions but in no case shall any two (2) mobile homes be closer than twenty (20) feet from one another.
3. No mobile home shall be located less than fifty (50) feet from any service or storage building other than approved accessory buildings located on and serving the specific mobile home lot as set forth in subsection E, paragraph 12 of this Section.
4. The minimum setback from the roadway line (clear zone rather than pavement) shall be fifteen (15) feet. Minimum setback from all interior lot lines shall be five (5) feet.
5. The percent lot coverage for an individual mobile home lot shall be no greater than twenty-five percent (25%).
6. The minimum distance between a mobile home and a parking space for motor vehicles shall be ten (10) feet.
7. No occupied travel or vacation trailer or other form of temporary type living units shall be permitted in a mobile home park.
8. Every mobile home lot shall be clearly identified by a number located on a sign or light post located on the lot.

E. Required Improvements

1. Water and Sewage System

Water supply and sewage collection/treatment facilities shall be installed and maintained in compliance with the requirements of the Village of Oakfield Public Works Department, New York State Health Department, Department of Environmental Conservation and the Genesee County Health Department. Water supply from the Village shall be through a "master meter" installed at the expense of the park owner.

2. Underground Utilities

Electrical systems, gas piping systems, cable and telephone wires, and community and individual fuel storage shall be installed underground and maintained in compliance with the NYS Uniform Code.

3. Artificial Lighting

Artificial lighting shall be provided from dusk to dawn to illuminate walks, driveways, roadways and parking spaces for the safe movement of pedestrians and vehicles. Specifically, roadway lighting standards shall be provided as follows:

(a) Overhead roadway lighting standards shall be placed no farther than one hundred (100) feet apart, have a minimum clearance above the pavement of twelve (12) feet and shall have a minimum capacity of 100 watts or as specified by the Planning Board.

(b) Service buildings shall have sufficient exterior lighting fixtures so as to properly illuminate entrances and drying yards connected therewith.

4. Refuse Disposal

It shall be the responsibility of the park owner to insure that garbage and rubbish shall be collected and properly disposed of outside the park as frequently as may be necessary to insure that garbage receptacles do not overflow. This responsibility shall include either the provision of garbage cans with tight fitting covers to each unit or dumpsters which service a number of units. Exterior property areas shall be maintained free from organic and inorganic material that might become a health, incident or fire hazard. Suitable screening shall be provided for all community refuse (dumpster) areas.

5. Roadway Paving

All roadways within the park shall be paved for a minimum width of twenty (20) feet in accordance with specifications acceptable to the Planning Board.

6. Parking Area Paving

Areas for motor vehicle parking and access driveways shall be surfaced with asphalt or concrete.

7. Mobile Home Lot

Each mobile home lot shall contain a mobile home stand to provide adequate support for the placement and tie down of the mobile home. The stand shall not heave, shift, or settle unevenly under the weight of the mobile home as a result of any frost action, inadequate drainage, vibration or other such forces. The material used in constructing the stand should be durable and capable of supporting the expected load regardless of the weather, and shall be constructed in compliance with the NYS Uniform Code. In addition, the footings and the load-carrying portion of the ground anchors shall extend below the frost line.

8. Patios/Decks

Mobile home lots may be provided with patios and/or decks. If installed, patios and/or decks may be covered and shall conform to distance separations, lot setbacks and percent lot coverage requirements, and shall not be enclosed (insect screening is allowable).

9. Storm Water Drainage

Mobile home parks shall have adequate facilities for drainage of surface and subsurface water. The entire mobile home park shall be graded to facilitate the safe and efficient drainage of surface water and to permit no ponding areas where water will stand for lengths of time so as to constitute a health or other hazard. Drainage ditches shall be provided where necessary to provide for the removal of surface drainage. Such ditches shall be provided in such a way as not to constitute a hazard to pedestrians. Gutters, culverts, catch basins, drain inlets, storm water sewers or other satisfactory drainage systems shall be utilized where deemed necessary and shall be acceptable for a size specified by the Planning Board and the Genesee County Soil and Water Conservation District.

10. Landscaping

Each mobile home lot shall be provided with at least two (2) shade trees with trunks not less than one and one-half (1 1/2) inches in diameter as measured three (3) feet from the ground. Poplars, silver or soft maples, box elders, catalpas, and horse chestnuts shall not be planted. The planting of elms is not recommended. Shade trees shall also be planted at intervals of not less than fifty (50) feet within the buffer areas to the sides and rear of the mobile home court. Shade trees are recommended in the buffer area between the public highway and the adjacent mobile home lots. Due regard shall be had to the obstructive qualities of limbs and branches along mobile home movement and accessways.

11. Service Buildings

The developer shall be required to furnish service buildings in conformance with the following:

- (a) Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a mobile home lot.
- (b) Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the NYS Uniform Code and the New York State Sanitary Code.
- (c) The service buildings shall be well lighted at all times from dusk to dawn and shall be well ventilated with screened openings, shall be constructed of such moisture proof material, including painted woodwork, as shall permit repeated cleaning and washing, and be maintained at a temperature of at least 68 degree Fahrenheit during the period of October 1 to June 1. The floors of such buildings shall be of concrete and supplied with drains.

12. Additional Structures on Mobile Home Lots

Additional structures on mobile home lots are subject to the following:

- (a) No non-integral structural addition or other accessory building or structure in excess of one hundred (100) square feet shall be permitted on any mobile home lot.
- (b) Structural additions, accessory buildings, car ports and awnings shall conform to distance separations, lot setbacks and percent lot coverage requirements.
- (c) Accessory buildings shall not be placed in front yards.

13. Mobile Home Park Owner Obligations

In general, mobile home parks shall be properly maintained so as to insure the desirable residential character of the property. Specifically, the following shall apply:

(a) Yard Maintenance

Mobile home parks shall be maintained reasonably free from holes and excavations, sharp protrusions, and other objects or conditions which might be a potential cause of personal injury. Walks, steps, driveways and roadways that contain holes or tripping hazards shall be filled, repaired, or replaced as the need indicates. Trees, or limbs of trees, that constitute a hazard, shall be removed. Snow removal is the responsibility of the mobile home park owner.

(b.) Noxious Weeds

Ragweed and other noxious weeds considered detrimental to health such as a poison ivy or poison sumac shall be completely eliminated from all areas of the mobile home park. Open areas shall be maintained free of heavy undergrowths of any description.

(c) Accessory Structures

All accessory buildings or structures shall be kept in good repair, free from health, fire and accident hazards. They shall be of durable construction and appropriate for intended use and location, exterior wood surface of all structures that are not inherently resistant to deterioration shall be periodically treated with a protective coating or paint or other suitable preservative.

(d) Gravel Areas

All areas surfaced with gravel shall be kept clear of all forms of vegetation.

(e) Infestation

Grounds and structures shall be maintained free of insect, vermin, and rodent harborage and infestation. Methods used for purposes of extermination shall conform with generally accepted practice.

(f) Skirts

Skirts for individual mobile homes are required and shall conform to the New York State Uniform Code. Such skirting shall be installed within thirty (30) days of the installation of the mobile home and must be maintained.

14. Mobile Home Park Plans and Registration of Mobile Home Park Occupants

It shall be the duty of each mobile home park owner/operator to keep a register containing a record of all mobile home owners and occupants located within the park. This register shall contain the following:

- (a) The name and legal address of all occupants.
- (b) The name and address of the owner of each mobile home.
- (c) The make, model, year, and license number of each mobile home.

SECTION 512 **LIGHT INDUSTRIAL USES IN C-1 DISTRICTS**

Light industrial uses may be permitted in the Neighborhood Commercial (C-1) District upon compliance with the following standards and the issuance of a special use permit in conformance with Section 208.

A. Construction and Safety Standards

The proposed light industrial uses shall comply with all the construction and safety standards contained in the NYS Uniform Code and all other applicable laws, codes and regulations.

B. Enclosure of Process and Storage Areas

No outside process or storage associated with the light industrial uses shall be permitted. Long term (greater than 24 hours) storage of products and/or materials shall not be allowed in trucks or trailers parked onsite.

C. Hazardous Materials and/or Processes

No light industrial use shall involve a use classified as "high hazard" by the NYS Uniform Code (see Section 703.4) or use highly hazard materials. Use and storage low and moderate hazard materials and processes shall be done in compliance with all applicable laws, codes and regulations. The Village Zoning Enforcement, Code Enforcement and representatives of the Fire Department shall have the authority to thoroughly inspect all light industrial uses at least annually and to preform spot inspections as they determine necessary to protect the public health and safety.

D. Noise Dust and Odors

Light industrial uses shall not emit or release any noxious or annoying fumes, odors, noise or other disturbances.

E. Buffer Area

When the Planning Board has determined that a buffer area may be necessary to protect surrounding land uses from a light industrial use, it may require the installation and maintenance of a buffer strip as set forth in Section 301.A.8.e of this Zoning Law.

SECTION 513 **ENERGY TOWERS**

No person, firm, or corporation being the owner or occupant of any land or premises within the Village of Oakfield, shall use or permit the use of said land or premises for the construction of a tower for energy-deriving purposes without obtaining a special use permit and site plan approval therefore as hereinafter provided.

A. Specific Exemptions From This Section.

1. Pre-existing towers.
2. Attached towers the height of which is within the maximum building height prescribed in Zoning Schedule A of the Zoning Law of the Village of Oakfield.

B. Permit Application.

1. All applications for a special use permit and site plan approval shall be by written application on forms provided by the Village of Oakfield.
2. Each application for a special use permit and site plan approval shall be accompanied by a complete plan, drawn to scale, showing the location of the tower on site; the location of all structures, power lines or other utility lines within a radius equal to the proposed tower height; dimensions and sizes of the various structural components of the tower's construction; design data which shall indicate the basis of design; and certification by a registered professional engineer or manufacturer's certification that the tower was designed to withstand wind load requirements for structures as set forth in the New York State Uniform Fire Prevention and Building Code.
3. All applications for a special use permit and site plan approval for the construction of a tower to be used to derive energy will be referred to the Planning Board. In granting such approvals, the Planning Board may impose other conditions and restrictions deemed necessary for the maintenance and safety of such towers.

C. General Provisions

Prior to issuance of final site plan approval, the following requirements shall be complied with:

1. Towers shall be located or placed in rear yards.
2. Guy wires and anchors for towers shall not be located closer than one-half (1/2) of the height of the tower to any property line.
3. Energy-deriving towers shall be so placed that the base portion of the tower, if visible from any right-of-way, shall be suitably screened from view.

4. There shall be a limit of one (1) energy-deriving towers per parcel.

5. Energy-deriving towers shall not produce a level of noise at any lot line greater than the ambient nighttime level. Noise reduction technology shall be installed as a condition of approval if it is determined by the Planning Board that the ambient nighttime noise levels are exceeded after installation occurs.

6. Towers used solely for energy-deriving purposes shall not exceed a total height of one hundred fifty (150) feet from the ground to the top of the tower.

SECTION 514 OUTSIDE SOLID FUEL BURNING DEVICES

Outside solid fuel burning devices shall not be permitted in the Village of Oakfield.

SECTION 515 COMMERCIAL COMMUNICATION TOWERS

No commercial communication tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

A. Shared Use of Existing Towers and/or Structures

At all times, shared use of an existing tower and/or structure including another commercial communications tower, water tower, or building shall be preferred to the construction of a new commercial communication tower. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower. The installation of a commercial communications antenna(s) on an existing structure located within the C-1, C-2 and I Districts shall be considered a permitted accessory use not subject to Site Plan Review, provided the following criteria are met:

1. The existing structure is not increased in height or otherwise modified so as to change its visual appearance,
2. The antenna(s) do not extend above such structure more than ten (10) feet, and
3. The applicant provides the necessary documentation to the Zoning Enforcement Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code.
4. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.

B. New or Altered Towers and/or Structures

The authorizing board may, in its sole discretion, consider a new or altered (including tower or structure which are modified, reconstructed, or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the

authorizing board that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

The applicant shall be required to submit a site plan in accordance with Article IV for all commercial communication towers that are proposed to be erected, moved, reconstructed or altered. Site Plan Review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section. In addition to Article IV, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

The authorizing board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQR), and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The authorizing board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

Where shared usage of an existing tower or other structure is found to be impractical, as determined in the sole discretion of the authorizing board, the applicant shall investigate shared usage of an existing tower or other structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection B of this Section. Any new commercial communication tower approved for a site with an existing tower or other structure site shall be subject to the standards of Subsections F through N of this Section.

E. New Tower at a New Location

The authorizing board may consider a new commercial communication tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the authorizing board, and submits a report as described in Subsection B of this Section.

F. Future Shared Usage of New Towers

The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived provided that the applicant demonstrates, in the sole discretion of the authorizing board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

1. The number of Federal Communications Commission (FCC) licenses that in the future, would be available for the area.
2. The kind of tower site and structure proposed.
3. The number of existing and potential licenses without tower spaces;
4. Available spaces on existing and approved towers; and
5. Potential adverse visual impact by a tower designed for shared usage.

G. Setbacks for New Towers

All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

1. All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the authorizing board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this paragraph may be increased in the sole discretion of the authorizing board, or it may be decreased, again in the sole discretion of the authorizing board, in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Village Engineer and the authorizing board.

2. Accessory structures must comply with the minimum setback requirements in the underlying district.

H. Visual Impact Assessment

The authorizing board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to those guidelines and criteria listed below that the authorizing board, in its sole discretion, deems appropriate at the pre-submission conference:

1. Assessment of “before and after” views from key viewpoints both inside and outside of the Village, including state highways and other major roads, from state and local parks, other public lands; from any privately-owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers

2. Assessment of alternative tower designs and color schemes, as described in Subsection I below.

3. Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

I. New Tower Design

Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:

1. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the authorizing board.

2. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae).

3. The authorizing board may request a review of the application by the Village Engineer, or other engineer selected by the authorizing board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.

4. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

5. No portion of a tower may be used for signs or advertising purposes including company name, banners, or streamers.

6. The applicant shall provide documentation acceptable to the authorizing board that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.

7. Space on communication towers shall be made available for public safety purposes including Genesee County Public Safety Radio System at no cost to public safety agencies.

J. Existing Vegetation

Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of (4) feet off the ground) shall take place prior to approval of the special use permit. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

K. Screening

Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

L. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking

Parking shall be provided in accordance with Section 501. No parking space shall be located in any required yard.

N. Fencing

Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the authorizing board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.

O. Maintenance and/or Performance Bond

Prior to approval of any application, the authorizing board shall require the applicant and/or owner to post and file with the Village Clerk a maintenance and/or performance bond in an amount necessary to completely demolish and remove the Tower and all related structures, and restore the site to level ground with a non-erodable surface. Such bond or security shall be renewable every five (5) years. Upon renewal, the applicant shall provide to the Village Planning Board no less than two estimates from demolition companies that depict the costs of demolition, removal and restoration. The Village Planning Board may adjust the amount of the performance or maintenance bond as seen fit to reflect these cost estimates. The Village Planning Board, at their own discretion, may require the applicant to reimburse the Village for costs related to hiring an independent demolition company to perform a cost estimate for the demolition, removal and restoration of the tower and site if the applicant does not provide sufficient cost estimates.

P. Annual Re-certification

The owner/operator of a commercial communications tower shall annually, on the anniversary of original issuance of his/her special use permit, provide a written certification to the Zoning Enforcement Officer that their tower is still in operation and currently being used as approved by the special use permit.

Q. Removal of Obsolete/ Unused Facilities

Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

R. Emergency Call Routing

In accordance with Genesee County Local Law no. 3 of 2001, all wireless service providers installing and operating equipment for communications purposes shall route all 911 emergency calls to the Genesee County Public Service Answering Point.

SECTION 516 **BIO REMEDIATION**

A. Purpose

The purpose of this provision is to allow for use of bio remediation for the treatment of petroleum-contaminated soils within the C-1, C-2 and I Districts. It is recognized that operation of such uses without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

B. Process

An applicant shall apply to the authorizing board for a special use permit to establish a bio remediation cell(s) in a C-1, C-2 or I District.

C. General Provisions

The following provisions are intended to insure the use of bio remediation will not adversely affect surrounding land uses or pose unnecessary risks to residents and the environment:

1. All operations must be set back not less than 1,000 feet from any neighboring residential use or place(s) of public assembly.

2. All contaminated soils to be treated must have originated from within the Village of Oakfield. No contaminated soils from property located outside of the Village of Oakfield shall be used in a bio remediation process located within the Village.

3. Prior to approval of any special use permit, the authorizing board, in its sole discretion, may require the applicant and/or owner to post and file with the Village Clerk a maintenance and/or performance bond or other form of security acceptable to the Village Attorney, in an amount sufficient to cover the clean up and/or remediation said bio remediation cell(s) during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the authorizing board, based upon the unique characteristics of the bio remediation cell(s) and site. The applicant and/or owner shall cooperate with the authorizing board in supplying all necessary construction, sampling, maintenance and reclamation data to the authorizing board prior to approval of any application to accomplish the foregoing.

SECTION 517 **PONDS**

A. Purpose

The purpose of this section is to provide for the construction of ponds that are adequately designed and located so as to not pose adverse impacts upon surrounding land uses. Farm water supply, conservancy, storm water/erosion control and fire protection or other ponds may be located within the R-1, R-2, C-1, C-2, and I Districts upon issuance of a special use permit provided the following criteria are met.

B. General Provisions

1. The proposed pond is located not less than 100 feet from any property line. This setback distance shall be measured from the edge of the surface of the water at its highest level.

2. The proposed pond design is deemed acceptable by the Genesee County Soil and Water Conservation District (GCSWCD), as provided through a written certification of approval.

3. Any soil excavated in the construction of a pond shall not be removed from the affected parcel without the specific authorization of the Planning Board in issuing the Special Use Permit.

SECTION 518 ACCESSORY APARTMENTS

A. Purpose

The purpose of this provision is to allow for accessory apartments that are compatible with the neighborhoods in which they are located. Accessory apartments can be instrumental in allowing senior citizens to remain somewhat independent. It is recognized that the potential investment required for the establishment of an accessory apartment will in all likelihood result in its occupancy by subsequent individuals who may not share the family and/or close friend relationship that may have been the case for the initial occupant(s).

B. Process

An applicant shall apply to the Planning Board for a Special Use Permit in compliance with Section 208, to establish an accessory apartment in the R-1 or R-2 District. In reviewing a Special Use Permit application for an accessory apartment, the Planning Board shall consider the conditions set forth in Subsection C of this Section in addition to those set forth in Section 208.

C. General Provisions

The following provisions are intended to insure both that the accessory apartment is secondary to the residential use, and that it is compatible with the residential character of the neighborhood:

1. Only one accessory apartment is permitted per lot, and such apartment shall be part of the principal residential structure on the lot. An accessory apartment shall not be permitted in an accessory building.

2. Either the principal dwelling unit or the accessory apartment shall be occupied by, and considered the primary residence, of the property owner.

3. No alteration to the exterior of the structure shall be made which changes the residential character thereof.

4. An accessory apartment shall not be permitted on a lot that does not meet both the minimum lot area and lot frontage requirements of the respective zoning district in which it is located.

5. Not more than 25% of the entire floor area of the structure may be used for the accessory apartment and the total floor area to be utilized (including any new construction) shall not exceed 600 sq. ft.

6. All utilities hookups shall be installed and maintained in compliance with the requirements of the authority having jurisdiction.

7. Adequate parking shall be provided as set forth in Section 501.

SECTION 519 OCCASIONAL SALE OF PERSONAL PROPERTY

No public sales of personal property shall be conducted on residential property or premises unless a permit for the same has been issued by the Village Clerk. No such permit shall be issued unless the fee therefore has been paid in accordance with the Village's current fee schedule, which is on file in the Clerk's Office. No permit shall be issued for a period longer than three (3) consecutive days. No more than two (2) permits shall be issued for the same premises in any one calendar year, except that if the premises contain more than one residence or apartment, no more than two (2) permits shall be issued for the same residence or apartment.

TOWN OF OAKFIELD ZONING ORDINANCE

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TOWN OF OAKFIELD ZONING ORDINANCE

ARTICLE I PURPOSES

SECTION 100 PURPOSES

This plan is adopted for the protection and promotion of the public health, safety, morals and general welfare of the community, as follows:

101. To guide the future growth and development of the Town in accordance with a comprehensive plan of land use and population density that represents the most beneficial and convenient relationships among the residential, non-residential and public areas within the Town, considering the suitability of each area for such uses, as indicated by existing conditions; trends in population and mode of living, and having regard for the use of land, building development and economic activity, considering such conditions and trends both within the Town and with respect to the relation of the Town to areas outside thereof.

102. To provide adequate light, air and privacy; to promote safety from fire, flood and other danger, and to prevent over-crowding of the land and undue congestion of the population.

103. To protect the character and the social and economic stability of all parts of the Town, and to encourage the orderly and beneficial development of all parts of the Town.

104. To protect and conserve the value of land throughout the Town and the value of buildings appropriate to the various districts established by this Ordinance.

105. To bring about the gradual conformity of the uses of land and buildings through the comprehensive zoning plan set forth in this Ordinance, and to minimize the conflicts among the uses of land and buildings.

106. To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard to the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian traffic movement appropriate to the various uses of land and buildings throughout the Town.

107. To provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment, and other economic activity relating to uses of land and buildings throughout the Town.

108. To limit development to an amount equal to the availability and capacity of public facilities and services.

109. To prevent the pollution of streams and ponds; to safeguard the water table, and to encourage the wise use and sound management of the natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.

110. Short Title - This Ordinance shall be known as and may be cited as the Zoning Ordinance of the Town of Oakfield.

ARTICLE II **DEFINITIONS**

SECTION 200 **USE OF WORDS AND TERMS**

For the purpose of this Ordinance, certain words and terms used herein and defined as follows:

SECTION 210 **GENERAL CONSTRUCTION OF LANGUAGE**

All words used in the present tense include the future tense; all words in the singular number include the plural number, and vice-versa; the word "person" includes corporations and all other legal entities; the words "lot", "plot", and "tract of land" shall one include the other; the word "premises" shall include land and buildings thereon; the word "building" shall include structure and vice-versa; "occupied" or "uses" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied", unless the natural construction of the wording indicates otherwise. The word "shall" is mandatory. Unless otherwise specified, all distances shall be measured horizontally.

SECTION 220 **DEFINITIONS**

Accessory Use: A use which is customarily incidental and subordinate to the principal use on a lot, and located on the same lot therewith.

Alter: To change or rearrange the structural parts or the exit facilities of a structure, or to move a building from one location to another.

Area, Building: Total of areas taken on a horizontal plane at the main grade level of principal buildings and all accessory buildings including carports and covered porches but exclusive of uncovered porches, parapet, steps and terraces.

Basement: That portion of a building wholly or partly underground, which extends no more than four feet above the adjoining finished grade. The word "basement" includes the word "cellar".

Board of Zoning Appeals: That Board appointed by the governing body, specifically to hear

all appeals as provided by these regulations.

Boarding House: A dwelling occupied by one family with no more than two boarders, roomers or lodgers in the same household, who are lodged with or without meals, and in which there are provided such services as are incidental to its use as a temporary residence for part of the occupants. The term "boarding house" shall include "rooming house" for the purposes of this ordinance.

Buffer Strip: A continuous strip of trees and/or shrubs not less than ten (10) feet in depth and not less than six (6) feet in height densely planted to provide a physical screen preventing visual access from one use to another and to reduce the escape and/or intrusion of litter, fumes, dust, smoke, noise or other noxious or objectionable elements.

Building: Any structure having a roof supported by columns or poles or walls, and intended for the shelter, housing or enclosure of persons, animals, machinery, equipment or other material. A tent or canopy is a structure and is subject to this ordinance and a zoning permit is required except as provided under section 580 temporary tents and canopies.

Building Accessory: A subordinate building, subordinate to the main building on the lot and used for purposes customarily incidental to that of said main building.

Building Height: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs; to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

Building Length: The least horizontal distance between the furthestmost walls of a building, including any carport and covered porches.

Building, Main: A building in which is conducted the main or principal use of the lot on which said building is situated.

Building, Temporary: A "temporary building" or "temporary structure" is one erected, constructed or placed upon the premises, to exist there for a brief or temporary duration of time, not exceeding nine months. All other buildings or structures shall be deemed and considered as permanent for the purposes of this ordinance.

Camp: Any one or more of the following, other than a hospital, place of detention or school offering general instruction:

Type 1: Any area of land or water on which are located two or more cabins, tents, trailers, shelters, households, or other accommodations of a design or character suitable for seasonal or other more or less temporary living purposes, regardless of whether such structures or other accommodations actually are occupied seasonally or otherwise; or

Type 2: Any land, including any building thereon, used for any assembly of persons for what is commonly known as "day camp" purposes, and any of the foregoing establishments whether or not conducted for profit and whether or not occupied by adults or by children, either as individuals, families or groups.

Campsite: Any land on which are located two or more recreational vehicles or other accommodations, excluding mobile homes, suitable for transient or temporary living purposes for overnight, weekend or longer periods of camping.

Certificate of Compliance: A certificate issued by the Zoning Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of this Ordinance only and such adjustments thereto granted by the Board of Appeals.

Club Membership: A group of persons organized in accordance with the Not-For-Profit Corporation Law (example - fish and game clubs).

Convalescent Home or Nursing Home: Any establishment where three or more persons suffering from or afflicted within or convalescing from any infirmity, disease or ailment, are habitually kept or boarded or housed for remuneration, other than municipal or incorporated hospitals, or establishments for the care of the mentally ill.

Coverage: That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

Dwelling: A detached building or immobile house trailer, designed or used exclusively as living quarters for one or more families; the term shall not be deemed to include automobile court, motel, boarding or rooming house, mobile house trailer, tourist home, or tent.

Dwelling, One Family: A dwelling containing one dwelling unit only.

Dwelling, Two Family: A dwelling containing two dwelling units only.

Dwelling, Multi-Family - A dwelling containing three or more dwelling units.

Dwelling Unit: A building, or portion thereof, providing complete housekeeping facilities for one family.

Earth-Sheltered House: A structure which utilizes earth to shelter the structure from extreme fluctuations in temperature, wind, and air infiltration. The structure may be completely below the original grade, totally above the original grade with earth bermed around the exterior walls, or partially above and partially below the original grade such as with placement in the side of a hill. An earth sheltered house must provide at least two distinct means of egress.

An earth-sheltered house is distinguishable from a basement being used as a house chiefly in

terms of design function. An earth-sheltered house is designed, and appears to be designed, as the final structure just as it stands. A basement is designed, and appears to be designed, as a foundation for a superstructure placed upon it. These distinctions are most noticeable by comparing: (a) The position of the structure with respect to final grade; (b) The manner in which lighting and ventilation are provided; (c) The design strength of the walls and roofs; (d) The means of access.

Educational Institution, Private: Any non-public school or other organization or institution conducting a regularly scheduled curriculum of study similar to that of the public schools and operated under the Education Law of New York State.

Family: One or more persons who live together in one dwelling unit and maintain a common household. May consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

Farm: Any parcel of land consisting of at least five acres which is used for the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm structures within the prescribed limits and the storage of equipment used. It excludes the raising of fur-bearing animals, riding academies, livery or boarding stables and dog kennels.

Filed Map: Any map, survey or plat filed in the County Clerk's Office of Genesee County.

Fence: A barrier constructed of wood, masonry, stone, metal or other manufactured material or combination of materials, which materials are used in a manner in which such materials are commonly used in fencing, other than temporary fences, such as snow fences or rabbit fences. (Amended 9/16/97)

Frontage: The extent of a building or a lot along a public street as defined herein.

Floor Area of a Building: The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Garage, Private: An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a non-resident of the premises.

Garage, Public: Any garage, other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, adjusting or equipping of automobiles or other motor vehicles.

Gasoline Station: Any area of land, including structures thereon, that is used for the storage and sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories or facilities for lubricating, washing or otherwise

servicing motor vehicles.

Gasoline Station-Market: A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market, or food market or such a commercial use which provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

Habitable Floor: Any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation or combination thereof. A floor used only for storage purposes is not "habitable".

Home Occupation: An occupation or a profession which: (A) Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, and (B) Is carried on by a member of the immediate family residing in the dwelling unit, and (C) Is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and (D) Which conforms to the following additional conditions:

1. The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.

2. No more than two persons outside the immediate family shall be employed in the home occupation.

3. There shall be no exterior display, no exterior sign (except as permitted under Section 560), no exterior storage of materials and no exterior indication of the home occupation or variation from the residential character of the principal building.

4. No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced, nor shall any home occupation be allowed which will result in:

a. Dissemination of noise, vibration, odor, dust, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

b. Hazard or fire or explosion or other physical hazard to any person, building or vegetation.

c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such a manner as to constitute a public nuisance.

In particular, a home occupation includes, but is not limited to, the following: Art studio, Dressmaking, Barber shops and beauty parlors (when limited to one work station), Day nursery, Professional office of a physician, dentist, lawyer, engineer, architect or accountant within

a dwelling occupied by the same Teaching or tutoring, Real estate offices

However, a home occupation shall not be interpreted to include the following: Motor vehicle repair shop, machine shop, welding and fabrication shop, Commercial stables and kennels, Restaurants.

Hospital: Unless otherwise specified, the term "hospital" shall be deemed to include sanitarium, preventorium, clinic, rest home, nursing home, convalescent home and any other place for the diagnosis, treatment or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

Hospital, Animal: An establishment for the medical and/or surgical care of sick or injured animals.

Hotel: A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room are provided within the buildings or in an accessory building.

Junkyard: Land or building used for collecting, storage or sale of waste paper, rags, scrap metal or discarded pallets, tires (other than tires used for agricultural purposes ie: bunker silos) or other discarded materials; or for collecting, wrecking, dismantling, storage, salvaging or sale of machinery, parts or vehicles not in running condition. (Amended 6/28/88)

Junkyard, Automobile: Any place of storage or deposit whether in connection with another business or not, where more than one motor vehicle is held (other than enclosed in a building) which is not bearing both a valid registration plate and a valid inspection certificate. If it is not readily discernible from the highway that a motor vehicle is bearing a valid registration plate it shall be presumed that such motor vehicle is not bearing registration plate. If it is not readily discernible from the highway that a motor vehicle is bearing a valid inspection certificate it shall be presumed that such motor vehicle is not bearing a valid inspection certificate. Such presumption shall continue until substantial evidence to the contrary is presented. (Amended 7/12/94)

Kennel: A "kennel" shall mean the keeping of five (5) or more dogs over the ages of five (5) months.

Lake, Artificial: A body of water created through construction or other similar method, having a surface area in excess of one acre.

Landfill, Sanitary: The depositing of refuse in a natural or man-made depression or trench, or dumping it at ground level, compacting to the smallest practical volume, and covering with earth or other material in a systematic and sanitary manner.

Launderette: A business premises equipped with individual clothes washing machines for

the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment house or an apartment hotel.

Lot: A parcel of land, not divided by streets, devoted to or to be devoted to a particular use, or occupied or to be occupied by a building or buildings, together with such open spaces as are required under the provisions of this ordinance, and having its principal frontage on a street as defined in this ordinance.

Lot, Corner: A lot located at the junction of and fronting on two or more intersecting streets.

Lot, Area: The total horizontal area included within lot boundaries.

Lot, Depth: The mean horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot, Width: The horizontal distance between the side lot lines, measured at right angles to the lot depth.

Lot Lines: The property lines bounding a lot as defined herein.

Lot Line, Front: In the case of a lot abutting upon only one street, the line separating the lot from the street; in the case of any other lot, the owner shall, for the purpose of this ordinance, have the privilege of electing any street lot line as the front lot line, except that where the majority of lots in any block are developed, the owner shall select the same front line as used by such other lots. In subdivision approved by the Planning Board, said Board may designate front lot line on any lot having frontage on more than one street.

Lot Line, Rear: The lot line which is generally opposite the front lot line, if the rear lot line is less than ten (10) feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line, not less than ten (10) feet long, lying wholly within the lot farthest from the front lot line.

Lot Line, Side: The property line or lines extending from the front lot line to the rear lot line.

Mobile Home: A portable unit, designed and built to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed without a permanent foundation for year round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. Mobile units arrive at the site where they are to be occupied as dwellings completed, including major appliances and furniture, and ready for occupancy except for minor and incidental unpacking and assembly operations, location of foundation supports, connection to utilities, and the like.

Mobile Home Park: A parcel of land under single ownership which has been improved for

the rental or lease of two or more lots and the provision of services for mobile homes for nontransient residential use.

Mobile Home Subdivision: A parcel of land under single ownership in which a single lot or lots are developed and eventually sold by the landowner to persons for the placement of a mobile home.

Non-Conforming Use: A use of a building or of land that does not conform to the regulations as to use in the district in which it is situated, which use was lawful under the preceding ordinance at the time the use was established.

Nursery: Any place used as a garden for the open cultivation and growing of trees, shrubs and other plants, including the replanting of said plants grown at places other than the nursery.

Nursing Home or Convalescent Home: Any establishment where three or more persons suffering from or afflicted with, or convalescing from, any infirmity, disease or ailment, are habitually kept or boarded or housed for remuneration, other than municipal or incorporated hospitals, or establishments for the care of the mentally ill.

Official Map: A map adopted by the Town Board, showing streets, highways and parks already laid out, adopted and established by law. Drainage systems may also be shown in this map.

Parking Area: An off-street area containing one or more parking spaces, with passageways and driveways appurtenant thereto. In general, there shall be an average of three hundred fifty (350) square feet of parking area per parking space.

Parking Space: An off-street space available for the parking of one motor vehicle on a transient basis and having a width of ten (10) feet, and an area of not less than two hundred (200) square feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct usable access to a street.

Quarry, Sand Pit, Gravel Pit, Top Soil Stripping: A lot or land or part thereof used for the purposes of extracting stone, sand, gravel, or top soil for sale, as an individual operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made.

Sign: Any structure or part thereof, or any device attached to a structure or painted or represented on a structure, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement. A sign includes any billboard, but does not include the flag, pennant, or insignia of any nation, or group of nations, or of any state, city or other political unit or of any political education, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event. However, a sign as designed herein shall not include a similar structure or device located within a building.

A "business sign" is a sign which directs attention to a business or profession conducted or to products sold upon the same lot. A "For Sale" or "To Let" sign relating to the lot on which it is displayed shall be deemed a "business sign".

An "advertising sign" is a sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the same lot.

An "illuminated sign" is any sign designed to give forth any artificial light, or designed to reflect such light deriving from any source which is intended to cause such light or reflection. A "flashing sign" is an "illuminated sign" on which the artificial light is not maintained stationary and constant in intensity and color at all times when in use.

Site Plan: A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and hearings and any other information deemed necessary by the Planning Board.

Special Use: A specifically designed use that would not be appropriate generally or without restrictions throughout the zoning district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare.

Street: A public or private way which affords the principal means of access to abutting properties.

Use: The specific purpose for which land, water, or a building or structure is designed, arranged, intended, or for which it is or may be occupied or maintained.

Utility, Public: Any person, firm, corporation or municipal agency, duly authorized to furnish to the public, under public regulation, electricity, gas, water, steam, telephone or telegraph.

Yard: An open space on the same lot with a building or group of buildings which open space lies between the buildings or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward, except as may be specifically authorized in this ordinance. In measuring a yard, as hereinafter provided, the line of a building shall be deemed to mean a line parallel to the nearest lot line, drawn from a point of a building or the point of a group of buildings nearest to such lot line, and the measurement shall be taken at right angles from the line of the building as defined herein to the nearest lot line.

Front, Yard: A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the building.

Yard, Rear: A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the building.

Yard, Side: A yard between the side line of the lot and the nearest line of the building, and extending from the front yard to the rear yard, or, in the absence of such yards, to the front and rear lot line, as the case may be.

ARTICLE III ESTABLISHMENT OF DISTRICTS

SECTION 300 DISTRICT CLASSIFICATION

The Town of Oakfield is hereby divided into the following districts:

LC	Land Conservation
R&A	Residential Agriculture
R	General Residential
C	Commercial
I	Industrial

SECTION 310 ZONING MAP ESTABLISHED

Said districts are bounded and defined as shown in a map entitled "Zoning Map" of the Town of Oakfield, N.Y.", a copy of which is located at the end of this text and which, with all explanatory matter thereon, is hereby made a part of this Ordinance. (The FP Flood Plain Overlay Zone "A" shown on said map is for informational purposes. Flood regulations and the controlling map for flood purposes are set forth in a Local Law for Flood Damage Prevention). (Amended 4/14/87)

SECTION 320 INTERPRETATION OF DISTRICT BOUNDARIES

Where uncertainty exists as to the location of any boundaries shown on the zoning map, the following rules shall apply:

320.1 District boundary lines are intended to follow streets, right-of-way, water courses or lot lines, or be parallel or perpendicular thereto, unless such district boundary lines are fixed by dimensions, as shown on the zoning map.

320.2 Where district boundaries are indicated as following approximate streets, rights-of-way, or water courses, the center lines thereof shall be construed to be such boundaries.

320.3 Where district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs or other bodies of water, the mean high water lines thereof shall be construed to be the district boundaries.

320.4 Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.

320.5 If the district classification of any land is in question, it shall be deemed to be in the most restrictive adjoining district.

SECTION 330 **ORDER OF RESTRICTIVENESS**

Where districts are referred to as "more restrictive" or "less restrictive", the designation shall refer to the order in which the districts are named in Section 300, the first named being the most restrictive (exclusive of the Flood Plain Overlay Zone).

SECTION 340 **LOTS IN TWO OR MORE DISTRICTS**

Where a zoning district boundary line divides a lot in single ownership at the effective date of this Ordinance, leaving part subject to permissive regulations and part subject to prohibitive regulations, the Zoning Board of Appeals after public hearing may permit an extension of the use of that lot into the district where it is prohibited provided the extension does not extend more than fifty (50) feet into that district. Furthermore, the Board may impose conditions on that extension as protection to neighboring property.

SECTION 350 **EXISTING LOTS-OF-RECORD**

A single family dwelling and customary accessory buildings may be erected on any existing lot-of-record with a minimum of 100 feet in width and 20,000 sq. ft. in area (recorded with the County Clerk at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance). This provision shall apply even though such lot fails to meet the requirements for area or width or yard size provided that requirements other than those applying to area, width, or yard size, of the lot shall conform to the regulations for the district in which such lot is located. The single-family dwelling minimum yard requirements for existing lots-of-record within the R&A and R districts shall be as follows:

MINIMUM YARD REQUIREMENTS (Existing Lots-of-Record)

- A. Front 50 feet
- B. Side-one 8 feet
- C. Side total 23 feet
- D. Rear 30 feet

Existing lots-of-record in C and I districts shall conform to the provisions of this Ordinance.

ARTICLE IV REGULATIONS FOR DISTRICTS

SECTION 400 APPLICATION OF REGULATIONS

No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purpose except in conformity with this ordinance. No building, structure, hotel or premises shall be used, and no building or other structure shall be erected which is intended, arranged, or designed to be used for any trade, industry, business or purpose of any kind, that is noxious or offensive by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the comfort, peace, enjoyment, health or safety of the community, or tending to its disturbance, inconvenience, discomfort or annoyance.

In interpreting and applying this Ordinance, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public health, safety, morals, convenience and general welfare. This Ordinance shall not be deemed to affect in any manner whatsoever any easements, covenants, or other agreements between parties, provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or land, or upon the creation, erection, construction, establishment, moving, alteration or enlargement of buildings than are imposed by other ordinances, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, the provisions of this Ordinance shall prevail.

SECTION 410 **GENERAL REGULATIONS**

SECTION 411 **BUILDINGS, USES AND LOTS**

The provisions of this ordinance shall be subject to such exceptions, additions or modifications as herein provided by the following general supplementary regulations.

411.1 One Principal Building and Use Per Lot - There shall not be more than one principal structure and one principal use on any one lot in the following districts:

- Land Conservation (LC)
- Residential-Agriculture (R&A)
- General Residential (R)
- Commercial (C)

411.2 Yard and Open Space for Every Building - No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building; no yard or any other open space on one lot shall be considered as a yard or open space for a building on any other lot.

411.3 Subdivision of a Lot - Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation shall be effected in such manner as not to impair conformity with any of the requirements of this Ordinance with respect to the existing building and all yards and other required spaces in connection therewith, and no permit shall be issued for the erection of a building on the new lot thus created unless it complies with all the provisions of this ordinance.

411.4 Irregularly Shaped Lots - Where a question exists as to the proper application of any of the requirements of this Ordinance to a particular lot or parcel because of the peculiar or irregular shape of the lot or parcel, the Board of Appeals shall determine how the requirements of the Ordinance shall be applied.

411.5 Lots Under Water - No more than 25 percent of the minimum area requirements of a lot may be fulfilled by land which is under water continuously or periodically. Land which is under water that is open to use by persons other than the owner of the lot shall be excluded entirely from the computation of the minimum area of that lot. For the purposes of this section, land in the bed of a stream not exceeding five feet in width at mean water level, and land in any pond not exceeding 150 square feet in area shall not be considered as under water. Where any area is separated from the main body by water, such separated land shall not be included in computing lot area. (Amended 4/14/87)

411.6 Required Street Frontage - No building permit shall be issued for any structure unless the lot upon which that structure is to be built has the required frontage on a street or highway, as defined herein, which street frontage provides the actual access to such structure, and which street or highway shall have been suitably improved to Town Board standards or a bond posted therefore

to the satisfaction of the Town Board or Planning Board, as provided in Section 280a of the Town Law.

411.7 Parts of Lot Not Counted Toward Area Requirements - For any lot created by subdivision subsequent to the effective date of this ordinance, no part of such lot less in width than one-half of the minimum requirement for the district in which it is located shall be counted as part of the minimum required lot area.

411.8 Lot Width Required - Within any residential district, no part of any dwelling or other structure housing a main use, and within any business district, no part of any residence structure, shall be erected on any part of the lot which has a width of less than the minimum requirements for the district in which it is located.

SECTION 412 **YARDS, YARD REQUIREMENTS, BUILDING PROJECTIONS, SETBACKS, OTHER FEATURES**

412.1 Porches - No porch may project into any required yard. Any two-story or any enclosed porch, or one having a roof and capable of being enclosed, shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

412.2 Projecting Horizontal Architectural Features - Architectural features, such as window sills, belt courses, chimneys, cornices, eaves or bay windows, shall not project more than three feet into any required yard, but not nearer than eight feet from the lot line in any case. The sum of any bay window projections on any wall shall not exceed one-fourth the length of any said wall.

412.3 Fire Escapes - Open fire escapes may extend into any required yard.

412.4 Walls and Fences - The yard requirements of this Ordinance shall not be deemed to prohibit any necessary retaining wall, nor to prohibit any fence or wall, provided that such fence or wall does not exceed six (6) feet in height, unless that part above such height is not less than three-fourths (3/4) open construction.

412.5 Visibility at Intersections - On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three feet in height, shall be erected, placed or maintained within the triangular area formed by the intersecting street lines and a straight line joining said street lines at points which are thirty (30) feet distant from the point of intersection, measured along said street lines. The height of three feet shall be measured above the road surface at the nearest edge of road traveled-way. This paragraph shall not apply to existing trees, provided that no branches are closer than six (6) feet to the ground.

412.6 Corner Lots - On a corner lot in any residential district or C district, there shall be provided a side yard on the side street equal in depth to the required front yard on said lot. In such instances where there are two front yards, one of the remaining yards shall be considered a side yard

and the other shall be considered a rear yard for the purposes of this ordinance.

412.7 Swimming Pools - All swimming pools whose capacity is 5,000 gallons or more, shall be considered accessory structures and shall set back from lot lines at least the minimum distance required for other buildings and structures.

412.8 Buffer Areas - Wherever a buffer strip is required by this Ordinance, it shall meet the following standards:

A. Be at least ten feet in width along any lot line abutting a lot in a residence district.

B. Be of evergreen planting of such type, height and spacing as, in the judgement of the Planning Board, will screen the activities on the lot from view of a person standing at street level on the adjoining residential lot. The plan and specifications for such planting shall be filed with the approved plan for the use of the lot.

C. A wall or fence, of location, height, and design approved by the Planning Board, may be substituted for the required planting.

412.9 Exterior Lighting - All exterior lighting in commercial and industrial districts, including the lighting of signs, shall be of such type and location and shall have such shading as will prevent the source of the light from being seen from any adjacent residential property or from the street.

412.10 Accessory Structures - Accessory structures and uses, including swimming pools and satellite dishes (Amended 7/9/85), when located in a side yard shall meet the same side yard requirements as the principal building. Accessory structures entirely within a rear yard shall not be less than five feet from any side or rear line. (Amended 4/13/82) A satellite dish one meter or less in diameter may be erected without a permit on the roof of any building. It may also be erected without a permit in any other location which is not closer than five feet to a property line and which is not closer to a highway than either the minimum front yard requirements set forth in Section 900 or, if closer than the minimum front yard requirement, is not closer than the principal building to a highway. (Amended 1/9/96)

412.11 Level of Front Yard - The surface of the front yard at the front wall of any dwelling shall not be less than one foot above the elevation of the center-line of the street, measured at the mid-point between the side lines of the lot (Amended 4/13/82). However, this section shall not apply if no wall of the dwelling is closer than 200 feet to the highway right-of-way (Amended 7/9/85).

SECTION 413 **NONCONFORMING USES, STRUCTURES AND LOTS**

Except as hereinafter provided, the lawful use of any buildings or land existing at the time of the enactment or amendment of this ordinance may be continued although such use does not conform with this Ordinance.

413.1 Nonconforming Lots - A nonconforming lot shall not be further reduced.

413.2 Nonconforming Structures - A nonconforming structure or part thereof may be restored to a safe condition only to the extent of its prior nonconformity. A nonconforming structure may be enlarged provided the enlargement does not increase the nonconformity of the structure. For example, a structure nonconforming by reason of its nearness to a side lot line may be extended rearward provided the extension does not further reduce the side yard to extend into the required yard. This section shall not apply to nonconforming signs (see Section 560.4).

413.3 Nonconforming Uses

A. A nonconforming use may be converted to a conforming use as a matter of right.

B. A nonconforming use may be enlarged by special permit only (see Section 510) as long as:

1. The enlargement is in connection with the same business.
2. The enlargement is upon the same lot occupied by the use at the effective date of the Ordinance.
3. The enlargement does not create a greater deviation from the standards contained in this ordinance.
4. Such other conditions as may be deemed appropriate by the Town Board.

C. The right to continue a nonconforming use, once established and not abandoned, runs with the land, and this right is not confined to any one individual or corporation.

D. A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50 percent of the assessed value of the building unless said building is changed to a conforming use.

E. A non-conforming use discontinued for a period of one year or more shall be considered abandoned and shall not be re-established or revived except by grant of a special use permit by the Town Board. (Amended 8/12/94)

F. In a mobile home park which is a non-conforming use, a mobile home unit may be replaced with a different mobile home unit of equal or smaller size without a special permit, but a special permit shall be required for replacement with a larger mobile home unit.

SECTION 414 **FENCES** (Amended 9/16/97)

A. Any fence erected in the Town shall adhere to the following:

1. Before a fence shall be erected, a zoning permit must be obtained from the Zoning Enforcement Officer. A request for a permit shall be accompanied by a site plan which shall show the height and location of the fence in relation to all other structures and buildings, and in relation to all streets, lot property lines and yards. These restrictions shall not be applied so as to require a permit for, nor restrict, the erection, alteration, or reconstruction of fences for agricultural uses on farms or temporary fences.

2. Fences may be erected, altered or reconstructed to a height not to exceed three (3) feet above ground level when located within twenty (20) feet of the street right-of-way.

3. Fences may be erected, altered or reconstructed to a height not to exceed eight (8) feet above ground level when located more than twenty (20) feet from the street right-of-way line.

4. Fences shall be erected with the “good” or “finished” side facing towards neighboring properties. The Zoning Enforcement Officer will determine what side of a fence shall be considered the good or finished side subject to the applicant’s appeal of such determination to the Zoning Board of Appeals as set forth in Section 620.

5. These restrictions shall not be applied so as to restrict the erection of a wall for the purpose of retaining earth.

6. Temporary fences shall not exceed four (4) feet in height and shall be at least fifty (50) percent open construction. The use of such fencing shall be limited to time periods not to exceed six (6) months at a time.

7. Where fencing is erected on ground that is sloping and it is desired that the top line of fence sections shall be horizontal, the fence may be erected so lineal portions of the fence up to 10 feet in length may be at the maximum allowed height measured from the ground level at the highest point of ground level under the up-to-10 foot portion.

SECTION 420

SCHEDULE OF REGULATIONS FOR DISTRICTS

SECTION 421

RESIDENTIAL AGRICULTURAL DISTRICTS - R&A

A. Permitted Uses

1. Single family detached dwellings with a minimum floor area of seven hundred (700) square feet.
2. Mobile homes, minimum floor area of six hundred (600) square feet.
3. Farms and related farming activities provided that no off-premise manure shall be stored within one hundred (100) feet of a property boundary.
4. Farm water supply, conservancy and fire protection ponds, located not less than one hundred (100) feet from any street or property line.
5. Municipal parks, playgrounds, and buildings deemed appropriate by the Town Board.
6. Home occupation.
7. Churches and other similar places of worship, parish houses, convents, and other facilities of recognized religious groups.
8. Accessory uses and buildings incidental to and on the same lot as the principal use, as follows:
 - a. Private garages and carports.
 - b. Swimming pools, tennis courts and other recreational facilities for private, noncommercial use.
 - c. Customary farm buildings for the storage of products or equipment located on the same parcel as the primary use.
 - d. Customary farm buildings for housing farm animals shall not be located less than one hundred (100) feet from an adjoining zone.
 - e. Dwellings for domestic, household employees or farm workers employed on the same property as the permitted primary use.
 - f. Roadside farm stands for the sale of farm products produced thereon. There shall be a limit of one (1) stand per farm. Such stands shall be

set back a minimum of thirty (30) feet from the edge of the pavement.

g. Signs, fences, and off-street parking subject to the provisions of this Ordinance.

9. Two-family dwellings with a minimum floor area of six hundred fifty (650) square feet per unit.

B. Uses Permitted With A Special Use Permit in Accordance With Section 500

1. Public utility uses exclusive of office buildings, maintenance buildings and yards and equipment storage yards.

2. Non-commercial landing strip.

3. Industrial agricultural and commercial agricultural operations.

4. Mobile home parks and mobile home subdivisions.

5. Stripping of topsoil and sod. At least three inches of topsoil shall remain or shall be replaced on the surface.

6. Campsites.

7. Artificial lakes.

8. Cemeteries.

9. Excavation for specified purposes.

10. Dog kennels. (Amended 7/9/85)

11. Model shop, pattern shop, machine shop or welding. (Amended 6/28/88)

12. Auto body repair shop, small engine and small machines repair shop (including lawn and garden machines). (Amended 8/13/97)

13. Sporting club, limited to trap shooting, skeet shooting, sporting clay shooting, and archery and fishing. All operations must be set back not less than 500 feet from all property lines and from edge of highway. Days and hours operation may be regulated by the special use permit not to exceed a.m. to 8:00 p.m. but not to exceed legal sunset. Natural or man-made will be required to protect the public welfare and provide for normal and/or acceptable noise abatement and control projectiles. An acceptable site plan

of
from 9:00
berms

for location, size and make-up of berms will be required.

14. Golf courses, golf driving ranges, golf retail and/or pro shops, restaurants and other entities or accessories associated with golfing.
15. Temporary wind data gathering towers for a period not to exceed two years from issuance of permit, which permit may be renewed for one additional two year period for good cause shown.

C. Uses with Permit or Special Use Permit

1. Non-commercial Wind Energy Systems with either a permit or a special use permit as respectively required in Section 585.5.

SECTION 422 **GENERAL RESIDENTIAL DISTRICT - R**

A. Permitted Uses

1. Single family detached dwellings with a minimum floor area of seven hundred (700) square feet.
2. Churches and other similar places of worship, parish houses, convents, and other such facilities of recognized religious groups.
3. Public parks, playgrounds and buildings deemed appropriate by the Town Board.
4. Home occupations.
5. Farms and related farming activities provided that no off-premise manure or farm ponds shall be within one hundred (100) feet of an adjoining property line, except the keeping of farm animals. (Amended 7/9/85)
6. Home and farm gardens.
7. Two-family dwellings with a minimum floor area of six hundred fifty (650) square feet per unit.
8. Accessory uses and buildings incidental to and on the same lot as the principal use, as follows:
 - a. Agricultural buildings and structures.

- b. Private garages and carports.
- c. Swimming pools, tennis courts and other recreational facilities for private, noncommercial use.

B. Uses Permitted With a Special Use Permit in Accordance With Section 500

- 1. Cemeteries.
- 2. Excavations for specific purposes, as follows:
 - a. Artificial lakes
 - b. Gravel pits
 - c. Topsoil removal
- 3. Public utility structures.
- 4. Educational and cultural institutions.
- 5. Mobile home parks and mobile home subdivisions.
- 6. Single mobile homes for a period of one year while constructing a residential dwelling on the same lot. This special permit may be renewed for one additional year by the Zoning Enforcement Officer.
- 7. Dog kennels. (Amended 7/9/85)
- 8. The keeping of farm animals. (Amended 7/9/85)
- 9. On a lot which is adjacent to a commercially zoned lot (as of June 1, 1988) located in the Village of Oakfield, a used car lot. (Amended 6/28/88)

SECTION 423 **COMMERCIAL DISTRICT - C**

A. Permitted Uses

- 1. Motor vehicle sales, services and parking.
- 2. Stores and shops for conducting of wholesale or retail trade and business.

3. Offices, banks.

B. Uses Permitted With Special Permit

1. Drive through banks, restaurants, drive-in restaurants, bowling alleys and similar community services and places of entertainment.
2. Gasoline stations, gasoline station-markets, or public garages.
3. Motels and auto courts.
4. Dog kennels. (Amended 7/9/85)
5. Food warehousing and distribution centers. (Amended 8/9/88)

SECTION 424 **INDUSTRIAL USES - I**

A. Uses permitted in the Industrial District are subject to the following conditions:

1. Dwelling units and lodging rooms, other than watchmen's quarters, are not permitted.
2. All business, servicing or processing, except for off-street parking and off-street loading, shall be conducted within completely enclosed buildings, unless otherwise indicated hereinafter.
3. All storage, except of motor vehicles in operable condition, shall be within completely enclosed buildings or effectively screened by a wall, fence or barrier including entrance and exit gates and approved by the Planning Board.

B. The following uses are permitted in the I District:

1. Manufacturing, warehousing, the fabrication and assembly of industrial parts and materials in metal, plastic, glass, wood, paper or similar materials, the mining, processing and storage of minerals.
2. Industrial and scientific research and development facilities.
3. Commercial greenhouses.
4. Home farm and market gardens operations.

5. Accessory structures and uses necessary and customarily a part of a permitted use, and all business uses.
6. Wholesale trades and businesses.
7. Transportation yards and terminals.
8. Liquid fuels in underground storage.
9. The warehousing, distribution and sales of bulk solid and gaseous fuels, building materials and supplies and equipment.

C. Uses permitted with special permit:

1. Sanitary landfills
2. Car wash
3. Motor vehicle service stations
4. Public garages for storage, repair and servicing of motor vehicles, including body repair, painting and engine rebuilding.
5. Stripping of top soil and of sod. At least three inches of topsoil shall remain or shall be replaced on the surface.
6. Other manufacturing, processing or storage uses determined by the Town Planning Board and Town Board to be of the same general character as the uses permitted in Subsection B above and found not to be obnoxious, unhealthful or offensive by reasons of the potential emission or transmission of noise, vibration, smoke, dust, odors, toxic or noxious matters, glare or heat.
7. Planned unit development.
8. Dog kennels. (Amended 7/9/85)

D. Uses with Permit or Special Use Permit

1. Non-commercial Wind Energy Systems with either a permit or a special use permit as respectively required in Section 585.5.

SECTION 425 **LAND CONSERVATION - LC**

A. **Permitted Uses**

1. Farms and related farming activities provided that no off-premise manure shall be stored within one hundred (100) feet of a property boundary.
2. Farm water supply, conservancy and fire protection ponds located not less than one hundred (100) feet from any street or property line.
3. Accessory uses and buildings incidental to and on the same lot as the principal use, as follows:
 - a. Customary farm buildings for the storage of products or equipment located on the same parcel as the primary use.
 - b. Customary farm buildings for housing farm animals shall not be located less than one hundred (100) feet from an adjoining zone.

B. **Uses Permitted with Special Use Permit:**

1. Dog Kennels. (Amended 7/9/85)

ARTICLE V **GENERAL REGULATIONS**

SECTION 500

SECTION 510 **APPLICATION FOR A SPECIAL PERMIT**

Application for required special permit shall be made to the Town Board. Each such application shall be referred to the Planning Board for a report, which report shall be rendered prior to the date of public hearing on the application. The Town Board, after public hearing with the same notice required by law for zoning amendments, and with notice mailed to owners of record of property within 250 feet of the property included in the application, may authorize the issuance of a permit provided that it shall find all of the following conditions and standards have been met. Special permits may be subject to County Planning Board review according to General Municipal Law, Section 239-n.

510.1 The location and size of the use, the nature and intensity of the operations involved in, or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located.

510.2 The location, nature and height of buildings, walls, fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

510.3 Operations in connection with any special use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics, than would be the operations of any permitted use not requiring a special permit.

510.4 Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

SECTION 511 **REQUIRED PLAN**

A plan for the proposed development of a lot for a permitted special use shall be submitted with an application for a special permit. The plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, special features and any other pertinent information, including such information about neighboring properties as may be necessary to determine and provide for the enforcement of this Ordinance.

SECTION 512 **CONDITIONS AND SAFEGUARDS**

The Town Board shall attach such conditions and safeguards to the special permit as are necessary to assure continual conformance to all applicable standards and requirements.

SECTION 513 **EXPIRATION OF SPECIAL PERMITS**

A special permit shall be deemed to authorize only the particular use or uses specified in the permit, and shall expire if said use or uses shall cease for more than six months for any reason, or if all required improvements are not made within one year from the date of issue.

SECTION 514 **EXISTING VIOLATIONS**

No permit shall be issued for a special use for a property where there is an existing violation of this Ordinance.

SECTION 515 **REVIEW**

Special permits shall be reviewed at least once a year by the Zoning Enforcement Officer for possible violations. Such violations shall be reported to the Town Board.

SECTION 520 **GENERAL OFF-STREET PARKING PROVISIONS AND REGULATIONS**

For every building or structure erected, altered or extended after the enactment of this Ordinance, there shall be provided parking facilities or vehicle storage as set forth below. As defined in this ordinance, an off-street parking space shall measure no less than ten (10) feet in width and twenty (20) feet in depth and include sufficient space for aisles and maneuverability.

All parking areas, passageways, and driveways (except when provided in connection with one and two family residential uses and farm residences) shall be surfaced with a dustless, durable,

all-weather pavement clearly marked for car spaces and shall be adequately drained, all subject to the approval of the Planning Board.

520.1 A site plan shall be filed with the permit application where off-street parking facilities are required or permitted, under the provisions of this Ordinance in connection with the use or uses for which application is being made.

520.2 Off-street parking in commercial and industrial zones may be provided in any yard space, but shall not be closer than ten (10) feet to any district boundary line.

The term vehicle as used in this section shall include, but not be limited to, automobiles, motorcycles, trucks, motor homes, campers and trailers, including recreational and boat trailers.

520.3 The collective provision of off-street parking areas by two or more commercial or industrial buildings or uses located on adjacent lots is permitted, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately and further provided that the land upon which the collective facilities are located is owned or leased by one or more of the collective users.

520.4 No driveway providing access to an off-street parking area shall be located closer than fifty feet to the intersection of public streets.

520.5 All parking areas and appurtenant passageways and driveways serving commercial and industrial uses shall be illuminated adequately during the hours between sunset and sunrise when the use is in operation. Adequate shielding shall be provided by business uses to protect adjacent residential zones from the glare of such illumination and from that of automobile headlights.

SECTION 521 **REQUIRED OFF-STREET PARKING SPACE**

521.1 One family detached dwellings - Two parking spaces per dwelling unit.

521.2 Two, three and four family dwellings - One and one-half parking spaces per dwelling unit.

521.3 Rooming houses - One and one-half parking spaces per roomer.

521.4 Garden apartments - One and one-half parking spaces per unit.

521.5 Motels - One parking space for every sleeping or dwelling unit plus ½ parking space per employee exclusive of parking required for a restaurant or lounge.

521.6 Barber and Beauty Shops - Two parking spaces per beauty chair or barber chair, plus

one parking space for each employee.

521.7 Business Offices and Professional Offices - Four parking spaces for every 1000 square feet of building area or major fraction thereof, plus one parking space for each employee.

521.8 Stores For Retail of Furniture, Appliances, or Hardware - One parking space for every 300 square feet of building area or major fraction thereof, plus one parking space for each employee.

521.9 Retail and Service Shops, Except When Otherwise Specifically Covered Herein - Four parking spaces for every 1000 square feet of building area or major fraction thereof, plus one parking space for each employee.

521.10 Supermarkets - Self-Service Food Stores - 5.5 parking spaces for every 1000 square feet of building area or major fraction thereof, plus one parking space for each employee.

521.11 Laundromats - One parking space for every two washing machines.

521.12 Home Occupations - Two spaces for client use plus one space for each non-resident employee exclusive of spaces required for residential purposes.

521.13 Auditorium, Churches, Theaters, Assembly Halls and Similar Places of Public and Quasi-Public Assembly Having Fixed Seating Facilities - One parking space for every four seats in the main assembly unit.

521.14 Auditorium, Exhibition Halls, Assembly Halls, Community Centers, and Similar Places of Public and Quasi-Public Assembly Not Having Fixed Seating Facilities - One parking space for every four persons who may legally be admitted therein at one time under the State Fire Prevention Laws.

521.15 Motor Vehicles Sales - One parking space for every 300 square feet of building area or fraction thereof.

521.16 Motor Vehicle Service Stations - One parking space for every 100 square feet of building area or fraction thereof.

521.17 Bowling Alleys - Eight parking spaces for each bowling lane.

521.18 Restaurants, Cafeterias, Taverns, Bars (indoor service only) - One parking space for every four seats for customers, plus one space for each employee.

521.19 Drive-In Restaurants - Four parking spaces for every 100 square feet of building area or fraction thereof plus one space for each employee.

521.20 Industrial Establishments - 3/4 parking space for each employee, plus one space for

each 1,000 square feet of gross floor area in the buildings for use by visitors to the building or buildings. The employee ratio shall be applied to that shift of work activity that has the greatest number of employees.

521.21 Hospitals, Nursing and Convalescent Homes - 1 ½ parking spaces for each bed, plus ¾ space for each employee in the largest working shift.

SECTION 522 **OFF-STREET LOADING AND UNLOADING PROVISION FOR COMMERCIAL AND INDUSTRIAL DISTRICTS**

For every building, structure or part thereof having over 5,000 square feet of gross building area erected and occupied for commerce, hospital, laundry, dry cleaning, places of public assembly, industry, and other similar uses involved in the receipt and distribution of vehicles of materials or merchandise, there shall be provided and permanently maintained adequate space for standing, loading and unloading services in order to avoid undue interference with the public use of streets or alleys.

SECTION 530 **MOBILE HOMES**

SECTION 531 **REGULATIONS PERTAINING TO SINGLE MOBILE HOMES (NOT LOCATED IN MOBILE HOME PARKS)**

A. The minimum usable floor space of the mobile home shall not be less than 600 square feet, which shall be measured by the outside dimensions of the mobile home without consideration of any exterior structural additions, hitch, or A-frame.

B. The area of the lot upon which mobile home is placed shall conform to the lot requirements for single family residences in R-A and R Districts as set forth in this Ordinance.

C. No mobile home shall be located within 50 feet of the right-of-way line of any highway or road.

D. No mobile home or attached structure shall be located nearer than 100 feet from any existing residence and shall be located no closer to either side lot line than 25 feet and no closer to the rear lot line than 35 feet.

E. All mobile homes allowed under the provisions of Section 530 of this Ordinance shall have the wheels or skids removed and shall be set upon a solid foundation within sixty (60) days of placement on the site. The entire perimeter of the mobile home shall have non-combustible, solid skirting extension of the sidewalls to below the level of the surrounding ground so as to enclose the area between the floor of said mobile home and the ground. The area so enclosed shall be adequately vented according to the New York State Building Code as it applies to residences.

F. All mobile homes must be anchored at all corners to at least four (4) anchors or tie-downs, such as cast-in-place concrete "dead man" or eyelets embedded in the ground to a depth of not less than four (4) feet and fastened by a steel cable or strap of such gauge as to sustain a minimum load of 4800 pounds.

G. Any addition to any mobile home shall require the issuance of a building permit by the Zoning Enforcement Officer. Said permit shall only be issued for additions which will be used for purposes other than enclosed living, sleeping, or eating quarters (i.e. permits issued for patios, porches, storage areas, etc.)

H. All water supply systems shall be approved by the Genesee County Health Department.

I. All sewerage disposal systems shall be approved by the Genesee County Health Department.

J. Nothing in these sections shall be so interpreted as to prevent any person or persons presently residing in a mobile home from continuing to use that mobile home as a residence. However, if any mobile home now located in the Town of Oakfield is moved from its present location, it must meet all the requirements of this Ordinance.

K. Existing mobile homes may be replaced only by mobile homes having a minimum useable floor space of 600 S.F., measured by outside dimensions without consideration of any exterior structural additions, hitch, or A-frame, provided:

1. That no mobile home may be installed on a lot where no mobile home has existed for a period of 30 days.

2. That permission is obtained from the Genesee County Health Department.

3. That the new mobile home has non-combustible extension of the side walls of the mobile home extending from the side walls to below the level of the surrounding ground, and that the new mobile home be securely anchored at all corners to at least four (4) anchors or tie-downs and fastened by a steel cable or strap of such gauge as to sustain a minimum load of 4800 pounds.

4. Mobile homes shall comply with Section 400-dd(2) and 400-dd (3) of Article 19AA of the Executive Law of the State of New York.

SECTION 532

STANDARDS AND REQUIREMENTS FOR THE CONSTRUCTION OF MOBILE HOME PARKS

Condition of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the mobile home park occupants. The site shall not be exposed to objectionable smoke, dust, noise, odors or other adverse influences, and no portion subject to predictable sudden flooding, or erosion and shall not be used for any purpose which would expose persons or property to hazards.

532.1 Site, Size, Density and Setback Requirements

- A. The minimum site for a mobile home park shall be five (5) acres.
- B. The maximum number of mobile home spaces shall not exceed five (5) per gross acre.
- C. Each mobile home park shall set aside ten (10) percent of the total acreage of the site as open space and recreation area.
- D. A setback of sixty (60) feet shall be observed from the centerline of any public road bordering the site to any mobile home in the park.
- E. A setback of thirty (30) feet shall be observed from any property line excluding a street line or street centerline to any mobile home in the park.
- F. The site shall be located and laid out so that no mobile home shall be closer than one hundred (100) feet to any existing single family or two family dwelling.

532.2 Lot Size, Density and Setback Requirements

- A. (a) The minimum lot in a mobile home park shall be eight thousand (8,000) S.F., with a minimum width of eighty (80) feet and a minimum depth of one hundred (100) feet.

(b) Mobile homes having a width of 24 ft. or more shall be located on lot meeting the requirements set forth for residential lots in R districts as defined in this Ordinance.
- B. No mobile home shall be closer than fifteen (15) feet to another mobile home or other structure in the park.
- C. Each mobile home located in a mobile home park shall have a front yard, a rear yard and two side yards. No side yard or rear yard space shall be less

than ten (10) feet in depth and no front yard shall be less than twenty-five (25) feet in depth.

- D. There shall be a minimum setback of twenty-five (25) feet observed from an abutting park street to any mobile home stand in the park.
- E. Maximum heights for buildings shall be thirty-five (35) feet.

532.3 Site Layout and Design Requirements

The layout and design of the mobile home park shall conform to the following:

A. Streets:

1. All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means.

2. All mobile home courts containing twenty (20) or more mobile home lots shall have access from two points along a single public street or highway, or bordering on two streets, access can be one for each street, such access points being separated by at least one hundred (100) feet.

3. Entrances to mobile home parks shall have direct connections to a public street and shall be designed to allow free movements of traffic on such adjacent public streets. No parking shall be permitted on the entrance street for a distance of one hundred (100) feet from its point of beginning.

4. The street system should provide convenient circulation by means of minor streets and property located collector streets. Dead-end streets shall be limited in length to five hundred (500) feet and their closed end shall be provided with an adequate turn around sixty-five (65) feet diameter cul-de-sac.

5. Each mobile home space in a park shall have direct access to a roadway, the surface of which shall be constructed of bituminous concrete or portland concrete cement and shall have a minimum width of twenty (20) feet. Bituminous concrete road surfaces shall consist of 12" R-O-B gravel laid in two lifts as a base course for 3" bituminous concrete, applied in two lifts. All other requirements shall be set by the Town of Oakfield.

6. Grades of all streets shall be sufficient to insure adequate surface drainage, but should not be more than eight (8) percent. Short runs with a maximum grade of ten (10) percent may be permitted, provided traffic safety is insured.

7. Street intersections should generally be at right angles and in no case

shall any angle or intersection be less than seventy-five (75) degrees.

8. Entrances and exits shall be so located to provide a minimum sight distance on the adjacent public road in both directions from the interior road at the point of intersection of not less than three hundred (300) feet.

B. Parking

1. Two (2) car parking spaces shall be provided for each mobile home to meet the needs of the occupants of the mobile home park and their guests without interference with normal movement of traffic.

2. At least one parking space shall be situated on each unit, and the remainder may be located in adjacent parking bays along the park streets.

3. Parking may be in tandem.

4. Each parking space shall have dimensions of at least ten (10) feet by twenty (20) feet and shall have all weather surfacing.

C. Storm Water Drainage

1. All mobile home parks shall be well-drained and constructed so as to eliminate the accumulation of standing surface water for extended periods of time. The drainage system shall consist of:

Buried corrugated steel pipe to carry storm water only;

OR

A series of well-constructed and properly maintained open ditches to carry surface runoff to off-site drainage channels.

2. The drainage system shall be designed to adequately handle at least that storm water generated by the site during a ten (10) year storm as determined by the U.S. Army Corps of Engineers. It must be certified by the Genesee County Soil and Water Conservation District Office that the off-site downstream drainage system is capable of handling the runoff generated by the park during a ten (10) year storm.

532.4 Lot Requirements

A. Each lot shall front on an approved interior street.

- B. Interior lots shall not be permitted to front on more than one street.
- C. No more than one (1) mobile home may be placed on any lot.
- D. No mobile home shall be located within a park except in an authorized space, and no mobile home shall be permitted to occupy any such space unless it is equipped with a properly functioning lavatory, a bathroom or shower, and one (1) five (5) pound fire extinguisher.
- E. No mobile home shall be permitted in a mobile home park with less than six hundred (600) square feet of permanent, enclosed living area.
- F. No addition shall be made to a mobile home except a canopy and/or porch open on three sides, or an addition made by a mobile home manufacturer.
- G. Each mobile home lot shall contain a mobile home stand to provide adequate support for the placement and tiedown of the mobile home. The stand shall have not heave, shift, or settle unevenly under the weight of the mobile home as a result of any front action, inadequate drainage, vibration or other such forces. The material used in constructing the stand should be durable and capable of supporting the expected load regardless of the weather.
- H. Mobile homes must be anchored at all four corners. Anchors or tie-downs, such as cast-in-place concrete "dead man" eyelets embedded in concrete screw anchors or arrowhead anchors shall be placed at least at each corner of the mobile home stand and each device shall be able to sustain a minimum load of four thousand eight hundred (4,800) pounds.
- I. All occupied mobile homes shall be set on a stand and skirted with a non-combustible material, which shall be on all sides of the mobile home and constructed from the said side walls to the level of the surrounding ground, so as to enclose the area between the floor of the mobile home and the said surrounding ground. Such skirting is to be properly ventilated and be completed within thirty (30) days after arrival in the park.
- J. One (1) accessory building, not to exceed one hundred (100) s.f. in dimension may be located on each lot.
- K. Each lot shall be provided with approved connections for water and sewer in accordance with the regulations of the Genesee County and New York State Departments of Health.
- L. All utilities shall be underground.
- M. No front or side yard shall be used for storage.

532.5 Required Site Improvements

A. Water Supply System

All water supply systems shall be approved by the Genesee County Health Department.

B. Sewerage Disposal and Treatment

All sewerage disposal systems shall be approved by the Genesee County Health Department.

532.6 Electrical Systems

A. Except as otherwise permitted or required by this standard, all electrical installations in mobile home parks shall be underground, residential distribution designed and constructed in accordance with local utility and the New York State Board of Fire Underwriters. Where the state or other political subdivision does not assume jurisdiction, such electrical installations shall be designed and constructed in accordance with the appropriate provisions of the current edition of the National Electrical Code. The point of the electrical connection for the mobile home will be within the area of the mobile home stand.

B. The mobile home park secondary electrical distribution system to mobile home lots shall be single phase 120/240 nominal.

C. 1. For the purpose of this section, where the park service exceeds 240 volts, transformers and secondary distribution panel boards shall be treated as services.

2. Mobile home lot feeder circuit conductors shall have adequate capacity for the load supplied, and shall be rated at not less than one hundred (100) amperes at 120/240 volts.

D. 1. Provision may be made for connecting a mobile home power supply assembly by a permanent wiring method and the mobile home service equipment may provide for installation of at least one fifty (50) ampere receptacle.

2. Mobile home service equipment may also be provided with a means for connecting a mobile home accessory building or structure or additional electrical equipment located outside a mobile home by a permanent wiring method.

532.7 Gas Distribution System

A. Gas equipment and installations within a mobile home park shall be designed and constructed in accordance with the applicable codes adopted by the local utility. Where the state

or other political subdivision does not assume jurisdiction, such installations shall be designed and constructed in accordance with the appropriate provisions of the current edition of the American National Standard-National Fuel Gas Code.

532.8 Service Buildings

A. Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a mobile home lot.

B. Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the New York State Building Code and the New York State Sanitary Code and/or all other applicable ordinances and statutes regulating buildings, electrical installations, and plumbing and sanitation systems.

532.9 Refuse Disposal

No refuse or other organic material shall be placed, stored, or dumped in other than refuse containers anywhere in the park. The existence of any refuse or rubbish outside a container for more than twenty-four (24) hours shall be a violation of this ordinance.

SECTION 540 **CAMPSITES**

541. Any campsite shall be located and maintained only in those districts as permitted in this Ordinance and in accord with the standards set forth in this Ordinance.

542. All existing campsites of record shall be exempt from this Ordinance, except that they shall comply with this section whenever they are sold or any addition, expansion or alteration of the use or operation is proposed. Within six (6) months after the adoption of this Ordinance, the Zoning Officer shall notify existing campsites of this provision.

543. Before a permit for a campsite is issued, the Town Board shall determine that the proposed use is designed and arranged in accordance with the requirements of Section 510, "Special Use Permits", and in accordance with the following standards:

A. Site

The campsite shall be located on a well-drained site which is properly graded to insure rapid drainage and be free at all times from stagnant pools of water.

B. Lots

Each campsite shall be marked off into lots. The total number of lots in such campsite shall not exceed twelve (12) per gross acre. Each lot shall have a

total area of not less than 2,500 s.f. with a minimum dimension of thirty (30) feet. Only one trailer shall be permitted to occupy any one lot.

C. Setbacks

All travel trailers, tents and the like shall not be located nearer than a distance of:

- At least twenty-five (25) feet from an adjacent property line, except residential property.
- At least one hundred (100) feet from any adjacent residential property line.
- At least one hundred (100) feet from the right-of-way of a public street or highway.
- At least ten (10) feet from the nearest edge of any roadway location within the park or camp.

D. Travel Trailer Stand

Each travel trailer lot shall have a stand of sufficient size and durability to provide for the placement and removal of travel trailers and for the retention of each travel trailer in a stable condition. The stand shall be suitably graded to permit rapid surface drainage.

E. Accessibility

Each campsite shall be easily accessible from an existing public highway or street with entrances and exits designed and strategically located for the safe and convenient movement into and out of the campsite, and with minimum conflicts with the movement of traffic on a public highway or street. All entrances and exits shall be at right angles to existing public highways or streets and all entrances and exits shall be of sufficient width to facilitate the turning movements of vehicles with travel trailers attached.

F. Street System

Each campsite shall have improved streets to provide convenient access to all lots and other important facilities within the campsite or camp.

The street system shall be so designated to permit safe and convenient vehicular circulation within the campsite or camp. All streets shall intersect at right angles.

All streets shall have the following minimum widths:

1. One way traffic movement - 12 feet
2. Two way traffic movement - 20 feet

Except in cases of emergency, no parking shall be allowed on such streets.

An improved driveway shall be provided for each lot. This driveway shall have a minimum width of nine (9) feet.

G. Utilities

All sewer and water facilities provided in each campsite shall be in accordance with the regulations of the New York State Department of Health and the New York State Department of Environmental Conservation.

H. Open Space

Each campsite designed for twenty (20) or more sites shall provide a common open space suitable for recreation and play purposes. Such open space shall be conveniently located. The open space area shall be ten (10) percent of the gross land area of the campsite but not less than one (1) acre.

I. Improvements

Lighting, landscaping and buffer areas may be required by the Board and shall be in keeping with surrounding development, the unique features of the site and the health and safety of occupants of the campsite and adjacent property owners.

J. Management

Every campsite shall be managed from an office located on the premises. The manager shall maintain the campsite in such a manner so as to protect the health, safety and comfort of all persons accommodated in the campsite and so as to preserve the campsite in a clean and attractive manner.

K. Removal of Wheels

Unless special consent be given by the Town Board, it shall be unlawful to remove wheels from any travel trailer or otherwise permanently affix such travel trailer to the ground. Such removal shall be grounds for the revocation of the permit for such campsite.

SECTION 550 RECREATION VEHICLES

551. Recreational vehicles may be occupied as a dwelling only as follows:

- A. As provided in Section 550, or
- B. For not more than two separate periods, per year, not exceeding two weeks, as temporary lodging while parked on the same lot with a residence, or,
- C. On a temporary permit issued by the Town Board on recommendation of the Planning Board for periods of six months each and subject to the following conditions:
 - 1. Approval shall be granted by the Genesee County Health Department.
 - 2. Any connections must be removed and vehicle moved to approved parking location on expiration of permit.

552. Recreational vehicle may be stored in any location on a lot other than within the required front yard. When stored, no connection shall be permitted.

SECTION 560 **SIGNS**

561. General Standards

- A. A sign shall not be higher than the height limitations in the district where such sign is located, nor shall any sign attached to a building be located above the roof line except that a farm name may appear on a silo.
- B. A sign shall not be erected nor shall a sign project into a public right-of-way.
- C. Flashing, oscillating and revolving signs are not permitted.
- D. No sign may be illuminated in such a manner as to shine directly on adjoining properties or be hazardous to traffic safety.
- E. No off-premise advertising sign shall be permitted in any district.

562. Standards for Commercial Signs

- A. All signs permitted as accessory uses for residential uses in commercial district.
- B. One sign for the purposes of identification of banks or monetary institutions, business or professional offices or mortuaries in the C District shall be permitted and shall not exceed six (6) square feet in area. Such sign shall not be permitted within any required yard area.

C. In commercial and industrial districts, two signs, one of which may be free-standing, shall be allowed for each permitted use. If attached to the front or rear wall, such signs shall not exceed an area equal to 10% of the front or rear wall area of the building or portion thereof devoted to such use or activity. If attached to the side wall of the building devoted to such use or activity, such sign shall not exceed twenty-five (25) square feet in area. No sign shall project more than one foot from the facade of the building.

D. Free-standing business sign shall be permitted but only if erected on the same premises on which the business to which they refer is conducted. Such signs shall conform to the following provisions relating to their number and size.

(1) Each business or industrial use may have one free-standing sign. Such free-standing sign shall have an area of not more than twenty-five (25) S.F. nor be more than twenty-five (25) feet in height, located not less than ten (10) feet from property lines.

(2) In a shopping center or industrial park there may be one directory sign at any location thereon which shall not exceed five (5) square feet in area for each acre of land in the shopping center or industrial park provided that no such sign shall exceed thirty (30) square feet in area. No individual free standing sign shall be allowed in a shopping center.

563. Standards for Other Signs

A. A business sign directing attention to a permitted "Home Occupation" shall not contain a gross surface area exceeding six (6) square feet.

B. The sale or rental of a premises may be advertised by not more than one (1) non-illuminated business sign with a gross surface area not exceeding six (6) square feet and provided that such sign is promptly removed after the premises has been sold or rented.

C. Farm product signs not exceeding twenty (20) square feet in area may be displayed on the property, but only when such products are on sale.

D. The sale or development of a premises by a contractor, builder, developer or other persons interested in such sale or development may be advertised by not more than two (2) business signs.

E. Signs of mechanics, painters and other artisans may be maintained on a premises where such persons are performing work provided such signs do not exceed twelve (12) square feet in gross surface area and are promptly removed upon completion of the work.

F. Two-off premises directional signs not over eight (8) square feet in area and showing only the name of and direction to a legal, conforming use may be placed at a highway location.

564. Standards for Existing Signs

Signs existing on the adoption date of this ordinance which do not comply with any of the provision of this ordinance are hereby declared to be generally in conflict with the development objectives of the community and are, therefore, to be discouraged from continuance.

A. Whenever such nonconforming sign is (1) damaged by fire or other cause, or (2) is to be replaced, altered or reconstructed, no permit shall be granted for such repair, replacement, alteration or reconstruction unless done in a manner so that such nonconforming sign will thereafter be fully conforming with this Ordinance.

B. A nonconforming sign which cannot be made conforming with this Ordinance and which is declared unsafe by the Zoning Officer or other proper authority, shall be immediately removed.

565. Signs Allowed In All Districts Without A Zoning Permit (Amended 8/8/95)

1. One (1) number and/or name plate identifying residents, mounted on house, apartment or mailbox, not exceeding one (1) square foot in area.
2. One (1) lawn sign identifying residents, not exceeding one (1) square foot per side and located not less than ten (10) feet from any lot line. Such signs are to be non-illuminated except by alight which is an integral part of a lamp post if used as a support, with no advertising message thereon.
3. One (1) sign identifying the name of the farm owner or name of the farm not exceeding twenty-four (24) square feet per side in area and located not less than ten (10) feet from any lot line.
4. A sign used on a temporary basis to identify or announce an activity or function such as a construction project and the specialists concerned, elections, sporting events, carnivals, garage sales, meetings, etc. Such signs shall not exceed sixteen (16) square feet and shall not be located less than five (5) feet from any lot line. Temporary signs shall be removed within ten (10) days after the activity of function ends. Garage sales signs may not be displayed more then 10 days in any one year.
5. Sign for posting of property pursuant to Environmental Conservation Law Section 11-2111. However individual signs with an area in excess of two (2) square feet are not allowed.

SECTION 570 **MOTOR VEHICLE JUNK YARD OR SANITARY LANDFILL**

571. No motor vehicle junk yard or sanitary landfill shall be established or expanded hereafter until a special use permit shall have been granted by the Town Board for such use.

572. No motor vehicle junk yard shall be operated or established hereafter except in accordance with Section 136 of the General Municipal Law regulating automobile junk yards and those applicable regulations which follow.

573. Before a permit for a motor vehicle junk yard or sanitary landfill is issued, the Town Board shall find that such automobile junk yard or sanitary landfill will not constitute a detriment to the public health, safety, welfare, convenience, and property values by reason of dust, smoke, fumes, noise, traffic, odors, vermin or other condition. The Town Board may specify any reasonable requirements to safeguard the public health, welfare, safety, convenience and property values in granting such permit.

A. No motor vehicle junk yard shall be located within 200 feet from any highway, street or property line or within 500 feet from any existing dwelling, church, school, public building or place of public assembly.

B. No sanitary landfill shall be located within 200 feet from any highway, 500 feet from any stream or property line or within 1,000 feet from any existing dwelling, church, school, public building or place of public assembly.

C. Any motor vehicle junk yard or sanitary landfill shall be completely surrounded with a fence which substantially screens said area and having a suitable gate which shall be closed and locked except during the working hours of said automobile junk yard or sanitary landfill.

Where the topography, natural growth of timber or other considerations accomplish the purposes of this section in whole or in part, the fencing requirements hereunder may be reduced or waived by the Town Board provided, however, that such natural barrier conforms with the purposes of this section and is maintained.

SECTION 580 **TEMPORARY TENTS AND CANOPIES**

581. Temporary tents and canopies may be erected without a building permit for a period or periods not to exceed in total 180 days in any calendar year.

582. Such tents and canopies may be located without regard to yard requirements except that the requirements of Section 412.5 visibility at intersections shall apply.

583. For the purpose of this section a tent or canopy is defined as a structure with walls and/or roof fabric with no rigid walls or roof. Erection of a tent or canopy shall not be itself

disqualify the tent or canopy from being a temporary tent or canopy under this section.

SECTION 585

WIND ENERGY SYSTEMS

585.1 Purposes

The purpose of this Section is to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system and to allow for the orderly development of land, protect property values, and aesthetic conditions. This Section does not repeal, annul, impair, or interfere with any existing ordinance or local law.

585.2 Definitions

Non-commercial Wind Energy System - A wind energy system that is operated primarily (51% or more) for on-site (may be more than one parcel) consumption, and has a nameplate capacity of 50 kW or less, and a total height of 175 feet or less, and a blade length of 30 feet or less.

Commercial Wind Energy System - A wind energy system that is operated primarily (51% or more) to put energy into the electric grid, and/or has a nameplate capacity of more than 50 kilowatts (kW), and/or a total height of more than 175 feet, and/or a blade length of more than 30 feet.

Electromagnetic Interference (EMI) - The interference to communication systems created by the scattering of electromagnetic signals.

Shadow Flicker - The alternating pattern of sun and shade caused by wind tower blades casting a shadow.

Total Height - The vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point.

Wind Energy System - Equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities, or other component used in the system. A wind energy system can consist of one or more wind towers.

Wind Tower - The monopole, freestanding, or guyed structure that supports a wind turbine generator.

585.3 Compliance

It is unlawful for any person to construct, install, maintain, modify, or operate a wind energy system that is not in compliance with this Section or with any condition contained in a Special Use or Zoning Permit issued pursuant to this Zoning Ordinance.

585.4 Commercial Wind Energy Systems Prohibited
Commercial Wind Energy Systems shall not be allowed in any area or zone within the Town of Oakfield.

585.5 Permit Requirements

1. Special Use Permit. A Special Use Permit is required for Non-commercial Wind Energy Systems and for any wind energy system, or a component thereof, except for Non-commercial Wind Energy Systems located in County-adopted, State-certified Agricultural Districts for primary on-farm use.

2. Zoning Permit. A Zoning Permit and Site Plan Review are required for the installation of a wind tower that is part of any wind energy system.

3. Expiration. A permit issued pursuant to this Zoning Ordinance expires if:

a. the wind energy system is not installed and functioning within 2 years from the date the permit is issued; or

b. the wind energy system is out of service or otherwise unused for a continuous 12-month period.

4. Fees.

a. The application for a Special Use Permit for a Non-commercial Wind Energy System, except for Non-commercial Wind Energy Systems located in County-adopted, State-certified Agricultural Districts must be accompanied by the fee required for a Special Use Permit.

b. The application for a Zoning Permit for each tower in a Non-commercial Wind Energy System must be accompanied by the fee required for a Zoning Permit for an accessory use.

B. Restoration Requirement. (see also Restoration section under Agricultural Mitigation)

1. A wind energy system that is out of service for a continuous 12-month period or any wind energy system found to be unsafe by the Building Code Enforcement Officer and not repaired by the owner to meet federal, state and local safety standards within six months will be deemed to have been abandoned. The Zoning Enforcement Officer may issue a Notice of Abandonment in form of a letter to the owner of a wind energy system that is deemed to have been abandoned. The Zoning Enforcement Officer will withdraw the Notice of Abandonment if the owner provides information within 30 days from the date of the Notice that causes the Zoning Enforcement Officer to determine that the wind energy system has not been

abandoned.

2. The owner of a wind energy system must provide the Zoning Enforcement Officer with a written Notice of Termination of Operations if the operation of a wind energy system is terminated.

3. Within 3 months of receipt of Notice of Abandonment or within 6 months of providing Notice of Termination of Operations, the owner of a wind energy system must:

- a. remove all wind turbines, aboveground improvements, and outdoor storage;
- b. remove all foundations, pads, and underground electrical wires to a depth of 4 feet below the surface of the ground; and
- c. remove all hazardous material as defined by NYSDEC from the property and dispose of the hazardous material in accordance with federal and state law.
- d. all disturbed areas will be decompacted and the topsoil will be replaced to original depth reestablishing original contours where possible.

C. Special Use Permit or Zoning Permit Requirements. In addition to those criteria set forth under other Sections of this Zoning Ordinance/Law, the Town shall consider the following factors when setting conditions upon Special Use Permits or Zoning Permits issued for all wind energy systems and may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense:

1. Proposed ingress and egress.
2. Proximity to transmission lines to link the system to the electric power grid.
3. Number of wind towers and their location.
4. Nature of land use on adjacent and nearby properties.
5. Location of other wind energy systems in the surrounding area.
6. Surrounding topography.
7. Proximity to residential structures, residential zoning districts, or areas identified for future residential use.
8. Design characteristics that may reduce or eliminate visual obtrusiveness.

9. Possible adverse effects on migratory birds, and other animals and wildlife.
10. Possible adverse effects of stray voltage, interference with broadcast signals, shadow flicker, and noise.
11. Impact on the orderly development, property values, and aesthetic conditions
12. Possible adverse effects on groundwater quality or quantity.
13. Recommendations of the Town Board.
14. Any other factors that are relevant to the proposed system.

D. Standards.

1. Location.

- a. A wind energy system may only be located in areas that are zoned Residential-Agricultural (R & A) and Industrial (I)

2. Set Backs. Each wind tower in a wind energy system must be set back (as measured from the center of the base of the tower):

- a. from any State Forest, public park any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a State, Federal, or local government.
- b. from important bird areas.
- c. from the property line of the parcel on which the wind tower is located.
- d. from any residence or building that is on any parcel.
- e. from any public building that is on any parcel.
- f. from the right-of-way of any public road.

585.9 Spacing and Density.

A wind tower must be separated from any other wind tower by a minimum distance equal to twice the height of the wind tower and by a sufficient distance so that the wind tower does not interfere with the other wind tower.

585.10 Structure.

A wind tower must be of monopole construction to the extent practicable. If monopole construction is not practicable, a wind tower must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a wind tower may be guyed.

585.11 Height.

The total height of a wind energy system must be 175 feet or less. Other maximum building/structure height restrictions within other sections of this Zoning Ordinance/Law are not applicable. Wind energy systems higher than 175 feet may be allowed through incentive zoning provisions described in Article ## of this Law/Ordinance pending Town Board approval.

585.13 Clearance.

The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least 30 feet.

585.13 Access and Safety.

1. Security. A wind tower, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence may be required.

2. Climbing Aids. Monopole wind towers shall have all climbing aids and any platforms locked and wholly inside the tower.

3. Operational Safety. Wind towers shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

4. Lightning. All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.

5. Access Roads. All wind energy systems shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.

585.14 Electrical Wires.

1. Location. All electrical wires associated with a wind energy system must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices (see also Construction section under Agricultural Mitigation).

2. Transmission Lines. All wind energy systems shall combine transmission lines and points of connection to local distribution lines.

3. Substations. All wind energy systems shall connect the facility to existing substations, or if new substations are needed, minimize the number of new substations.

585.15 Lighting. A wind tower and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.

585.16 Buildings and Outdoor Storage. Any ancillary buildings and any outside storage associated with a wind energy system must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment (i.e. in an agricultural setting accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from roads and adjacent residences.

585.17 Aesthetics.

1. Appearance, Color, and Finish. The exterior surface of any visible components of a wind energy system must be a nonreflective, neutral color. Wind towers that are located within view, or within one mile of each other must be of uniform design, including tower type, color, number of blades, and direction of blade rotation.

2. Visual Impact Assessment. The applicant shall complete a Visual Environmental Assessment Form (Visual EAF - SEQR), as well as a visual impact assessment of any proposed wind energy systems or any proposed modifications to existing wind energy systems. The visual impact assessment shall include assessment of visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the wind energy system identified by the Planning Board.

585.15 Signs. No wind tower, turbine, building, or other structure associated with a wind energy system may be used to advertise or promote any product or service. A weather resistant sign plate no greater than 2 sq. ft. in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other word or graphic representation, other than appropriate warning signs, may be placed on a wind

turbine, tower, building, or other structure associated with a wind energy system so as to be visible from any public road.

585.19 Agricultural Mitigation. The following shall apply to construction areas for wind energy systems located in County-adopted, State-certified Agricultural Districts. The applicant is required to coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. When required by the town, the applicant shall hire an Environmental Monitor to oversee the construction and restoration in agricultural fields. The person or company hired as an Environmental Monitor shall be approved by the Town and paid by the applicant.

1. Siting.

- a. Minimize impacts to normal farming operations by locating structures along field edges where possible.
- b. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
- c. Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.
- d. All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

2. Construction.

- a. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
- b. Where necessary, culverts and waterbars shall be installed to maintain natural drainage patterns.
- c. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and laydown areas. No vehicles or equipment will be allowed outside the work

area without prior approval from the landowner and, when applicable, the Environmental Monitor.

d. Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.

e. In cropland, hayland and improved pasture a minimum depth of 48 inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of thirty-six inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to forty-eight inches, the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.

f. All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and, when applicable, the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.*

g. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.

h. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.*

i. Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.

j. Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.*

*Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

3. Restoration.

a. Restoration scheduling will be consistent with the seasonal limitations identified by Ag. and Markets and will be incorporated into the project's Agricultural District Notice of Intent (if applicable) as well as the Stormwater Management Plan (General Permit).

b. Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four (4) inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four (4) inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1st, unless approved on a site-specific basis by the landowner in consultation with Ag. and Markets. All parties involved should be cognizant that areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.

c. All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.

d. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

e. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.

f. Following restoration, all construction debris will be removed from the site.

3. Two Year Monitoring and Remediation.

a. The applicant will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration. The Applicant will provide to the Town all testing, data and reports necessary to document compliance with subsections (a) through (e) herein.

b. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and Ag. and Markets.

c. Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.

d. When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the applicant's responsibility to fully redress all project impacts.

e. Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where

representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

585.20 Noise. Audible noise due to the operation of any part of a wind energy system shall not exceed 50 decibels (dBA) for any period of time, when measured at any residence, school, hospital, church, public park, public library or place of public assembly.

585.21 Insurance. Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Town Board in consultation with the Town's insurer and Attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.

585.22 Severability. The provisions of this section are severable, and the invalidity of any section, subdivision, paragraph, or other part of this Zoning Ordinance shall not affect the validity or effectiveness of the remainder of the Zoning Ordinance.

SECTION 590 **INCENTIVE ZONING**

590.1 Purposes

The purpose and intent of these provisions are to offer incentives to applicants who provide amenities that assist the Town to implement specific physical, cultural and social policies in the Comprehensive Plan as supplemented by the local laws and ordinances adopted by the Town Board.

590.2 Districts Designated for Incentives

All zoning districts are designated as eligible for zoning incentives. Incentives may be offered to applicants who offer an acceptable amenity to the Town in exchange for the incentive.

590.3 Incentives Prohibited

Zoning Incentives may not be used to allow Commercial Wind Energy Systems, which are defined in Section 585.2, and prohibited by Section 585.4 of the Town of Oakfield Zoning Ordinance.

590.4 Amenities For Which Incentives May Be Offered

A. The following amenities may be either on or off the subject application:

- (1) Affordable housing.
- (2) Passive and active open space and related improvements.
- (3) Parks.
- (4) Child-care or elder-care facilities.
- (5) Utilities.
- (6) Road improvements.
- (7) Health or other human-service facilities.
- (8) Cultural or historical facilities.
- (9) Other facilities or benefits to the residents of the community.
- (10) Any combination of amenities and/or cash in lieu of any amenity(ies).

B. These amenities shall be in addition to any mandated requirements pursuant to other provisions of the Town of Oakfield Zoning Ordinance.

590.5 Incentives Permitted

The following incentives may be granted by the Town Board to the applicant on a specific site:

- A. Decreases in required minimum lot sizes.
- B. Changes of use or zoning classifications.
- C. Changes in setbacks or height.
- D. Reduction to open space.
- E. Any other changes in the provisions of the Town of Oakfield Zoning Ordinance.

590.6 Criteria and Procedure for Approval

A. Applications for incentives in exchange for amenities shall be submitted to the Town Board. In order to preliminarily evaluate the adequacy of amenities to be accepted in exchange for the requested incentive, the following information shall be given by the applicant:

- (1) The requested incentive.
- (2) The proposed amenity.
- (3) The cash value of the proposed amenity.
- (4) A narrative which:
 - (a) Describes the benefits to be provided to the community by the proposed amenity.
 - (b) Gives preliminary indication that there is adequate sewer,

water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and amenity, if it is an on-site amenity, may place on these facilities beyond the demand that would be placed on them as if the district were developed to its fullest potential.

(c) Explains how the amenity helps implement the physical, social or cultural policies of the Comprehensive Plan as supplemented by the local laws and ordinances adopted by the Town Board.

B. The Town Board shall review the proposal and inform the applicant whether or not the proposal is worthy of further consideration. If it is deemed worthy of further consideration, the applicant may then submit two (2) sketch plans to the Planning Board:

(1) The first sketch plan.

(a) The first sketch plan shall show how the site will be developed, with the amenity, if it is on-site, and the incentive. In addition to meeting the requirements of the Zoning Law or Ordinance for Site Plan Review, the plan shall also show existing development, property owners' names and tax account numbers for all property within two hundred (200) feet of the property lines of the proposed project or such other distance as specified by the Town Board.

(b) If the incentive will result in a setback or open space reduction, the drawing shall show this reduction in relation to the principal structures on-site and on adjacent properties, as well as property line locations.

(2) The second sketch plan should meet the requirements of the Zoning Law or Ordinance for Site Plan Review; show existing development, property owners' names and tax account numbers for all properties within two hundred (200) feet of the property lines of the project site or such other distance as specified by the Town Board; but shall only show how the site would be developed exclusive of any amenity or incentive.

(3) The applicant shall also submit such additional information and plans as may be required by the Planning Board, including such additional information and plans as may be required under other sections of the Zoning Law or Ordinance, which, in its judgment, are necessary in order to perform a thorough evaluation of the proposal.

C. The Planning Board will review the proposal and report to the Town Board with its evaluation of adequacy with which the amenity(ies)/ incentive(s) fit the site and the relate to adjacent uses and structures. The Planning Board's review shall be limited to the planning design and layout considerations involved with the project review or such other issues as may be specifically referred by the Town Board. The Planning Board's report shall be submitted to the Town Board within seventy (70) days from the date of the Planning Board meeting at which the proposal is first placed on the agenda. This time period may be

exceeded/ suspended upon the consent of the applicant or for good cause by the Town Board.

D. The Town Board will review the Planning Board's report. The Town Board will notify the applicant as to whether it is willing to further consider the proposal. If the Town Board decides to further consider the proposal, it shall hold a public hearing. For Town Board public hearings on incentive zoning requests, the Town Clerk shall give notice of the hearing at least five (5) days prior to the date of the hearing.

E. All applicable requirements of the State Environmental Quality Review (SEQR) Act shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sewer, water, transportation, waste disposal and fire protection facilities to:

(1) First, serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/ incentive proposal: and

(2) Then, serve the on-site amenity and incentive, given the development scenario in subsection E (1) above.

ARTICLE VI ADMINISTRATION

SECTION 600

SECTION 610 **BUILDING PERMITS**

610.1 No building or structure shall be constructed, enlarged or moved, or excavation made therefore, or work begun thereon, until a permit therefore has been issued. This section shall apply to the construction or replacement of chimneys. (Amended 7/9/85)

610.2 Applications for building permits, except those for signs, shall be accompanied by a layout or plot plan, drawn to scale, showing the shape and dimensions of the lot to be built upon, the size and location of the lot of all buildings proposed, and of any existing buildings or structures that shall remain, the existing and intended use of each building or part of the building, the number of families that the building is designed to accommodate, the nature of the improvement, and the intended use or purpose to be made of the improvement and premises, and such other information with regard to the lot and the neighboring lots as may be necessary to determine and provide for the enforcement of this Ordinance. Applications, together with layout or plot plan, shall be submitted in triplicate. When the building permit is issued or denied, the issuance or denial shall be noted on the application in triplicate by the person issuing or denying said permit, and one copy returned to the applicant, one copy filed with the Town Clerk, and one copy kept with the Town Clerk, and one copy kept with the Zoning Enforcement Officer records.

610.3 Upon being notified that the site is prepared for installation of the foundation of a structure, the Zoning Officer shall inspect the site to check the location of the structure.

610.4 A building permit shall be void if rough construction is not completed within a period of one year from the date of said permit. The Zoning Officer may issue a one-year extension of a permit. One said extension of a permit will be allowed.

610.5 If the Town Board shall by resolution authorize a public hearing on a proposed amendment of this Ordinance, then for a period of sixty (60) days following the date of such resolution, no building or structure shall be erected, enlarged or altered, and no permit shall be issued for the erection, enlargement or alteration of any building or structure, or for the occupancy or use of any land or building, in any manner that would be contrary to the provisions of the proposed amendment.

SECTION 620 **BOARD OF APPEALS**

620.1 A Board of Appeals is hereby continued, to consist of five members appointed by the Town Board. The Board shall have a chairman appointed by the Town Board. The Board shall appoint its own secretary and shall prescribe rules for the conduct of its affairs.

620.2 Powers and Duties

The Board of Appeals shall have all the power and duties prescribed by Town Law and by this Ordinance, which are more particularly specified as follows.

A. Interpretation

Upon appeal from a decision by the Zoning Officer, to decide any questions involving the interpretation of this Ordinance, including determination of the exact location of any district boundary.

B. Variances

To vary the strict application of this Ordinance in cases of irregular, narrow, shallow, or steep lots, or other physical conditions, where strict application will result in a practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. No variance shall be granted by the Board of Appeals unless it finds:

1. Special circumstances or conditions, fully described in the findings of the Board, applying to such lands or buildings and not applying generally to land or buildings in the neighborhood, such that strict application of this Ordinance would deprive the owner of the reasonable use of such land or buildings.

2. The variance as granted is the minimum variance that would accomplish such purpose.

3. The granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be detrimental to the neighborhood or the public welfare.

620.3 Procedure

A. How Appeals and Applications Are Made

All appeals and applications made to the Board of Appeals should be in writing and shall refer to the specific provision of the Ordinance involved, and shall set forth the interpretation that is claimed, or the details of the variance that is requested and the grounds on which it is claimed the variance should be granted, as the case may be. Such appeals or applications shall be filed with the Town Clerk, and the Town Clerk shall promptly inform the Secretary of the Board of Appeals.

B. Public Hearing and Notice Thereof

1. Newspaper Publication - At least ten (10) days prior to said hearing, notice of any hearing shall be published in a newspaper of general circulation in the Town of Oakfield.

2. Referral to Town Planning Board

At least ten (10) days prior to said hearing, the Secretary of the Board of Appeals shall transmit to the Town Planning Board a copy of said appeal or application together with notice of the public hearing. The Town Planning Board may make a report or recommendation to the Board of Appeals.

However, if the Town Planning Board does not timely make a report or recommendation, the Board of Appeals may nevertheless proceed to hear and to determine the matter.

3. Referral to County Planning Board of Certain Application for Special Permit or Variance - The Board of Appeals may not act on an application for a special permit or variance applying to real property within 500 feet of a municipal boundary, county or state park, existing or proposed county or state road, or the boundary of any county or state owned land on which a public building or institution is situated, until 30 days after the County Planning Board shall have received a copy of the application. The Board of Appeals may not act contrary to a report or recommendation of the County Planning Board except by a resolution fully setting forth the reasons for such contrary action adopted by a vote of a majority plus one of all the members of the Board of Appeals. If the County Planning Board fails to report or recommend to the Board of Appeals within such 30 day period, or such longer time as may have been agreed upon the Board of Appeals, then the Board of Appeals may act without such report or recommendation from the County Planning Board.

4. Notice to Applicant and to Zoning Officer and to Owners of Nearby Property - At least ten (10) days prior to said hearing, notice of the hearing shall be sent by first class mail (Amended 9/13/83) to the applicant and the Zoning Officer and to all owners of property within a distance of 250 feet of the property line on both sides of the street on which the property fronts, and to all owners of property adjoining to the rear of the property effected.

C. Making and Filing of Decisions - Each decision of the Board of Appeals shall set forth the findings on which the decision is based, and shall state the vote of the members of the Board of Appeals on the matter. A copy of the decision shall be promptly filed with the Town Clerk, together with all supporting documents, and a copy of said decision should be promptly provided to the applicant. If the decision of the Board of Appeals is that a building permit or variance shall be granted, then such may be issued over the signature of the Chairman of the Board of Appeals or the Secretary of the Board of Appeals.

SECTION 630 **VIOLATIONS**

630.1 Penalties

Violation of this Ordinance shall be punishable by a fine and/or imprisonment as set forth in New York State Town Law. (Amended 6/28/88)

630.2 Enforcement

The Zoning Officer may on his own motion institute court action to enforce the provisions of this Ordinance, or may refer the matter to the Town Board for action to be authorized by the Town Board.

630.3 Additional Fee for Building Permit

If the Zoning Officer shall have laid a charge before court of failure to obtain a building permit, and if such charge is thereafter withdrawn upon agreement of the Zoning Officer and the person charged, then the fee for issuing a building permit within the next two years for the construction involved shall be \$25.00 more than the regular fee for said permit.

ARTICLE VII **AMENDMENTS**

SECTION 700 **AMENDMENTS**

The Town Board may from time to time, on its own motion, on petition, on recommendation of the Planning Board, amend, supplement, or repeal the regulations and provision of this ordinance in the manner provided for by law.

701. Amendment Procedures

Upon presentation to the Town Board of a petition requesting an amendment, supplement, change, modification or repeal of the regulations and/or restrictions prescribed for any such district or part thereof, or for a change or modification in such district's boundaries as shown on the zoning map, duly signed and acknowledged by the owners of at least fifty (50) percent of the area included in such proposed amendment or in the zoning district affected by such proposed amendment, it shall be the duty of the Town Board to hold a public hearing thereon within sixty (60) days thereafter.

702. Referral to Town Planning Board

Every such proposed amendment or change shall be referred to the Planning Board for report thereon before the public hearing required by law. In recommending the adoption of any

such proposed amendment, the Planning Board shall state, in writing, its reasons for such recommendation, describing any conditions that it believes makes the amendment advisable, and specifically setting forth the manner in which, in its opinion, the amendment would be in harmony with the comprehensive plan of land use for the Town, and be in furtherance of the purposes set forth in Article 1 of this Ordinance. In recommending the rejection or revision of any proposed amendment, the Planning Board shall similarly state its reasons. Failure on the part of the Planning Board to report to the Town Board its recommendation with respect to any proposed amendment within thirty (30) days after the date of referral shall be deemed to be approval thereof, unless such proceedings have theretofore been terminated.

703. Referral to County Planning Board

Prior to adoption by the Town Board, a proposed amendment may have to be referred to the County Planning Board pursuant to Section 239m of the General Municipal Law of the State of New York as noted in Section 620.3 B-3 of this Ordinance.

ARTICLE VIII **INTERPRETATION**

In interpreting and applying the provisions of this Ordinance, they shall be held to the minimum requirements for the promotion of the public health, safety, convenience, comfort and general welfare, and more particularly for the purposes set forth in Section 100. It is not intended by this Ordinance to interfere with or abrogate or annul any easement, covenant, or other agreement between parties, provided, however, that when this Ordinance imposes a greater restriction on the use of buildings or land or on the heights of buildings, or requires larger open spaces, or makes any other greater requirements than are imposed or required by any other ordinance, rules, regulations or by easements, covenants, or agreements, the provisions of this Ordinance shall control.

SECTION 810 **SEVERABILITY**

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared by any court of competent jurisdiction to be invalid, such invalidity shall not affect any other portion of this Ordinance. The Town Board hereby declares that it would have adopted every section, subsection, paragraph, sentence, clause and phrase of this Ordinance regardless of the fact that any other section, subsection, paragraph, sentence, clause or phrase be declared invalid.

SECTION 820 **SHORT TITLE**

This Ordinance shall be known and may be cited as the "Town of Oakfield Zoning Ordinance".

SECTION 830 **REPEALER**

The Ordinance, Zoning Ordinance - Town of Oakfield, adopted on December 9, 1963, together with all changes and amendments thereto, is hereby repealed and declared to be of no effect, except that should any section, clause, etc. of this Ordinance be declared invalid, the corresponding section of that Ordinance shall not be deemed to have been repealed.

SECTION 900 SUMMARY ZONING SCHEDULE FOR TOWN OF OAKFIELD

ZONE DISTRICT	PERMITTED USE *Permitted with Special Use Permit	Minimum Lot Size		Minimum Yard Requirements (Ft.) Principal Bldg.				Percent Lot Coverage	Maximum Bldg. Height (Ft.) Principal Bldg.	Minimum Floor Area Per Unit Sq. Ft.
		Area (Sq. Ft.)	Width (Ft.)	Front	Rear	Side One	Total Both Sides			
R&a Residential & Agriculture	1. Single-Family detached dwelling	30,000	150	50	35	20	45	x	35	700
	2. Places of Worship	30,000	200	50	35	20	45	x	x	
	3. Cemeteries	40,000	200	x	x	x	x	x	x	x
	4. Agricultural buildings & structures	x	x	50	x	x	x	x	x	x
	5. Mobile homes	30,000	150	50	35	20	45	x	x	600
R Residential	1. Single family	20,000	100	50	35	20	45	x	35	700
	2. Religious institution	40,000	200	50	35	20	45	x	35	x
	3. Two family dwelling	20,000	100	50	45	20	45	x	35	650
	4. Cemeteries*	40,000	200	x	x	x	x	x	x	x
	5. Educational institutions*	40,000	200	50	35	20	45	x	x	x
C Commercial	1. Motor vehicle sales, service & parking	40,000	200	75	35	12	30	30	35	x
	2. Stores - Shops for conducting wholesale or retail business	40,000	200	75	35	12	30	30	35	x
	3. Offices - Banks (not drive-in)	40,000	200	75	35	12	30	30	35	x
	4. Drive thru banks, restaurants, bowling alleys, similar places of entertainment*	40,000	200	75	35	12	30	30	35	x
	5. Gas stations*	40,000	200	75	35	12	30	30	35	x
	6. Motels - auto courts*	40,000	200	75	35	12	30	30	35	x
I Industrial	All Industrial Uses as specified in Section 424 B-1-9	40,000	200	75	35	15	30	40	50	x
	* Carwash	40,000	200	75	35	15	30	40	50	x
	* Motor Vehicle service stations	40,000	200	75	35	15	30	40	50	x
	* Public Garages	40,000	200	75	35	15	30	40	50	x
L-C Land Conservation	All L-C uses as specified in Section 425 x	30,000	1,500	50	35	20	45	x	35	x

TOWN OF OAKFIELD

ZONING MAP

AUG. 11, 1981 DATE ADOPTED

LEGEND

R+A RESIDENTIAL + AGRICULTURE

R RESIDENTIAL

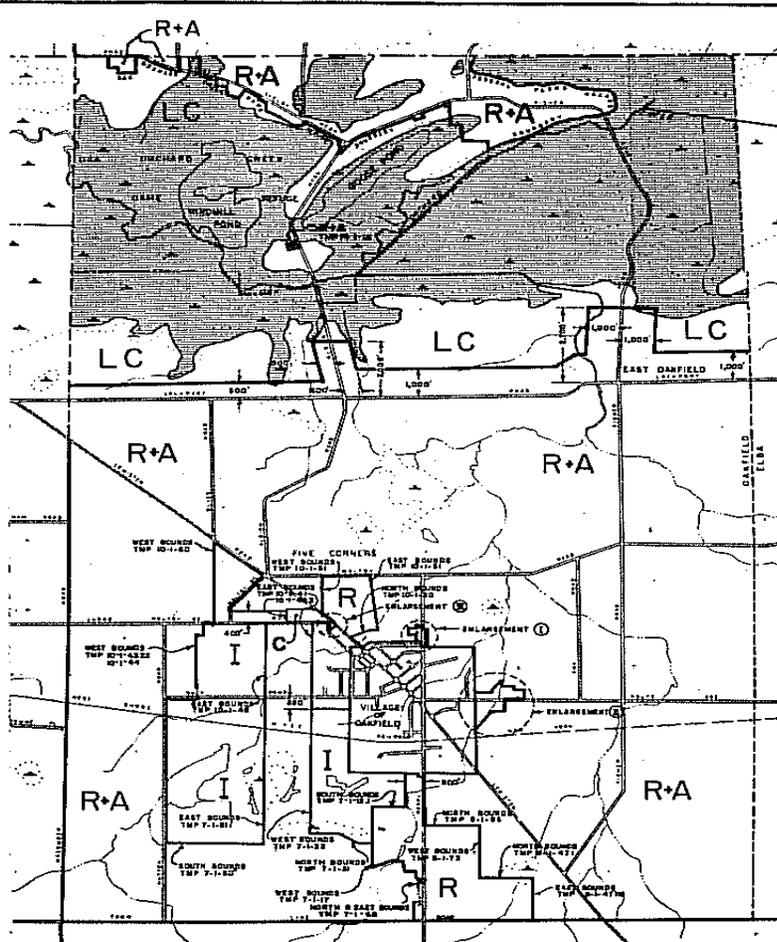
I INDUSTRIAL

C COMMERCIAL

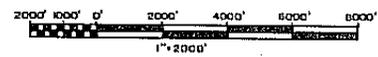
LC LAND CONSERVATION

 FLOOD PLAIN OVERLAY ZONE - "A"
(INFORMATIONAL USE ONLY - SEE SECTION 310)

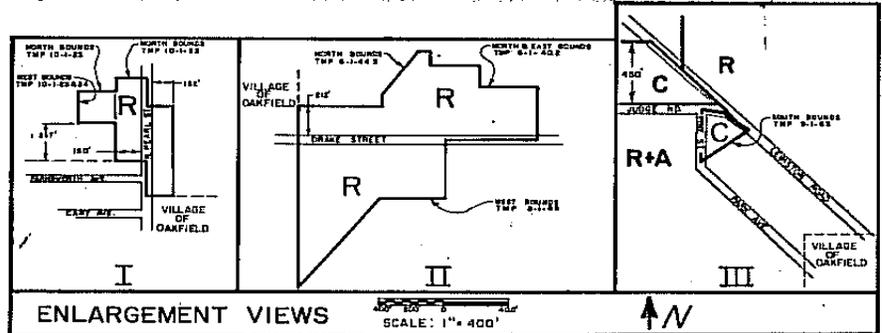
TMP TAX MAP PARCEL



REVISIONS			
DATE	DATE	DATE	DATE
Enactment	Map Rev.	Enactment	Map Rev.
16 AUG 84	28 SEPT 84		
14 APRIL 87	10 JULY 87		
9 AUG 88	27 OCT 88		
13 APRIL 93	19 JUNE 93		
23 AUG 94	19 JUNE 94		



- NOTE:
- Where zone boundaries are shown with dimensions given, dimensions are approximate and intended to begin and/or end at center lines of roads, natural features, municipal boundaries, corners of retraced RCW's, or Tax Map Parcel lot lines as indicated.
 - District boundaries have been determined at the time of adoption and/or amendments by using the most current tax maps. If a discrepancy exists the Official Zoning Map and/or the Zoning Board of Appeals will be the final determining factor to decide the District boundaries.



Prepared by: CENESSEE COUNTY DEPARTMENT OF PLANNING

Town of Pembroke, New York

Zoning Law

As Amended through February 14th, 2019

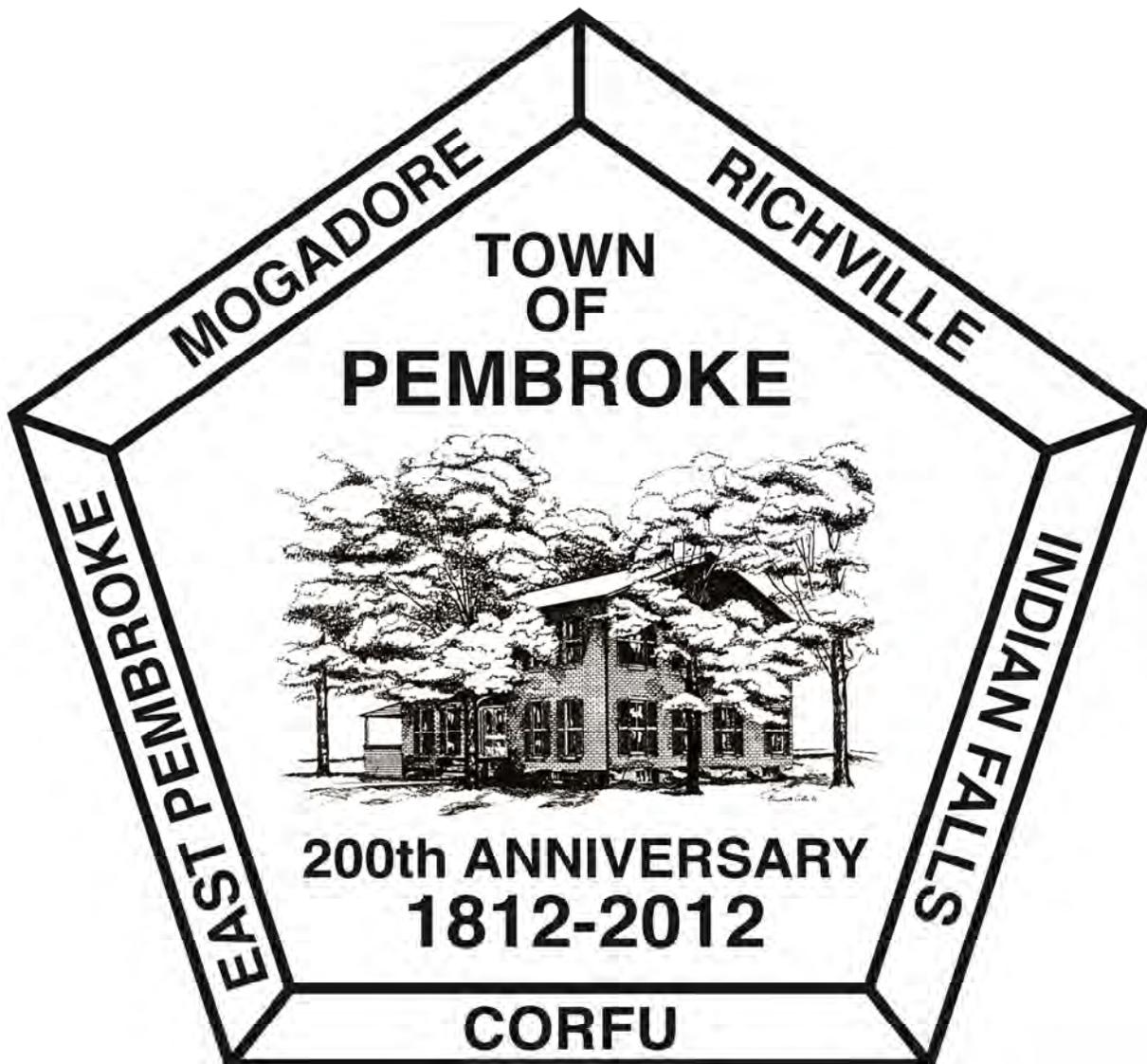


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TOWN OF PEMBROKE ZONING LAW

JUNE 14, 1995

(As Amended Through 2/14/2019)

The Zoning Law of the Town of Pembroke known as Local Law No. 1 of January 9, 1991, as thereafter amended by Local Law No.3 of 1992, Local Law No.2 of 1993, Local Law No. 1 of 1995, Local Law No. 2 of 1995, Local Law No. 2 of 1996, Local Law No. 1 of 1997, Local Law No. 1 of 2000, Local Law No. 4 of 2000, Local Law No. 1 of 2002, Local Law No. 1 of 2003, Local Law No.2 of 2003, Local Law No. 1 of 2005, Local Law No.2 of 2005, Local Law No.3 of 2005, Local Law No.2 of 2006, Local Law No.4 of 2006, Local Law No.5 of 2006, Local Law No.2 of 2007, Local Law No.3 of 2007, Local Law No.4 of 2007, Local Law No. 1 of 2008, Local Law No. 2 of 2009, Local Law No. 2 of 2012, Local Law No. 2 of 2013, Local Law No. 1 2015, Local Law No. 1 of 2016, Local Law No. 1 of 2017, Local Law No. 1 of 2018, Local Law No. 4 of 2018 and Local Law No. 1 of 2019.

ARTICLE I **ENACTING CLAUSE, TITLE, PURPOSES, APPLICATION AND DEFINITIONS**

SECTION 101 **ENACTING CLAUSE**

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Pembroke hereby adopts and enacts as follows:

SECTION 102 **TITLE**

This Zoning Law shall be known as the "Zoning Law of the Town of Pembroke".

SECTION 103 **PURPOSES**

This Zoning Law is adopted for the protection and promotion of the public health, safety, morals and general welfare of the community, as follows:

1. To guide the future growth and development of the Town in accordance with a comprehensive land use plan and population density that represents the most beneficial and convenient relationships among the residential, nonresidential and public areas within the Town, considering the suitability of each area for such uses, as indicated by existing conditions, trends in population and mode of living, and having regard for the use of land, building development and economic activity, considering such conditions and trends both within the Town and with respect to the relation of the Town to areas outside thereof.

2. To provide adequate light, air and privacy; to promote safety from fire, flood and other danger, and to prevent overcrowding of the land and undue congestion of the population.

3. To protect and conserve the value of the land throughout the Town and the value of buildings appropriate to the various districts established by this Zoning Law.

4. To protect the rural character and the social and economic stability of all parts of the Town, and to encourage the orderly and beneficial development of all parts of the Town.

5. To bring about the gradual conformity of the uses of land and buildings through the comprehensive zoning plan set forth in this Zoning Law, and to minimize the conflicts among the uses of land and buildings.

6. To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard to the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian traffic movement appropriate to the various uses of land and buildings throughout the Town.

7. To provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the Town.

8. To limit concentrated development to an amount equal to the availability and capacity of public facilities and services.

9. To prevent the pollution of streams and ponds, to safeguard the water table, and to encourage the wise use and sound management of the natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.

SECTION 104 APPLICATION OF REGULATIONS

No building or structure shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purpose except in conformity with this Zoning Law. No building, structure, or premises shall be used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind, that is noxious by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the health or safety of the community.

In interpreting and applying this Zoning Law, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public safety, health, morals and general welfare. This Zoning Law shall not be deemed to affect in any manner whatsoever any easements, covenants or other agreements between parties; however, where this Zoning Law imposes greater restrictions than are imposed by other ordinances, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, then the

provisions of this Zoning Law shall prevail.

This Zoning Law shall not apply to uses which were legal, prior, existing, nonconforming uses as defined herein except as set forth in Section 304.

Nothing herein contained shall require any change in plans or construction of a building for which a zoning permit has been issued.

All buildings under construction at the time of this Zoning Law is adopted shall conform to the Zoning Ordinance in effect at the time construction was commenced.

SECTION 105 VALIDITY

The invalidity of any section or provision of this Zoning Law shall not invalidate any other section or provision.

SECTION 106 DEFINITIONS

Except where specifically defined herein, all words used in this Zoning Law shall carry their customary meanings. Words used in the present tense shall include the future tense and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure", the word "shall" is always mandatory; the words "occupied" or "used" shall be construed to mean and shall be considered as though followed by words "or intended, arranged or designed to be used or occupied".

The following terms are specifically defined. As used in this Zoning Law, the following words shall have these meanings:

Accessory Building: A building situate on a lot, subordinate to the main building on the same lot, and used for purposes customarily incidental and subordinate to said main building.

Accessory Use: Use customarily incidental and subordinate to the principal use of buildings, and located on the same lot. For the purposes of this Zoning Law a Family Day Care Home, Roadside Stand and Home Occupation (as defined herein) shall be considered accessory uses to a principal use on a lot; however, they and other accessory uses may be subject to additional requirements and review provisions set forth in this Law (i.e. a home occupation requires issuance of a special use permit).

Accessory Structure: A structure the use of which is incidental to the principal use of the main structure and which is attached thereto or located on the same lot.

Adult Care: The provision of temporary or long term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19,23, 29, and 31 of the Mental Hygiene

Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

Adult Care Facility: A facility other than a Family Type Home, which provides adult care. For the purposes of this Zoning Law an Adult Care Facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult-care facility as defined by NYS Department of Social Services Chapter II, Subchapter D, Part 485.

Adult Uses: Business including, but not limited to, an Adult Bookstore, Adult Entertainment, Cabaret, Adult Mini Motion Picture Theater and Adult Motion Picture Theater as those terms are defined in Section 516.

Agricultural Use: Any parcel of land containing at least five (5) acres used for the raising of food products or other useful or valuable growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other generally accepted agricultural practices, where the same is carried on as a business or otherwise for profit. Such uses shall include the establishment of necessary farm structures within the prescribed limits, and the storage of equipment used in connection therewith. Agricultural uses shall exclude the raising of fur-bearing animals, riding academies, public stables or dog kennels.

Alteration: Structural changes, rearrangements, change of location, or addition to a building, other than repairs and modification in building equipment.

Amusement Game: Any mechanical, electric or electronic device used or designated to be operated for entertainment or as a game by the insertion of a coin, slug, token, plate, disc, key or any other article into a slot, crevice, or other opening or by paying money to have it activated. Not included are rides, bowling alleys, any device maintained within a residence for the not-for-profit use of occupants thereof and their guests, any gambling device, or jukeboxes.

Animal Care & Training Facility: Primary or Accessory Use where domestic (for example, dogs and cats) animals are temporarily present for non-medical care (grooming or training programs) such as, but not limited to, dog obedience; companion, seeing-eye, or rescue instruction, agility or competitive skills activities (hunting, retrieving, racing). This definition excludes facilities for the boarding or breeding of animals.

Animal Shelter: Building or land used for the temporary harboring of stray or homeless dogs, cats, and other similar household pets, together with facilities for the provision of necessary veterinary care and adoption of the harbored animals.

Animal Waste Storage Facility: Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

Antenna: An arrangement of wires or metal rods used for transmitting or receiving electromagnetic waves.

Area of Special Flood Hazard: Land subject to a one percent (1%) or greater chance of flooding in any given year, and part of Zone A on the Federal Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM).

Area Variance: The authorization by the Zoning Board of Appeals for the use of land in a manner, which is not allowed by the dimensional or physical requirements of this Zoning Law.

Arterial Highway: A highway, which collects and distributes traffic to and from minor highways. For the purposes of the Zoning Law the following highways shall be considered arterial highways within the Town: NYS Routes #5, 33 and 77.

Bed and Breakfast: See Tourist Home

Board of Appeals: The officially designated Town of Pembroke Board of Appeals as established by the Town Board in accordance with Section 267 of Town Law.

Boarding House: Owner-occupied dwelling wherein more than three (3) non-related, non-transient people are sheltered for profit.

Buffer Strip: See Section 302.F.

Building: Any structure having a roof supported by columns or by walls, and intended for the shelter, housing or enclosure of persons, animals, machinery, equipment or other material.

Building, Front Line Of: The line of that face of the building nearest the street line, or if there are street lines on two (2) or more sides of the building, it is the line of that face of the building fronting on that street line where the principal entrance is located. This face includes decks and porches but does not include steps.

Building, Height Of: The vertical distances measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof.

Building Permit: A permit issued by the Code Enforcement Officer, stating that plans for the proposed construction of a building or structure are in conformance with the Uniform Fire Prevention and Building Code.

Building, Temporary: A "temporary building" or "temporary structure" erected, constructed or placed upon the premises, for a period not exceeding nine (9) months. All other buildings or structures shall be deemed permanent for the purposes of this Zoning Law.

Campground: Land on which is located one or more cabins, trailers, shelters, houseboats or other accommodation for seasonal or temporary living purposes, excluding mobile homes.

Certificate of Compliance: A certificate issued by the Zoning Administration Officer upon completion of construction, alteration or change in occupancy or use of a building or land. Said certificate shall acknowledge compliance with all the requirements of this Zoning Law only and any adjustments thereto granted by the Board of Appeals.

Certificate of Occupancy: A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of the New York State Uniform Fire Prevention and Building Code.

Child Day Care: Shall mean care for a child on a regular basis provided away from the child's residence for less than twenty-four (24) hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity of the parents or stepparents of such child.

Child day care does not refer to care provided in:

- (1) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;
- (2) A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation;
- (3) A facility providing day service under an operating certificate issued by the department;
- (4) A Facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or
- (5) A kindergarten, pre-kindergarten or nursery school for children three (3) years of age or older, or a program for school-age children three (3) years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

Child Day Care Center: Shall mean a program or facility in which child day care is provided on a regular basis to more than six (6) children for more than three (3) hours per day per child for compensation or otherwise, except those programs operating as a group family day care home, a family day care home, or school-age child care program, as defined in this Section.

Club: An organization established pursuant to the New York Not-For-Profit Corporation Law for a social, educational, or recreational purpose, catering exclusively to members and their guests, whose activities are not conducted primarily for profit.

Cluster Development: A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, while maintaining the overall density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

Commercial Communication Tower: A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

Commercial Excavation: A lot or part thereof used for the purpose of excavation, processing or sale of sand, gravel, or clay, or other natural mineral deposits or the quarrying of any kind of rock formation, and exclusive of the process of grading a lot preparatory to the construction of a building for which a building permit application has been filed. Commercial excavation shall be divided into two categories based on the scale and type of operation as follows:

1. Major Excavation: All excavations requiring a New York State Mined Land Reclamation Permit shall be considered major excavations.

2. Minor Excavation: All excavations not requiring a New York State Mined Land Reclamation Permit shall be considered minor excavations.

Commercial Solar Energy System

A free-standing solar energy system installed by a Commercial Enterprise.

Commercial Wind Energy System: A wind energy system that is operated primarily (51% or more) to put energy into the electric grid, and/or has a nameplate capacity of more than 50 kilowatts (kW), and/or a total height of more than 175 feet, and/or a blade length of more than 30 feet.

Community Center: Meeting hall or place of assembly, not operated primarily for profit.

Community Residence: A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than fourteen (14) individuals and provides client supervision on a 24 hour basis. For the purposes of this Zoning Law an approved community residence as defined herein is considered a one-family dwelling.

Contractor's Yard: Businesses engaged in construction of buildings and structures, remodeling and repairs to existing buildings and structures, electrical services, plumbing services, excavation and grading services, roofing and siding services, masonry services, paving services, well drilling, sewage disposal system installation and services, and other similar services. Parking or storage of two or more pieces of contractor's equipment (i.e. back hoe, bulldozer, compressors,

commercial trucks, cargo containers, roll-offs, etc.) or bulk storage of construction material on a lot other than on-site or personal use.

Convalescent Home, or Extended Care Facility: See "Hospital".

Coverage: That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations, which change could lead to increased flood damage, excluding normal maintenance to farm roads.

Drive-In Business: A drive-in business includes drive-in restaurants, refreshment stands, banks, and the like where patrons enter the premises and are served or entertained in automobiles.

Dwelling: A building, including but not limited to a factory-manufactured home or mobile home, designed or used exclusively as permanent living quarters for one or more families; the term shall not be deemed to include automobile court, hotel/motel, boarding house, tourist home, tent or recreational vehicles.

Dwelling Unit: A building, or portion thereof, providing complete housekeeping facilities for one family.

Dwelling, One-Family: A building containing one dwelling unit only.

Dwelling, Two-Family: A dwelling containing two dwelling units only.

Dwelling, Multi-Family: A dwelling containing three or more dwelling units.

Dwelling, Multi-family Project: An apartment complex containing one or more separate buildings with more than three units.

Dwelling Unit, Primary: A dwelling, or portion thereof, providing complete living facilities for one family, and which occupies a space equal to or greater than 50% of the total available living space within a structure.

Electromagnetic Interference (EMI) -The interference to communication systems created by the scattering of electromagnetic signals.

Factory-Manufactured Home: A dwelling unit, or unit, which incorporate structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site. As set forth in the NYS Uniform Code (Part 1211.1), a factory-manufactured home shall be constructed and installed in accordance with Subchapter B of the Code. For the purposes of this Zoning Law a factory manufactured home shall be treated the same as a dwelling unit constructed on-site.

Family: One or more persons who live together in one dwelling unit and maintain a common household. May consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

Family Day Care Home: Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, as provided for and registered by NYS Department of State. The name, description or form of the entity, which operates a family day care home, does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered.

Family-Type Home: Adult care established and operated for the purpose of providing long term residential care, room, board and personal care, and/or supervision to four (4) or fewer adult persons unrelated to the operator. For the purposes of this Zoning Law a family-type home shall be considered a home occupation.

Fence: An artificially constructed barrier of wood, masonry, stone, wire, metal or any other manufactured material or combination of materials other than temporary uses such as snow fences or rabbit fences.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas, resulting from the overflow of inland waters and/or the unusual and rapid accumulation of, or runoff of, surface waters from any source.

Flood Insurance Rate Map (FIRM): Means an official map of the community, on which the FEMA has delineated the area of special flood hazard and the risk premium zones applicable to the community.

Flood Plain Overlay Zone: That area of the Town identified on the Flood Insurance Rate Map (FEMA Community Number 360283) as being subject to flood and/or mudslide hazards, which area is delineated on the Zoning Map, and for which special flood plain management requirements and criteria are enumerated in the Town's Flood Damage Prevention Local Law.

Floor Area of a Building: The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Floor, Lowest: Floor of lowest enclosed level including basement, crawl space, or garage.

Frontage: The extent of a building or a lot along one public street as defined herein.

Game Room: A building or place containing five (5) or more amusement games as defined here in (see Amusement Game)

Garage, Private: An enclosed space for the storage of one (1) or more motor vehicles, provided that no business, occupation or service is conducted for profit therein, nor is space for more than one (1) car leased to a nonresident of the premises.

Gasoline Station: Any building or land used for sale of motor fuel, oil and motor vehicle accessories, which may include facilities for lubricating, washing or servicing motor vehicles, but not painting or body repairs.

Gasoline Station-Market (Convenience Store): A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market, or food market, or a commercial use which provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

Grade, Finished: Natural surface of the ground, or the surface of the ground, lawn, walks or roads after the completion of any change in contour.

Group Family Day Care Home - Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise, as provided for and registered by NYS Department of State. The name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered.

Habitable Floor Area: Any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation or combination thereof. A floor used only for storage purposes is not "habitable".

Home Occupation: An accessory use of a dwelling unit for gainful employment involving the manufacture, provision or sale of goods, and/or services. In particular, a home occupation may include, but is not limited to, the following: accountant architect; art studio; attorney; barber shop (limited to one chair); beauty parlors (limited to two work stations); chiropractor; counselor; computer programmer; cook; dentist; direct sale product distribution (Amway, Avon, Tupperware, for example); draftsman; dressmaker or tailor; electrical/radio/television repair; engineer; financial planning and investment services; insurance broker or salesman; massage therapist; musician; optometrist; photographer; physician or surgeon; physical therapist; psychologist; real estate broker or salesperson; surveyor; teacher (limited to no more than two students at one time); telephone answering; upholsterer; veterinarian; or family-type home (adult care). However, a home occupation shall not be interpreted to include the following motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and kennels, restaurants or furniture refinisher.

Hospital: An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities.

Hospital, Animal: An establishment for the medical and/or surgical care of injured animals.

Hotel/Motel: A building providing overnight accommodation for more than four (4) transient people, which building need not be owner occupied and may provide eating, restaurant and related facilities.

Indoor Recreation: Includes, but is not limited to, health club, bowling alley, tennis court, table tennis, pool hall, skating rink, gymnasium, swimming pool, hobby workshop, and similar places of indoor recreation.

Industrial Park: A large tract of land that has been planned, developed and operated as an integrated facility for a number of individual industrial uses, with special attention to circulation, parking, utility needs, aesthetics, and compatibility.

Inter-modal Shipping Container: A standardized reusable steel box used for secure storage and/or movement of goods. Inter-modal indicates a container that can be moved from one mode of transport to another (from ship, to rail, to truck) without unloading and reloading its contents.

Junkyard: The term junkyard shall be defined in the same manner as is set forth in Local Law No.2 of 1985 of the Town of Pembroke together with any amendment(s) thereto.

Kenel: Building or land used for harboring six (6) or more dogs over six (6) months old.
Landfill, Sanitary: The depositing of refuse in a natural or man-made depression or trench, or dumping it at ground level, then compacting to the smallest practical volume, and covering with earth or other material in a systematic and sanitary manner.

Land Separation: See definition of "Land Separation" contained in Town of Pembroke Local Law No. 1 of 1992 regulating Land Separations, together with any amendment(s) thereto.

Landscaping Contractor's Yard: An area and building(s) where landscaping contractor stores equipment, vehicle, materials (rock, stone, bricks, fencing, fixtures, etc.), tools and other items related to his/her business.

Light Industrial: The processing, fabrication, assembly or packaging of previously prepared or refined materials.

Lot: Land occupied or which may be occupied by a building and its accessory uses, together with required open spaces, having not less than minimum area, width and depth required for a lot in the district in which such land is situated, and having frontage on a street, or other means of access as may be determined by the Planning Board to be adequate as a condition for issuance of a building permit. Any land included in a public road, street or highway right-of-way shall not be considered part of the lot for

zoning purposes.

Lot Area: Total area within property lines. Any land included in a public road, street or highway right-of-way shall not be included in calculating lot area.

Lot, Comer: A lot located at the junction of and fronting on two or more intersecting streets (also see definition "Lot Line Front").

Lot Depth: Mean horizontal distance from street right of way line of the lot to its opposite rear line measured at right angles to the street right-of-way line.

Lot, Frontage: The horizontal distance between the side lot lines, measured at the street right-of-way line.

Lot Width: The horizontal distance between the side lot lines, measured at right angles to the lot depth.

Lot Lines: The property lines bounding a lot as defined herein.

Lot Line, Front: In the case of a lot abutting upon only one street, the line separating the lot from the street right of way; in the case of a lot abutting more than one street, each street line shall be considered a front lot line.

Lot Line, Rear: The lot line, which is generally opposite the front lot line. If the rear lot line is less than ten (10) feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line, not less than ten (10) feet long, lying wholly within the lot and farthest from the front lot line.

Lot Line, Side: The property line or lines extending from the front lot line to the rear lot line, except in the case of comer lots which have no rear lot line.

Manufactured Housing: A dwelling unit, or units, manufactured in an off-site manufacturing facility for installation or assembly at the building site, bearing a label certifying it is built in compliance with the NYS Uniform Code as either a Factory-Manufactured Home (NYS Uniform Code Parts 1210, 1211 and 1212) or a Mobile Home (NYS Uniform Code Parts 1220, 1221, 1222 and 1223).

Manufacturing: Establishments engaged in the mechanical or chemical transformation of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

Mobile Home: A structure, whether occupied or not, transportable in one or more sections, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes plumbing, heating, and air conditioning and electrical systems contained therein. For the purposes of this Zoning Law a mobile home shall comply with the NYS Uniform Code (Parts 606 and 1221.1) and be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Chapter XX Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

Mobile Home Park: A parcel, which has been improved for the rental or lease of two or more lots and the provision of services for mobile homes for non-transient residential use.

Motel: See Hotel.

Motor Vehicle: A motor powered vehicle including, but not limited to, an automobile, pickup truck, van, sport utility vehicle (SUV), recreational vehicle (RV), motorcycle, all-terrain vehicle (ATV), and snowmobile. Trucks with a gross vehicle weight rating (GVWR) of greater than 10,000 lbs. shall not be considered a motor vehicle for the purposes of this Zoning Law.

Motor Vehicle Repair Shop: Any building or land used for gain, wholly or partially, engaged in the business of service, repair or diagnosing motor vehicle malfunctions or repairing bodies, fenders or other components damaged by accidents or otherwise.

Non-commercial Wind Energy System- A wind energy system that is operated primarily (51% or more) for on-site (may be more than one parcel) consumption, and has a nameplate capacity of 50 kW or less, and a total height of 175 feet or less, and a blade length of 30 feet or less.

Non-Conforming Building: A building legally existing at the time it was created which in its design or location upon a lot does not conform to the current regulations of this Zoning Law for the district or zone in which it is located.

Non-Conforming Lot: A lot of record legally existing at the date of the passage of this Zoning Law which does not have the minimum frontage or contain the minimum area for the zone in which it is located.

Non-Conforming Use: Use of a building or of land legally existing at the time it was created, but not conforming to the current zoning regulations of the district in which it is located.

Nursing Home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

NYS Uniform Code: The New York State Uniform Fire Prevention and Building Code as set forth in 9 NYCRR Volume B of the Executive Law.

Office Building: A building used primarily for conducting the affairs of a business, profession, service, industry or government, or like activity, that may include ancillary services for office workers such as a restaurant, coffee shop, newspaper or candy stand.

Outdoor Recreation: Includes, but is not limited to, golf courses; golf driving range; trap, skeet, and archery range; swimming pool; skating rink; tennis court; recreation stadium; skiing facility; hunting preserve; and similar places of outdoor recreation.

Outside Solid Fuel Burning Device: A solid fuel burning device designed and intended for installation outside of the primary building on a lot and used to produce heat for transfer to the primary or accessory building(s) on such lot.

Owner: Person or persons holding legal or equitable title to the property.

Parking Space: An off-street space available for the parking of one (1) motor vehicle on a transient basis and having a width of ten (10) feet, and an area of not less than two hundred (200) square feet, exclusive of passageways and driveways, and having access to a street.

Person: A person, firm, partnership, corporation, limited liability company, association or legal representative, acting individually or jointly.

Personal Services: Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

Planning Board: The officially designated Town of Pembroke Planning Board as established by the Town Board in accordance with Section 271 of the Town Law.

Pond: A manmade body of water other than a swimming pool, greater than two feet in depth.

Professional Office: An office used by a duly New York State licensed/registered architect, Attorney, dentist, certified counselor, certified public accountant (CPA), chiropractor, engineer, insurance broker or salesman, massage therapist, optometrist, physician or surgeon, physical therapist, psychologist, real estate broker or salesperson, surveyor, teacher or veterinarian.

Public Street/Road: A thoroughfare which has been dedicated or deeded to the public for public use, and which has been improved in accordance with municipal standards.

Reclamation Plan: Applicant's proposal for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation.

Recreational Vehicle: A unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own power or is mounted on or drawn by a motor vehicle. The basic entities are:

A. Travel Trailer: A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motor vehicle.

B. Camp Trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls, which fold for towing by a motor vehicle.

C. Truck Camper: A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck Campers are of two basic types:

1. Slide-in camper: A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.

2. Chassis-mount camper: A portable unit designed to be affixed to a truck chassis.

D. Motor Home: A vehicular unit built on a self-propelled motor vehicle chassis.

Recyclables Handling and Recovery Facility: Recyclables handling and recovery facility means a solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected and which is regulated by 6 NYCRR Part 360.

Religious Institution: Church, temple, parish house, convent, seminary and retreat house.

Restaurant: Any establishment, however designed, at which food and beverages (alcoholic and/or non-alcoholic) are sold for consumption on the premises to patrons seated within an enclosed building and where the taking of food and drink from said building is incidental. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground, play field or park operated for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

Retail Trade: Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Roadside Stand: Structure of a nonpermanent nature (movable and temporary) located on the owner's property utilized during the harvest season for the sale of agricultural products grown primarily by the owner.

Satellite Dish: A structure which is designed and/or intended to receive, relay or send television signals to or from orbiting or geo-stationary satellites.

School: Schools shall include parochial, private and public institutions providing New York State approved educational services, including preschool and vocational programs, together with private and public schools and colleges and universities.

School-Age Child Care Program: Care provided on a regular basis to more than six school age children under 13 years of age or who are incapable of caring for themselves where such children attend a school higher than kindergarten or attend full day (at least six hours) kindergarten at a public or private school whether such care is provided for compensation or otherwise.

Self-Service Storage Facility: A building or group of buildings in a controlled-access and fenced compound that contains varying sizes of individual, compartmentalized, and controlled access stalls or lockers for the dead storage of customer's goods or wares.

Shadow Flicker -The alternating pattern of sun and shade caused by wind tower blades casting a shadow.

Shopping Center: A group of businesses occupying adjoining structures, having adequate space for loading and unloading and adequate off-street parking.

Sign: Any structure or part thereof, or any device attached to a structure or painted or represented on a structure, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement. A sign includes any billboard, but does not include the flag, pennant, or insignia of any nation, or group of nations, or of any state, city or other political unit or of any political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event. However, a sign as designed herein shall not include a similar structure or device located within a building.

Sign, Advertising: A sign, which directs attention to a business, commodity, service or entertainment, conducted, sold or offered elsewhere than upon the same lot.

Sign, Business: A sign, which directs attention to a business or profession conducted or to products sold upon the same lot. A "For Sale" or "To Let" sign relating to the lot on which it is displayed shall be deemed a "business sign".

Sign, Directional: A sign limited to providing information on the location of an activity, business or event.

Sign, Portable: A sign, whether on its own trailer, wheels, or otherwise, designed to be movable and not structurally attached to the ground, a building, a structure or another sign.

Sign, Temporary: A sign related to a single activity or event having a duration of no more than sixty (60) days.

Sign Area: The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape, which most closely outlines the said sign.

Site Plan: A rendering, drawing or sketch prepared to specifications containing necessary elements, as set forth in this Zoning Law, which shows the arrangement, lay-out and design of the proposed use of a single parcel of land as shown on such plan. Plats showing lot, blocks or sites which are subject to review under Section 276 of NYS Town Law and the Town of Pembroke, Local Laws Nos. 1 and 2 of 1992 Regulating Land Separations and Subdivisions (including any amendments thereto) shall not be subject to review as site plans under this Zoning Law unless a zoning application is submitted.

Skilled Trade Shop: A shop where an individual involved in a skilled building trade (including carpenter, cabinet/furniture maker, plumber, electrician, for example) assembles custom fixtures, cabinets, furniture, for example, for installation by him/her at a job site location. No retail sales of materials and/or products directly to the public shall be allowed on site.

Solar Energy System: A system that uses photovoltaic equipment to convert solar energy into electricity. Examples of solar energy systems include, but are not limited to, flush-mounted solar panels installed on the roof of a building and freestanding or ground-mounted solar panels supported by posts fixed to the ground and not attached to an existing building.

Solar Farm: An area of land used primarily for the purpose of producing electricity by means of a solar energy system.

Subdivision: See definition of "Subdivision" contained in Town of Pembroke Local Law No. 2 of 1992 regulating Subdivisions (including any amendments thereto).

Special Use Permit: Authorization of a particular use of land which is permitted in this Zoning Law, subject to conditions imposed by this Zoning Law and/or the Town of Pembroke Planning Board to assure that the proposed use is in harmony with this Zoning Law and will not adversely affect the neighborhood if such conditions are met.

Stable Private: A building in which horses or other livestock are kept for private use and not for hire, remuneration, or sale.

Stable, Public: A building in which horses or other livestock are kept for remuneration, hire or sale.

Stabling of Agricultural Animals: A concentration of animals, permitted under agricultural use, private stable and public stable, within a building or other structure for the purpose of housing or feeding.

Storm Water/Erosion Control Basin: Any earthen structure, which is intended to retain storm waters and designed to release runoff over a period of time. A basin may or may not retain water over a long period of time.

Street/Road Grade: The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

Street/Road Right-of-Way Line: The line determining the limit of the highway rights of the public, either existing or contemplated

Structure: Anything constructed or erected, the use of which requires location on or in the ground, or attachment to something having location on or in the ground.

Swimming Pool: A structure intended for bathing, swimming or diving purposes, made of concrete, masonry, metal or other impervious materials, provided with a re-circulating and/or controlled water supply and a depth of greater than two (2) feet.

Temporary Use: An activity conducted for a specified limited period of time, which may not otherwise be permitted by the provisions of this Zoning Law. Examples of such uses are buildings incidental to new construction, which are removed after the completion of the construction work.

Topsoil: The fertile upper part of the soil.

Total Height: The vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point.

Tourist Home: Owner-occupied dwelling in which overnight accommodation is provided for less than four (4) transient people for profit (includes bed and breakfast).

Town Board: Shall mean the Town Board of the Town of Pembroke, New York.

Trailer: Trailer shall include any towed vehicle used for carrying goods, equipment, and/or machinery.

Trucks: Motor Vehicle with a gross vehicle weight rating (GVWR) of greater than 10,000 lbs.

Unregistered Motor Vehicle: Any powered vehicle designed for use on public highways including automobiles, trucks, and motorcycles for which the annual registration issued by the NYS Dept. of Motor Vehicles has expired or where the license plate has been removed.

Use: The specific purposes, for which land, water, structure or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

Use Variance: The authorization by the Zoning Board of Appeals for use of land for a purpose, which is not allowed or is prohibited by this Zoning Law.

Utility, Public: Any person, firm, corporation or governmental subdivision, duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television, or other similar service.

Warehouse: A building used primarily for the storage and/or distribution of goods and materials.

Wind Energy Conversion System (Production Model): Equipment installed for primarily farm use that converts and then stores or transfers energy from the wind into usable forms of energy in which the output is primarily consumed within the farm operation. The system includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facility, or other component used in the system.

Wind Energy System: Equipment that converts and then stores or transfers energy from the wind into usable forms of energy and include any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities, or other component used in the system. A wind energy system can consist of one or more wind towers.

Wind Tower: The monopole, freestanding, or guyed structure that supports a wind turbine.

Yard: An unoccupied open space, on the same lot with any principal or accessory buildings or structures.

Yard, Front: The unoccupied, open space within and extending the full width of the lot from the front lot line to the front line of the principal building which is nearest to such front lot line.

Yard, Rear: The unoccupied, open space within and extending the full width of the lot from the rear lot line to the part of the principal building which is nearest to such lot line.

Yard, Side: The unoccupied, open space within the lot extending the full distance from the front yard to the rear yard and from the side lot line to the part of the principal building which is nearest to such side lot line.

Zoning Administration Officer: The Zoning Administration Officer of the Town of Pembroke as appointed by the Town Board to administer the permit, inspection and review provisions of the Zoning Law.

Zoning Enforcement Officer: The Zoning Enforcement Officer of the Town of Pembroke as appointed by the Town Board whose duties are to enforce the Zoning Law and conditions placed upon Special Use Permits.

Zoning Permit: A permit issued by the Zoning Administration Officer, stating that the purpose for which a building, structure or land area is to be used is in conformance with the uses permitted and all other requirements of this Zoning Law.

ARTICLE II ESTABLISHMENT OF ZONING DISTRICTS

SECTION 201 ZONING DISTRICT CLASSIFICATION

The Town of Pembroke is hereby divided into the following zoning districts and overlay zones:

- AG Agricultural District
- AG-R Agricultural-Residential District
- MDR Medium Density Residential District
- R Residential District
- C Commercial District
- LC Limited Commercial District
- I Industrial
- INT Interchange District
- EP Earth Products District
- PUD Planned Unit Development District
- FPO Flood Plain Overlay Zone (Information Only)

SECTION 202 ZONING MAP ESTABLISHED

Said zoning districts are bounded and defined as shown in a map entitled "Zoning Map of the Town of Pembroke, N.Y.". The official copy of the zoning map is on file at the Town Clerk's Office.

SECTION 203 INTERPRETATION OF ZONING DISTRICT BOUNDARIES

Where uncertainty exists as to the location of any boundaries shown on the zoning map, the following rules shall apply:

A. Zoning district boundary lines are intended to follow streets, rights-of-way, water courses or lot lines, or be parallel or perpendicular thereto, unless such district boundary lines are fixed by dimensions, as shown on the zoning map.

B. Where zoning district boundaries are indicated as following approximate streets, rights-of-way, or water-courses, the center-lines thereof shall be construed to be such boundaries.

C. Where zoning district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs or other bodies of water, mean high water lines thereof shall be construed to be the zoning district boundaries.

D. Where zoning district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.

E. If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine the location of said lines.

SECTION 204 **LOTS IN TWO OR MORE DISTRICTS**

Where a zoning district boundary line divides a lot under single ownership on the effective date of this Zoning Law, leaving part subject to permissive regulations and part subject to prohibitive regulations, the Board of Appeals after public hearing may permit an extension of the use of that lot into the district where it is prohibited provided the extension does not extend more than fifty (50) feet into that district. Furthermore, the Board may impose conditions affecting such extension if required to protect neighboring property.

SECTION 205 **EXISTING LOTS OF RECORD**

A single family dwelling, mobile home, and/or customary accessory buildings may be placed on any vacant lot of record existing prior to the effective date of this Zoning Law and having a minimum of one hundred (100) feet in width and twenty thousand (20,000) square feet in area. This provision shall apply even though such lot fails to meet the requirements for area, width or yard size, provided that the other requirements of this Zoning Law are met. The minimum yard requirements for single-family dwellings on existing lots shall be as follows:

1. Front.....Fifty (50) feet
2. Side.....Fifteen (15) feet
3. Rear.....Thirty (30) feet

ARTICLE III **GENERAL REGULATIONS**

The provisions of this Zoning Law shall be subject to such exceptions, additions or modifications as herein provided by the following general supplementary regulations. The dimensions and restrictions set forth in Schedule A are incorporated herein and made a part of this Zoning Law.

SECTION 301 **BUILDINGS, USES AND LOTS**

A. **One Principal Building and Use Per Lot** - There shall not be more than one (1) principal building and one (1) principal use on any one lot in the Agricultural (AG), Agricultural Residential (AG-R), and the Medium Density Residential (MDR) Districts except as provided for in the following:

- (1) An approved multifamily dwelling project,
- (2) One permitted residential use accompanying a non-residential use, or uses, permitted on a lot in Agricultural (AG), Agricultural-Residential (AG-R), Medium Density Residential (MDR), and Limited Commercial (LC) Districts, provided there is only one use of a commercial nature on the lot, or
- (3) One permitted residential use accompanying a non-residential use, or uses, requiring a Special Use Permit in Agricultural (AG), Agricultural Residential (AG-R), Medium Density Residential (MDR.), and Limited Commercial (LC) Districts, if approved by the Planning Board as part of the Special Use Permit Application Process, provided there is only one use of a commercial nature on the lot.

B. **Yard and Open Space for Every Building**- No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building. Also, no yard or any other open space on one lot shall be considered as a yard or open space for a building on any other lot.

C. **Subdivision of a Lot** - Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation shall be effected so as not to violate any of the requirements of this Zoning Law with respect to the existing building, including yards and other required spaces in connection therewith. No zoning permit shall be issued for the erection of a building on the new lot thus created unless there is full compliance with all the provisions of this Zoning Law.

D. **Irregularly Shaped Lots**- Where a question exists as to the proper application of any of the requirements of this Zoning Law to a particular lot or parcel because of the peculiar or irregular shape of the lot or parcel, the matter shall be referred to the Zoning Board of Appeals and dealt with in accordance with the applicable provisions of Section 707.

E. Lots Under Water or Subject to Flooding

1. No more than twenty-five (25) percent of the minimum area requirements of a lot may be met by land, which is always under water, or land, which falls within the Federally, designated 100-year flood boundary.

2. Land, which is under water and is open to use by persons other than the owner shall be excluded from the computation of the minimum area of a lot.

3. Land in the bed of a stream not exceeding five (5) feet in width at mean water level, and land in a pond not exceeding one hundred fifty (150) square feet in area shall not be considered as under water for the purpose of computing lot area.

4. Where any part of a lot is separated by a main body of water, such separate land shall not be included in computing lot area.

F. Required Road Frontage- No zoning permit shall be issued for any structure unless the lot upon which that structure is to be built has the required frontage on a road, as defined herein, which frontage provides the actual access to such structure, and which road shall have been suitably improved to Town Board standards or a bond posted there for as provided in Section 280a of the Town Law.

G. Parts of Lot Not Counted Toward Area Requirements- When calculating the area of an existing lot of record, having less than the minimum required frontage pursuant to Section 205, no portion of the lot that is less than one-half the minimum required frontage may be counted as part of the minimum required lot area.

H. Adjacent Lots- Where two (2) or more adjacent lots are at the time of the effective date of this Zoning Law in the same ownership, they shall not be considered a single lot, unless they are described as one parcel in a deed recorded at the Genesee County Clerk's Office.

I. Yards on Comer Lots -When a lot fronts on two or more streets, any yard adjoining a street shall be considered a "front yard" and shall comply with all the applicable requirements for a front yard for the district in which it is located. When a lot has two or more front yards the remaining yards, those not adjoining a street, shall be considered side yards and comply with all the applicable requirements for side yards in the district in which it is located.

SECTION 302 **SUPPLEMENTARY YARD REGULATIONS, STRIPPING, AND EXCAVATIONS**

A. Porches and Decks - A porch or deck shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

B. Projecting Horizontal Architectural Features- Architectural features, such as windowsills, belt courses, chimneys, cornices, eaves or bay windows, shall not project more than four (4) feet into any required yard.

C. Fire Escapes - Open fire escapes may extend into any required yard.

D. Visibility at Intersections- On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three (3) feet in height, shall be erected, placed or maintained within the triangular area formed by the intersecting road lines and a straight line joining said road lines at points which are forty (40) feet distance from the point of intersection, measured along said road lines. This paragraph shall not apply to existing trees, provided that no branches are closer than six (6) feet to the ground.

E. Swimming Pools - Swimming pools shall be considered accessory structures within the provisions of Section 303 of this Zoning Law, and shall be set back from lot lines at least the minimum distance required for other buildings and structures. In-ground pools shall be surrounded by a chain-link or solid wood fence at least four (4) feet high. All pools shall have a gate equipped with self-closing, self-locking devices. Swimming pools shall be in conformity to the NYS Uniform Code.

F. Buffer Strip - Wherever a buffer strip is required by this Zoning Law it shall meet the following standards:

1. Be at least fifteen (15) feet in width and six (6) feet in height.
2. Be of evergreen planting of such type, height and spacing as will screen the activities on the lot from view of a person standing at street level on the adjoining lot.
3. A wall or fence of which the location, height, and design has been approved by the Planning Board, may upon good cause being shown, be substituted for the required planting.

G. Top Soil- No person shall strip, excavate or otherwise remove topsoil for sale or for use other than on the premises from which the topsoil is taken, except as specifically allowed by the Planning Board upon the recommendation of the Town Engineer in connection with the construction or alteration of a building or structure on such premises and excavating or grading incidental thereto.

H. Excavation During Construction - In any construction, open excavations shall be limited to a maximum of sixty (60) days, with appropriate fencing, barricades or covering.

I. Height Exceptions

1. District building height regulations shall not apply to flagpoles, radio or television antennae, transmission towers or cables, spires or cupolas, chimneys, elevator or stair bulkheads, penthouses, parapets or railings, water tanks or cooling towers, or any similar structures, provided that such structures are located on the roof and in their aggregate coverage occupy no more than ten percent (10%) of the roof area of the building and provide such structures pose no hazard to aircraft operations.

2. District building height regulations shall not apply to radio or television antennas and commercial communication antennas or towers provided such structures do not present a hazard to aircraft operations.

SECTION 303 **LOCATION OF ACCESSORY BUILDINGS, STRUCTURES AND OTHER ENCLOSED STORAGE**

A. Accessory Buildings Are Permitted As Follows:

1. One-story accessory building having a total floor area of two hundred fifty six (256) square feet or less and a building height of not more than twelve (12) feet shall not be located closer than eight (8) feet to the rear and side lot lines and shall be located in the side and/or rear yard.

2. The location of accessory buildings having a total floor area of greater than two hundred fifty six (256) square feet and/or a building height of greater than twelve (12) feet, shall be located in compliance with the required yard areas of the respective districts and shall be located in either the side or rear yard(s). If the main structure is located 75 or more feet from the road right-of-way the accessory building may be located in the front yard of the main structure but not within the minimum required front yard setbacks and/or side.

3. Accessory buildings with a total area, as measured on the exterior, of less than 15 sq. ft., such as school bus stations and animal shelters, do not require a zoning permit. School bus stations shall be permitted in the front yard provided they are located a minimum of ten (10) feet from any property line or the edge of any highway right-of-way. All other such accessory buildings shall comply with Section 303. Subsection A, Paragraph 1.

B. Accessory Structures (Other Than Buildings) Are Permitted As Follows:

1. Accessory structures (other than buildings) equal to or less than fifteen (15) feet in height, including satellite dishes with a diameter of thirteen (13) feet or less, shall not be located closer than fifteen (15) feet to the rear and side lot lines and shall be located in the rear yard. Satellite dishes less than three (3) feet in diameter may be located anywhere on a lot provided the minimum front, side and rear yard distance setbacks are maintained and shall not require the issuance of a zoning permit.

2. Accessory structures (other than buildings) greater than fifteen (15) feet in height, including production model Wind Energy Conservation Systems (windmills), antennas and satellite dishes greater than thirteen (13) feet in diameter, shall be located in compliance with the required yard area of the respective district and shall be located in the rear yard.

C. Other Enclosed Storage Is Permitted As Follows:

Semi-trailers, Inter-modal Shipping Containers (cargo containers) and/or motor vehicles or portions thereof (i.e., truck bodies) may be used for accessory storage purposes related to a permitted principal use in the C, LC, I and INT Districts. When used in a C, LC, I or INT District for a period of more than 60 days, such trailers and/or motor vehicles or portions thereof shall be placed or parked in compliance with the provisions of Subsection A of this Section with the exception that they be located in the rear yard. Semi trailers, Inter-modal Shipping Containers (cargo containers) and/or motor vehicles or portions thereof, shall not be used for storage purposes for longer than 60 days in the AG, AG-R, R or MDR Districts except as provided for in SECTION 522. In no instance shall semi trailers, Inter-modal Shipping Containers (cargo containers) and/or motor vehicles or portions thereof be placed in such a manner as to interfere with, or pose a hazard to, traffic circulation. Mobile homes shall not be used for storage purposes.

SECTION 304 **NONCONFORMING USES, BUILDINGS, STRUCTURES AND LOTS**

A. Lawful Existing Uses, Buildings, Structures and Lots

Except as otherwise provided in this Section, the lawful use of land, building or structure existing at the effective date of this Zoning Law may be continued, although such use, building or structure does not conform to the regulations specified in this Zoning Law for the zone in which such land, building or structure is located, provided, however:

1. No lot shall be reduced to a nonconforming size.
2. A nonconforming lot shall not be further reduced in size.
3. A nonconforming building or structure shall not be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance.
4. An existing mobile home which is occupied as a one-family dwelling on any lot in an AG, AG-R, MDR, or PUD District may be replaced with another mobile home provided that the following criteria, as well as the criteria in Section 601.D. are met.
5. A nonconforming use may not be expanded.

6. No existing conforming use shall be changed to a nonconforming use.
7. Such uses must comply with all applicable state, federal, and other local laws or regulations

B. Abandonment

A nonconforming use shall be deemed abandoned when there occurs a cessation of any such use or activity and a failure on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuance.

C. Restoration and Repair

Nothing in this Zoning Law shall prevent the restoration and repair or continuation of use of a nonconforming building or structure destroyed or partly destroyed by a disaster, provided that restoration is commenced within eight (8) months after date of destruction and is completed within sixteen (16) months after date of destruction.

D. Reversion

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

E. Alterations

A nonconforming building or structure may not be improved during its life to an extent exceeding, in aggregate cost, fifty percent (50%) of the assessed value of the building unless said building is changed to conform to the requirements of this Zoning Law.

F. District Changes

If a nonconforming use is established by a transfer of an area from one district to another after the effective date of this Zoning Law, then the foregoing provisions shall apply to any nonconforming use created by such change.

SECTION 305 **USES NOT PERMITTED**

Uses, which are not allowed by this Zoning Law, are prohibited.

SECTION 306 **MINIMUM HABITABLE FLOOR AREA (See Zoning Schedule A)**

- A. One-family dwellings shall have a habitable floor area of at least seven hundred twenty (720) square feet.

- B. Two-family dwellings shall have a habitable floor area of at least seven hundred twenty (720) square feet per primary unit and five hundred (500) square feet for the second unit.

- C. Multiple family dwellings shall have a habitable floor area of at least five hundred (500) square feet per unit.

SECTION 307 **MINIMUM DIMENSIONAL CRITERIA**

All one (1) and two (2) family dwelling units located on individual lots shall have a minimum outside width of at least twenty (20) feet. This provision shall not prohibit the construction of smaller additions or projections from larger units (less than twenty (20) feet wide) provided that the dwelling unit, excluding any such smaller additions or projection has a minimum outside width of twenty (20) feet.

SECTION 308 **DWELLING FRONT YARD GRADE**

Surface grade of front yards of dwellings measured at the midpoint of the front wall, shall be at least one (1) foot above the elevation of the road's center line, unless adequate site drainage is provided otherwise and approved by the Town Highway Superintendent.

SECTION 309 **STABLING AGRICULTURAL ANIMALS**
(See definition in Section 106, page 17)

- A. There shall be no stabling of large animals or storage of manure, fertilizer, or similar odor or dust producing substance within the MDR District. Such stabling or storage shall be permitted in the AG, AG-R, or EP Districts provided the following restrictions are observed:
 - 1. No such stabling or storage shall take place within 500 feet of a MDR District.

 - 2. No such stabling or storage shall take place within 75 feet of any adjoining lot line.

 - 3. The stabling of a large agricultural animal(s) including, but not limited to, horses, bovines, pigs, ostriches, goats etc. shall not take place on a lot of less than two (2) acres, except as noted below.

4. The stabling of large agricultural animals on lots of less than two (2) acres may be allowed by Temporary Special Use Permit issued by the Planning Board for no more two (2) years, with the option for renewal. An approved manure management plan must be presented with the Temporary Special Use Permit Application.
5. The housing of small farm animals, including but not limited to chickens and rabbits, is allowed in AG (Agricultural), AG-R (Agricultural-Residential), and MDR (Medium Density Residential) Districts provided such housing is limited to the rear and side yards, is in accordance with Schedule-A, and that such housing doesn't cause any undue noises and/or odors.

SECTION 310 **FENCES**

A. Fences erected on residential lots in the Town of Pembroke shall adhere to the following standards:

1. Before a fence shall be erected, a zoning permit must be obtained from the Zoning Administration Officer. A request for a permit shall be accompanied by a site plan which shall show the height and location of the fence in relation to all other structures and buildings, and in relation to all adjoining streets, lot property lines and yards.
2. Fences may be erected, altered or reconstructed to a height not to exceed three (3) feet above ground level when located within twenty (20) feet of the street right-of-way.
3. Fences may be erected, altered or reconstructed to a height not to exceed eight (8) feet above ground level when located more than twenty (20) feet from the street right-of-way line.
4. These restrictions shall not be applied so as to restrict the erection of a wall for the purpose of retaining earth.
5. Temporary fencing shall not exceed four (4) feet in height and shall be at least fifty percent (50%) open construction. A temporary fence permit shall be effective for a period not exceeding six (6) months but may be extended by the Zoning Administration Officer for an additional period not exceeding six (6) months upon the showing of good cause.
6. Fencing used to enclose a tennis court may be permitted up to ten (10) feet in height provided that such fencing is not closer than twenty-five (25) feet from a side or rear property line.
7. No fence shall be erected in a special flood hazard area, except for fences

connected with an agricultural use when it can be demonstrated that such fence would not restrict the flow of flood waters nor have an adverse impact on any buildings.

8. The finished side of the fence shall face the adjoining properties.

B. Commercial and industrial fences shall be reviewed and approved by the Planning Board as part of the site plan approval process.

C. These restrictions shall not be applied so as to restrict the erection, alteration, or reconstruction of fences for agricultural uses. However, fences used for nonagricultural purposes must comply with these restrictions.

ARTICLE IV **ZONING DISTRICT REGULATIONS**

SECTION 401 **AGRICULTURAL DISTRICT-AG**

The Agricultural (AG) District is designed primarily to preserve farmland and secondarily to preserve the rural nature of the Town. Agricultural and residential uses have a number of inherent conflicts between them. The purpose of this district is to minimize these conflicts by separating such uses by providing an area where agricultural uses are, and will remain primary. Active agricultural operations and agri-business are the predominant uses established in the district. Such uses shall continue to be permitted in this district. A limited number of residences will also be allowed as non-farm one family dwellings fronting on established roads based upon the parcel size as follows:

<u>Size of Original Parcel or Tract of Land</u>	<u>Maximum Number of One Family Dwellings Allowed</u>
1 to 5 acres	1
5.1 to 10 acres	2
10.1 to 20 acres	3
20.1 to 35 acres	4
35.1 or more acres	5

In calculating the above density the size of the parcel or tract of land will be established on the date that this provision of the Zoning Law was adopted (September 13, 1995). The maximum number of dwellings allowed per parcel or tract of land would be five. In addition, the size of each building lot will be 40,000 square feet with 200 feet of lot frontage. This would allow each farmland owner a reasonable amount of development of his/her land, while keeping most good farmland available for future agricultural production. Before a zoning permit can be issued the Planning Board shall be required to do a site plan review, with preserving prime agricultural land as the main criteria in siting the building lots.

A. Permitted Uses

The following uses are permitted in the Agricultural District:

1. Agricultural use
2. One-family dwelling (in conformance with limitations set forth above)
3. Mobile home (see Section 601)
4. Private stable
5. Accessory buildings, structures and uses

B. Uses Requiring Special Use Permit

The following uses are permitted in the Agricultural District upon the issuance of a Special Use Permit:

1. Home occupation (see Section 511)
2. Animal waste storage facility (see Section 513)
3. Public Stable
4. Pond (see Section 515)
5. Public Utility facility (see Section 505)
6. Child day care center
7. Commercial communication tower (see Section 517)
8. Accessory buildings, structures and uses (an additional Special Use Permit is not required but a new or revised site plan must be submitted for review and approval).
9. Kennel
10. Commercial Solar Energy System
11. Solar Farm

C. Area Regulations

See Zoning Schedule A.

SECTION 402

AGRICULTURAL-RESIDENTIAL DISTRICT (AG-R)

The Agricultural-Residential District (AG-R) is designed to preserve the rural nature of the Town. Primary uses are agricultural and low-density residential uses on lots with a minimum size of 40,000 square feet.

A. Permitted Uses

The following uses are permitted in the Agricultural-Residential District:

1. Agricultural use
2. One and two-family dwelling(s)
3. Mobile home (see Section 601)
4. Religious Institution
5. Public parks, public playgrounds, public libraries, municipal buildings and public water systems and similar public uses.
6. Private stable
7. School
8. Accessory buildings, structures and uses

B. Uses Requiring Special Use Permit

The following uses are permitted in an Agricultural-Residential District upon the issuance of a special use permit:

1. Multifamily dwelling(s)
2. Home occupation (see Section 511)
3. Wind Energy Conversion System (Production Model)
4. Public utility facility (see Section 505)
5. Public stable
6. Commercial greenhouse
7. Cemetery

8. Campground (see Section 510)
9. Mobile home park (see Section 602)
10. Cluster residential development (see Section 508)
11. Child day care center
12. Adult care facility
13. Boarding house
14. Tourist home
15. Animal waste storage facility (see Section 513)
16. Skilled trade shop (see Section 514)
17. Pond (see Section 515)
18. Commercial communication tower (see Section 517)
19. Accessory buildings, structures and uses (an additional special use permit is not required, but a new or revised site plan must be submitted for review and approval).
20. Uses allowed under subsection C. may also be allowed when no other use is viable from subsections A. and B. of this section at locations that are or were previously strictly commercial establishments that have ceased operations.
21. Animal Care & Training Facility
22. Commercial Solar Energy System
23. Solar Farm

C. **Uses Requiring Special Use Permit On Arterial Highways**

The following uses are permitted in an Agricultural-Residential District (in addition to those uses listed in 402.B) upon the issuance of a special use permit provided the affected lot and proposed use fronts directly upon an arterial highway:

1. Hotel-Motel
2. Aircraft landing strip
3. Motor vehicle repair shop (see Section 504)
4. Commercial excavation - minor excavation (see Section 507 B.)

5. Hospital
6. Motor vehicle sales and/or service (see Section 504)
7. Outdoor recreation facility
8. Indoor recreation facility
9. Club
10. Kennel
11. Community center
12. Professional office
13. Nursing home
14. Animal hospital
15. Animal shelter
16. Self-service storage facility
17. Landscaping Contractor's Yard
18. Contractor's Yard (see SECTION 518)
19. Retail, Commercial, Wholesale trade, and/or personal service not exceeding 10,000 sq.ft. of gross floor area.
20. Motor Vehicle Repair Shop (see SECTION 504)
21. Restaurant
22. Self-service Storage Facility

D. **Area Regulations**

See Zoning Schedule A

SECTION 403

MEDIUM DENSITY RESIDENTIAL DISTRICT- MDR

The Medium Density Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 20,000 square feet. The purpose of this district is to encourage residential growth in areas of the Town, which have existing concentrations of residential uses. The residential district will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A. Permitted Uses

The following uses are permitted in the Medium Density Residential District:

1. One and two-family dwelling(s)
2. Mobile home (see Section 601)
3. Religious institution
4. Public parks, public playgrounds, public libraries, municipal buildings and public water systems and similar public uses.
5. Agricultural uses, excluding the stabling of animals or the storage of manure, fertilizer, or similar odor or dust producing substances.
6. School
7. Accessory buildings, structures and uses.

B. Uses Requiring Special Use Permit

The following uses are permitted in the Medium Density Residential District upon issuance of a special use permit:

1. Multifamily dwelling(s)
2. Wind Energy Conversion System-Production Model (windmill)
3. Home occupations (see Section 511)
4. Professional office
5. Community center
6. Public utility facility (see Section 505)

7. Cluster residential development (see Section 508)
8. Child day care center
9. Adult care facility
10. Boarding house
11. Tourist home
12. Accessory buildings, structures and uses (an additional special use permit is not required, but a new or revised site plan must be submitted for review and approval).

C. **Area Regulations**

See Zoning Schedule A

SECTION 404 RESIDENTIAL DISTRICT - R

The Residential (R) District is designed primarily to provide for one family residential uses without permitting commercial uses except for home occupation.

A. **Permitted Uses**

1. One family dwelling
2. Accessory buildings, structures and uses

B. **Uses Requiring A Special Use Permit**

The following uses are permitted in a Residential District upon the issuance of a special use permit:

1. Two-family dwelling
2. Home occupation (see Section 511)
3. Cluster residential development (see Section 508)

C. **Area Regulations**

See Zoning Schedule A

SECTION 405 **LIMITED COMMERCIAL DISTRICT- LC**

The Limited Commercial (LC) District is designed to provide areas within the Town for development of commercial uses of limited size and scope. These districts are located along arterial highways, which provide both visibility and ready access to such uses.

A. Permitted Uses

The following uses are permitted in the Limited Commercial (LC) District:

1. Retail trade and/or personal service not exceeding 10,000 sq. ft. of gross floor area
2. Accessory buildings, structures and uses.

B. Uses Requiring A Special Use Permit

The following uses are permitted in the Limited Commercial District upon the issuance of a special use permit:

1. One, two or multifamily dwelling(s)
2. Indoor recreation facility
3. Outdoor recreation facility
4. Pond (see Section 515)
5. Public utility facility (see Section 505)
6. Home occupation (see Section 511)
7. Cluster residential development (see Section 508)
8. Child day care center
9. Tourist Home
10. Self-service storage facility
11. Funeral home
12. Crematory
13. Kennel

14. Pet cemetery
15. Animal hospital
16. Commercial communications tower (see Section 517)
17. Motor vehicle repair shop (see Section 504)
18. Restaurant
19. Motor vehicle sales and/or service (see Section 504)
20. Landscaping Contractor's Yard
21. Contractor's Yard (see Section 518)
22. Animal Care & Training Facility
23. Commercial Solar Energy System

Area Regulations

See Zoning Schedule A.

SECTION 406 **COMMERCIAL DISTRICT - C**

The Commercial (C) District is designed to provide areas within the Town for concentrations of commercial uses. These districts are located along major highways to provide for maximum development potential.

A. **Permitted Uses**

The following uses are permitted in the Commercial District:

1. Retail trade
2. Restaurant (excluding drive-in restaurant)
3. Hotel/motel
4. Commercial greenhouse
5. Office building
6. Personal service
7. Wholesale trade
8. Theater

9. Bank (excluding drive-in bank)
10. Accessory buildings, structures and uses
11. Animal Care & Training Facility

B. Uses Requiring A Special Use Permit

The following uses are permitted in the Commercial District upon the issuance of a special use permit:

1. Drive-in business, including drive-in restaurants and drive-in banks (see Section 504)
2. Motor vehicle repair shop (see Section 504)
3. Gasoline station (see Section 504)
4. Gasoline station-market (see Section 504)
5. Indoor recreation facility
6. Light industrial
7. Motor vehicle sales and/or service (see Section 504)
8. Recreational vehicle and mobile home sales and service
9. Public utility facility (see Section 505)
10. Alterations to existing one-family, two-family and multifamily dwelling(s)
11. Warehouse
12. Shopping center
13. Child day care center
14. Adult care facility
15. Contractor's Yard
16. Carwash
17. Self-service storage facility

18. Outdoor recreation facility
19. Pond (see Section 515)
20. Commercial communication tower (see section 517)
21. Self-service storage facility
22. One, two, or multifamily dwellings
23. Accessory buildings, structures and uses (an additional Special Use permit is not required, but a new or revised site plan must be submitted for review and approval)
24. Commercial Solar Energy System

Area Regulations

See Zoning Schedule A.

SECTION 407 **INDUSTRIAL DISTRICT - I**

The Industrial (I) District is designed to provide areas within the Town which are appropriate for industrial type uses. In limiting industrial uses to the Industrial District, it is the Town's intention to minimize the potential adverse impacts of such uses.

A. **Permitted Uses**

The following uses are permitted in the industrial district:

1. Warehouse
2. Heavy machinery and truck sales and service
3. Wholesale trade
4. Contractor's Yard (see Section 518)
5. Accessory buildings, structures and uses

B. **Uses Requiring Special Use Permit**

The following uses are permitted in the Industrial District upon the issuance of a special use permit.

1. Junkyard (see Section 509)
2. Industrial Park
3. Motor vehicle sales and/or service (see Section 504)
4. Recyclables handling and recovery facility
5. Self-service storage facility
6. Manufacturing
7. Truck Stop
8. Trucking terminal
9. Public utility facility (see Section 505)
10. Pond (see Section 515)
11. Alterations to existing one, two and multi-family dwelling(s)
12. Commercial communications tower (see Section 517)
13. Accessory buildings, structures and uses (an additional special use permit is not required, but a new or revised site plan must be submitted for review and approval)
14. Commercial Solar Energy System

C. **Area Regulations**

See Zoning Schedule A.

SECTION 408 INTERCHANGE DISTRICT- INT

The Interchange (INT) District is designed to blend commercial and light industrial uses, thus maximizing the development potential of the NYS Thruway Interchange.

A. **Permitted Uses**

The following uses are permitted in the Interchange District:

1. Hotel/motel
2. Restaurant (excluding drive-in restaurant)
3. Retail trade

4. Personal service
5. Office building
6. Bank (excluding drive-in bank)
7. Wholesale trade
8. Theater
9. Existing residences
10. Warehouse
11. Indoor recreation facility
12. Adult use
13. Religious Institutions
14. Accessory buildings, structures and uses

B. Uses Requiring A Special Use Permit

The following uses are permitted in the Interchange District upon issuance of a special use permit:

1. Drive-in business (see Section 504)
2. Gasoline station (see Section 504)
3. Gasoline station - market (see Section 504)
4. Car wash
5. Motor vehicle repair shop (see Section 504)
6. Farm equipment sales and service
7. Recreation vehicle sales and service
8. Truck stop
9. Public utility facility (see Section 505)

10. Mobile home sales
11. Shopping center
12. Industrial park
13. Self-service storage facility
14. Motor vehicle sales and service
15. Trucking terminal
16. Light industrial
17. Outdoor recreation facility
18. Pond (see Section 515)
19. Commercial communications tower (see Section 517)
20. Accessory buildings, structures and uses (an additional Special Use Permit is not required, but a new or revised site plan must be submitted for review and approval)

C. Area Regulations

See Zoning Schedule A.

SECTION 409 **EARTH PRODUCTS DISTRICT**

The Earth Products district is designed to allow for the mining of valuable earth products.

Permitted Uses

None

B. Uses Requiring a Special Use Permit

1. Commercial excavation-major excavation (see Section 507 A.)

SECTION 410 PLANNED UNIT DEVELOPMENT- PUD

A. Purpose

The purpose of the Planned Unit Development District is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities; to provide for both individual building sites and common property which are planned and developed as a unit; to provide harmonious land uses which offer a high level of amenities; to permit a variety of residential types and/or non-residential uses; and to preserve natural and scenic qualities of the site during the development process.

B. General Requirements

1. Minimum Area

The minimum area required to qualify for a Planned Unit Development shall be five (5) contiguous acres of land.

2. Ownership

The tract of land for a Planned Unit Development may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. A petition must be filed by the owner, or jointly by owners, of all property included in a project. In the case of multiple ownership, the approved Planned Unit Development plan is binding on all owners.

3. Location

The Planned Unit Development District shall be applicable to any zoning district or parts of zoning districts where the applicant can demonstrate that the characteristics of his holdings and plan will meet the objectives of this Section and the Town of Pembroke Comprehensive Plan.

4. Common Open Space

Common open space in a Planned Unit Development may be one (1) or more sites for use in common by all of the occupants within the project area or by the residents of the Town as a whole, depending upon dedication of such sites. Such common open space may be retained in private ownership or received in dedication by the Town. If the open space remains in private ownership, arrangements for the operation, maintenance, improvement and liability of such common property and facilities must be approved by the Town Board. No common open space, so designated by the proposal and approved by the Town Board, may be thereafter developed or disposed of except with the approval of the Town Board.

5. Permitted Uses

Any uses identified as permitted uses or uses allowed by special use permit as set forth in this Zoning Law for any district may be permitted at the sole discretion of the Town Board in a Planned Unit Development.

6. Mix of Uses

The mix of permissible uses shall be determined by the Town Board.

C. Application Procedure and Approval Process

1. Conceptual Review

Before submission of a petition for rezoning as a Planned Unit Development, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of his proposal before entering into any binding commitments or incurring substantial expenses of site plan preparation and the required documentation.

2. Rezoning Procedure

a. Submission of Petition

A petition for the establishment of Planned Unit Development districts shall be submitted to the Town Clerk by the developer (see Paragraph d. of this Subsection).

b. Notification and Referral

Within five (5) working days, the Town Clerk shall notify the Town Board of the petition and shall refer the petition and all supporting documentation to the Planning Board for its review and recommendations.

c. Planning Board Review

Within sixty-two (62) days of receipt of the petition, the Planning Board shall review it and recommend approval, approval with modifications or disapproval thereof to the Town Board. Failure to act within 62 days or such longer period as may be consented to by the developer shall constitute approval of said petition by the Planning Board.

d. Submission Requirements

The developer shall submit a minimum of four (4) sets of such plans, and drawings (additional sets may be required). These four (4) sets shall be submitted to the Town Clerk. The preliminary plans shall be accompanied by such maps, charts and written material necessary for the Boards to make a preliminary judgment on the suitability and impact of the proposed Planned Unit Development on the Town. Preliminary plans should include the following:

(1) A preliminary site plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multifamily housing areas, commercial and open space areas, etc.); the number and type of residential structures and dwelling units within each residential area; the approximate square footage of nonresidential use within each nonresidential area; the amount of open space; traffic circulation; and the surrounding land uses.

(2) A written preliminary description of the proposal including the total number of acres in the site; the estimated number and type of housing units; the estimated residential and nonresidential density; the major planning assumptions and objectives; the probable effect on adjoining properties; and the effect on the overall Town development plan and the effect on this Zoning Law.

e. Review Considerations - In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by the Zoning Law, and the impact on the established land uses in the area, overall density of development, traffic circulation, the provision of open spaces, and the effect on schools and other municipal facilities.

f. Town Board Review and Approval - Upon receipt of the Planning Board's recommendation, the Town Board may, after a public hearing and review of the proposed zone change by the County Planning Board, pursuant to General Municipal Law Sections 2391 and m, amend the Zoning Law so as to establish and define the boundaries of the Planned Unit Development. If the rezoning request is approved for the Planned Unit Development, such action does not authorize improvements to the rezoned land.

3. Final Plan

a. Ownership

Before final approval of the Planned Unit Development, the developer must show evidence of the full legal ownership in the land.

b. Submission of Final Plan

Upon approval of the zone change, the applicant has one year in which to submit a final plan to the Town Clerk.

c. Notification and Referral

Within five (5) working days, the Town Clerk shall notify the Town Board of the filing of the final plan and shall refer the final plan and all supporting documentation to the Planning Board for their review and recommendation.

d. Planning Board Review

Within sixty-two (62) days of receipt of the final plan, the Planning Board shall review the final plan and recommend approval, approval with modifications or disapproval to the Town Board. Failure to act within 62 days or such longer period as may be consented to by the developer, shall constitute approval of the final plan by the Planning Board

e. Submission Requirements

The applicant shall submit a minimum of four (4) complete sets of the final plan and drawings (additional sets may be required). These four (4) sets shall be submitted to the Town Clerk. The final plan shall be accompanied by a detailed justification for the proposal including such maps, charts and written material necessary for the Town Board to make an impartial judgment on the suitability and impact of the proposed Planned Unit Development on the Town. Such material shall include, but not be limited to, the following:

(1) A mapped development plan of the property covered by the development showing the size and location of the various development areas (road rights-of-way, single-family housing areas, multifamily housing areas, commercial and open space areas, etc.), the location of proposed residential structures and dwelling units within each residential area, the square footage of nonresidential use within each nonresidential area and the amount of open space.

(2) A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall Town development plan and the effect on this Zoning Law.

(3) Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of nonresidential floor area including the approximate selling and/or rental price, the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.

(4) Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the Town. Such material shall include, but not be limited to: the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the developer intends to provide needed facilities, a fiscal impact statement including a summary of new costs and revenues to the Town due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.

f. Review Considerations - In review of the final plan, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by this Zoning Law, and the protection of the established and permitted uses in the area. It shall consider: the location of main and accessory buildings and their relation to one another; the circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental effects of the proposed development

on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the town; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.

g. Town Board Review and Approval - Upon receipt of the Planning Board's recommendation, the Town Board shall, after a public hearing and review of the final plan by the County Planning Board, pursuant to General Municipal Law Sections 2391 and m, approve, approve with modifications or disapprove the final plan. The Town Board shall make its decision in accordance with official Town development policies and may impose conditions relating to that plan. The decision of the Town Board shall immediately be filed in the office of the Town Clerk and a copy mailed to the applicant by regular mail.

D. Design Standards

1. Area Requirements

The least restrictive area, yard, coverage, height, density and supplementary regulation requirements applicable to a specific use under this Zoning Law shall apply, except where the Planning Board finds that it is in the public interest to modify these requirements and the Town Board approves such modifications.

2. Traffic and Circulation

All proposed public roads shall meet the design and construction specifications set forth by the Town Highway Superintendent and/or Engineer.

Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.

3. Common Open Space

All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:

- a. Public dedication
- b. Establishment of a Home Owners Association
- c. Retention of responsibilities, control and maintenance by the developer

4. Security

Performance and maintenance bonds or other security may be required at the discretion of the Town Board.

SECTION 411 **FLOOD PLAIN OVERLAY ZONE - FPO (Information Only)**

The Flood Plain Overlay Zone is shown on the Zoning Map of the Town of Pembroke for information purposes only to identify potential areas of special flood hazard, to insure coordinated review of zoning and flood damage prevention regulations, and to minimize the threat of flood damages. Exact boundaries of the special flood hazard areas can be found on the Federal Emergency Management Agency's (FEMA) most current Flood Insurance Rate Map (FIRM), or equivalent map for the Town of Pembroke (Community Number 360283).

In addition to the Zoning Law, areas within special flood hazard areas are regulated by the Town of Pembroke's Flood Damage Prevention Local Law, which is administered by the Zoning Administration Officer or other designee of the Town Board. These requirements are in addition to those contained in the underlying zoning district.

ARTICLE V **SUPPLEMENTARY REGULATIONS**

SECTION 501 **OFF-STREET PARKING SPACE REQUIREMENTS**

For every building hereafter erected, altered or changed in use, there shall be provided at least the minimum number of off-street parking spaces set forth under this Section. All off-street parking (except for one and two family dwellings) shall be designed in such a manner as to allow vehicles to exit onto a road without backing out onto it.

Residential Uses

1. One and two-family dwellings: Two (2) parking spaces for every dwelling unit (inclusive of the driveway).
2. Multiple family dwelling: Five (5) parking spaces for every three (3) dwelling units (exclusive of driveway, except with Planning Board approval).
3. Home Occupations and Craftsman Shops: The number of parking spaces required for the existing residential use (see above), plus whatever additional parking spaces deemed necessary by the Planning Board.

Hotel/Motel

Three (3) parking spaces, plus one (1) parking space for every guest room.

- A. Places of Public Assembly (i.e. theaters, schools, community centers, religious institutions, etc.)

One (1) parking space for every five (5) seats or one (1) parking space for every one hundred (100) square feet of floor area.

- B. Professional Offices

Two (2) parking spaces, plus one (1) space for every two hundred (200) square feet of floor area.

- C. Restaurants

One (1) parking space for every one hundred (100) square feet of floor area.

- D. Light Industrial, Manufacturing, Wholesale Trade, Warehouse, Truck Stop and Trucking Terminal

One (1) parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.

- E. Other Business and Commercial Uses

One (1) parking space for every motor vehicle used directly in the business, plus one (1) parking space for every two hundred (200) square feet of floor area.

F. Unspecified Uses

As required by the Planning Board, based upon use intensity, turnover, customers, employees and vehicles used.

SECTION 502 **OFF-STREET LOADING SPACE REQUIREMENTS**

Every building used for a business purpose shall provide adequate space for off-street loading and unloading.

SECTION 503 **MODIFICATION OF PARKING AND LOADING REQUIREMENTS**

The Planning Board, under its powers of site plan review and approval, may modify the parking and off-street loading space requirements herein upon good cause being shown.

SECTION 504

**MOTOR VEHICLE, FARM AND HEAVY EQUIPMENT
RELATED USES**

A. Gasoline stations, gasoline station/markets, motor vehicle repair shops, motor vehicle sales and service, truck stop, trucking terminal, heavy machinery and truck sales and service, farm equipment sales and service, recreational vehicles sales and service and drive-in business shall require a special use permit and shall comply with the following:

1. Lots containing such uses shall not be located within three hundred (300) feet of any lot occupied by a school, playground, library or religious institution. Measurement shall be made between the nearest respective lot lines.
2. Lot size shall be at least forty thousand (40,000) square feet.
3. Lot frontage shall be at least two hundred (200) feet.
4. Lot depth shall be at least one hundred fifty (150) feet.
5. Pumps, other service devices, and above ground fuel and oil storage shall be located at least thirty (30) feet from all lot lines.
6. Any underground storage of fuel and oil of sufficient volume not regulated by the New York State Department of Environmental Conservation shall be located at least thirty (30) feet from all lot lines.
7. Unregistered motor vehicle(s), motor vehicle and equipment parts, dismantled vehicles and equipment shall be stored within a building or structure, or within a fence of a height to be determined by the Planning Board, within its sole discretion, so as to prevent public view of such items from any direction. All work connected with the uses covered by this Section shall be performed to the extent possible indoors. This provision shall apply to both existing and future motor vehicle, farm and heavy equipment related uses.
8. There shall be no more than two (2) access driveways from any street. Maximum width of each access driveway shall be thirty (30) feet.

SECTION 505 **PUBLIC UTILITY FACILITY**

Public utility installations (other than commercial communication antennas and towers, which are covered by Section 517) shall require a special use permit and shall comply with the following:

- A. Such facility shall be surrounded by a fence approved by the Planning Board.
- B. The facility shall be landscaped in a manner approved by the Planning Board.
- C. To the extent practicable, equipment shall be stored so as not to be visible from surrounding properties.
- D. Any other requirements as determined by the Planning Board.

SECTION 506 **SIGNS**

A. General Standards

Except as provided in Section 506.C., every sign (other than temporary signs) shall require a zoning permit. A zoning permit issued for a sign that meets the provisions of SECTION 506 does not require a site plan review by the Planning Board. Also, every sign shall be designed, attached, supported, and located in such a manner as to:

- 1. Not impair public safety.
- 2. Not restrict clear vision between a sidewalk and street, and a driveway, or between two streets.
- 3. Not be confused with any traffic sign or signal.
- 4. Not prevent free access to any door, window, or fire escape.
- 5. Signs may be illuminated by a steady light provided that lighting does not illuminate adjacent property. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare.

B. Off-Premises Signs

Off-premises advertising signs are not permitted in any district.

C. Signs Permitted In All Districts Without A Zoning Permit

1. One (1) number and/or name plate identifying residents, mounted on house, apartment or mailbox, not exceeding one (1) square foot in area.

2. One (1) lawn sign identifying residents, not exceeding one (1) square foot, or two (2) square feet if double-faced. Such signs are to be non-illuminated except by a light which is an integral part of a lamppost if used as a support, with no advertising message thereon.

3. One (1) sign identifying the name of the farm owner or name of the farm not exceeding twenty-four (24) square feet in area and located not less than ten (10) feet from a lot line.

4. One (1) "For Sale" or "For Rent" sign not exceeding an area of six (6) square feet. Such sign shall not be greater than six (6) feet in height and shall be located not less than ten (10) feet from a lot line. Such signs shall be removed upon completion of the sale or rental.

5. A sign used on a temporary basis to identify or announce an activity or function including, but not limited to, a construction project and the subcontractor involved, elections, sporting events, carnivals, garage sales, and meetings, etc. Such signs shall not exceed 12 square feet and shall not be located less than five (5) feet from a lot line. Temporary signs shall be removed within ten (10) days after the activity or function ends. Garage sales and farm produce sales temporary signs used more than sixty (60) days per year shall require a permit as set forth in Section 506.D.3.

6. Political Campaign Signs not exceeding four (4) square feet in size, located at least five (5) feet from a lot line, with only one (1) sign per candidate per parcel of property. Candidates of the same political party for various offices may be named on a single sign. Such signs shall not be placed more than sixty (60) days prior to an election and shall be removed within three (3) days after an election.

D. Other Signs Permitted in Agricultural, Agricultural-Residential, or Medium Density Residential Districts

The following signs are permitted in AG, AG-R, or MDR Districts upon issuance of a Zoning Permit.

1. A maximum of two (2) home occupation or skilled trade shop signs not exceeding six (6) square feet in area each and located not less than ten (10) feet from any lot line.

2. One (1) sign identifying a mobile home park in an Agricultural-Residential District, not exceeding twenty (20) square feet in area and located not less than ten (10) feet from a lot line.

3. A maximum of two (2) signs identifying farm produce sales or garage sales not to exceed twelve (12) square feet in combined total signage and located not less than ten (10) feet from a lot line when used sixty (60) or more days per year.

4. One (1) sign identifying a school, church, public park or public building, not exceeding forty (40) square feet in area on any one side and located not less than ten (10) feet from a lot line.

5. One (1) sign for uses which have a valid special use permit to operate. Such sign may either be wall-mounted with a maximum size of 20 square feet, or freestanding with a maximum size of eight (8) square feet per side. Freestanding signs shall be limited in height to 25 feet and not be located within 10 feet of a property line. The final location/placement of all signs for uses allowed by special use permits in the AG, AG-R, and MDR Districts shall be determined by the Planning Board.

6. Off-premises directional signs, for sub-divisions or mobile home parks located in the Town of Pembroke, not exceeding fifteen (15) square feet and limited to two (2) signs per use. Such signs shall be located not less than ten (10) feet from a lot line or the road right-of way.

E. Other Signs Permitted in Commercial, Limited Commercial, Industrial, Interchange or Earth Product Districts

The following business signs are permitted in C, LC, I, INT, or EP Districts upon issuance of a zoning permit subject to site plan review for all new signs (not including new lettering on an existing sign).

1. Two (2) on-premises signs, one of which may be freestanding (except for shopping centers), shall be allowed for each permitted use. If attached, such signs shall not exceed a total area of one hundred (100) square feet or an area equal to ten (10) percent of the wall area of the building or portion thereof devoted to such use or activity, whichever is less. No sign shall project more than one (1) foot from the facade of the building.

2. On-premises freestanding signs shall be permitted. Such signs shall conform to the following provisions relating to their number and size:

a. Each commercial or industrial use, except as limited by Section 506.E.2.b, may have one freestanding business sign, except businesses located on through lots which may have two. Such freestanding sign shall have an area of not more than twenty-five (25) square feet nor be more than twenty-five (25) feet in height, except for INT allowing a maximum height of thirty-five (35) feet in height and located not less than ten (10) feet from a lot line.

b. Freestanding signs in a shopping center or industrial park shall be limited to one (1) directory sign at any location thereon not exceeding five (5) square feet in area for each acre of land in the shopping center or industrial park, provided that no such sign shall exceed thirty (32) square feet in area.

2. Off-premises directional signs for businesses located in the Town of Pembroke, not exceeding thirty-two (32) square feet in size and limited to two (2) signs peruse shall be permitted. Such signs shall be located not less than ten (10) feet from a lot line.

3. Portable Signs. Any sign not permanently attached to the ground or a building. In addition, any temporary sandwich type, sidewalk, or curb sign over 12 square feet in area and/or over four (4) feet in height is considered to be a portable sign. Such signs shall be located not less than (10) feet from a lot line.

F. Nonconforming Signs

1. Nonconforming signs whether on premises or off premises shall be removed at the expense of the owner when the use discontinued. This shall include portable, temporary and permanent signs.

2. Nonconforming signs may not be enlarged, extended, relocated or altered in any way, except to make them conform to provisions of this Zoning Law. This provision shall not restrict routine maintenance of nonconforming signs involving replacement of electrical parts and repainting.

G. Prohibited Signs

The following types of sign are prohibited and shall not be permitted, erected, or maintained in any zoning district and the owner thereof shall upon written notice of the Zoning Enforcement Officer forthwith, in the case of immediate danger, or otherwise within 10 days, make such sign conform with the provisions of this Zoning Law or remove it. If the order is not complied with, the Zoning Enforcement Officer may cause said sign to be removed at the expense of the owner.

1. Any sign, which by reason of its size, location, content, coloring or manner of illumination, constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstruction or detraction from the visibility of any traffic control device on public streets and roads.

2. Signs, which obstruct free ingress to or egress from a required door, window, fire escape or other required exit way.

3. Signs, which make use of words such as "STOP", "LOOK", "DANGER", and other words, phrases, symbols, or character in such a manner as to interfere with, mislead or confuse traffic.

4. Any sign which has any visible moving part, visible revolving parts or visible mechanical movement of any description (except time and temperature revolving signs as allowed)

or other apparent visible movement achieved by electrical, electrical or kinetic means, including intermittent electrical pulsations, or by action of normal wind current.

5. Signs or other exterior advertising structure displaying any obscene, indecent, or immoral matter.

H. Interchange District

The Interchange District, a gateway to the community and a vital area for economic development, has been designated for future commercial and industrial development. Within this district, special attention must be paid to signage to ensure an area that reflects the characteristics of the Town of Pembroke.

1. Prohibited signs:

- a. Signs on roofs, dormers and balconies
- b. Billboards

2. Permitted Signs

- a. Wall mounted signs
- b. Projecting signs
- c. Awning signs
- d. Freestanding signs

Such permitted freestanding signs shall be limited to 35-feet in height and conform to the following provisions relation to their number and size:

Size of Building (sq. ft.)	Maximum size of freestanding sign (sq. ft.,1 side)
5,000	25
5,000-34,999	50
35,000-100,000	75
100,000	100

SECTION 507 COMMERCIAL EXCAVATION

Except when incidental to the construction of a building on the same lot, the excavation, processing or sale of sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation shall require a special use permit from the Planning Board as provided for in Sections 409.

A. Major Excavation

1. State Permit

In order to obtain said special use permit, the applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law.

2. Reclamation

The applicant shall further be required to comply with the reclamation standards established by the New York State Department of Environmental Conservation while carrying out such use.

B. Minor Excavation (per Section 402.C.4)

As part of the application process for a special use permit, the applicant's plan shall be presented to the Genesee County Soil and Water Conservation District for its review and comments. Also, before issuing a special use permit, the Planning Board must find that such excavation will not endanger the stability of adjacent land or structures or the quality or quantity of groundwater and that it does not constitute a detriment to public health, safety, or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition.

In granting said special use permit, the Planning Board shall specify any reasonable requirement including the following:

1. Minimum Lot Area

The minimum lot area shall be ten (10) acres.

2. Minimum Setback Requirements

All buildings shall be located not less than one hundred (100) feet from any street or property line. The top of the slope of all excavation operations shall be located or shall occur not less than one hundred (100) feet from any street or property line. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one (1) public notice sign identifying the use of the property, fencing, berms, buffers, access roads and/or parking.

3. Slope

During mining the banks of all excavations shall be maintained at a slope not to exceed the normal angle of repose of such material.

4. Drainage

All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc. from flowing on to public roads, adjacent property or into any stream. Excavation areas shall be planned and graded to avoid collections of stagnant water.

5. Dust

All storage areas, yards, service roads, or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust or other wind-blown air pollutants.

6. Roadside Landscape

Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented in the entire area of the roadside setback for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back the over-burden around the perimeter of the excavation site to create a "berm" for the purpose of screening and noise reduction. No berm shall be constructed within twenty-five (25) feet of any right-of-way line or property boundary lines.

7. Fencing

Fencing may be required depending upon the existence of an earthen berm, the nature of the operations, distance from developed areas, distance from property lines, depth of pit water and slope of pit walls.

8. Topsoil

All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the reclamation plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams, or adjacent property.

9. Erosion

The applicant's plan shall also include a provision for the control of soil erosion.

10. Hours of Operation

All operations shall be conducted between the hours of seven o'clock in the morning (7:00a.m.) and six o'clock in the evening (6:00p.m.) with no Sunday or holiday operations, except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.

11. Blasting and/or Processing

Operations involving blasting and on-site processing of mineral deposits shall not be allowed.

12. Reclamation Plan

The applicant shall submit a reclamation plan.

13. Performance Bond

A performance bond or some other financial security may be required in the discretion of the Planning Board to assure that the conditions stipulated in the approval of the special use permit are carried out. Any such security shall be in a form and amount acceptable to the Planning Board.

C. Duration of Special Use Permit

The special use permit for a minor excavation shall be issued for a period of one (1) year, subject to a subsequent annual review and re-certification by the Planning Board based on a written request for such continuance, which request shall be submitted to the Town Zoning Administration Officer at least sixty (60) days prior to the expiration of each such one (1) year period. A public hearing shall not be required for such annual re-certification, except upon motion of the Planning or Town Board.

The special use permit for a major excavation shall continue as long as its New York State Department of Environmental Conservation permit remains in effect, it complies with the terms thereof, and it meets the reclamation standards established by the New York State Department of Environmental Conservation.

If on-site mining or processing operations are not carried out continuously for one (1) year for a major or minor excavation, the site shall be considered abandoned, and, prior to any further excavation or processing, a new special use permit shall be required.

SECTION 508 **CLUSTER RESIDENTIAL DEVELOPMENT**

Cluster residential development of one-family dwellings may be permitted, as specified in the New York State Cluster Enabling Act, Chapter 963 of the Laws of 1963, in the AG-R and MDR Districts of the Town provided that a special use permit is obtained and the following conditions are observed:

- A. The project shall encompass a minimum land area often (10) acres.

- B. The developer shall dedicate all un-subdivided lands to permanent open space. In no case shall such lands be less than twenty-five (25) percent of the total project area. All such lands shall be suitable, in the opinion of the Planning Board, for the intended use. Such lands shall be offered for dedication to the Town Board.

- C. The developer shall seek preliminary, non-binding, informal conditional approval of the Planning Board of the design and arrangement of streets, lots, open spaces, and other elements of the project prior to filing the special use permit application.

- D. The overall density, maximum building height and maximum lot coverage requirements as set forth in Zoning Schedule A of this Zoning Law for the district involved apply to the entire cluster development project, whereas the minimum frontage, and side and rear yard requirements for the applicable district apply only to the outer lots of said cluster residential development. The Planning Board may modify all other area requirements as set forth in Zoning Schedule A.

SECTION 509 **JUNKYARDS**

A. Establishment

No person shall establish, operate, or maintain a junkyard until he has obtained a special use permit in compliance with Section 708 and shall have obtained an annual license in compliance with Local Law Number 2 of 1985 known as The Recycling Operations Code of the Town of Pembroke, New York, together with any future amendment(s) thereto.

B. Regulations

Alljunkyards shall comply with all regulations set forth in said Local Law Number 2 of 1985 together with any future amendment(s) thereto. **See Addendum A**

SECTION 510 **RECREATIONAL VEHICLES AND CAMPGROUNDS**

A. Recreational Vehicles

1. Recreational vehicles may only be temporarily occupied as a dwelling as follows:

a. As provided in Section 510 B.

b. For not more than two separate periods, per year, not exceeding two (2) weeks each, one recreational vehicle may be used as a temporary dwelling while parked on the same lot as a permanent dwelling.

c. With a temporary use permit, a recreational vehicle may be used as a temporary dwelling for a period not to exceed six (6) months and subject to the following conditions:

-Approval shall be granted by the Genesee County Health Department.

-Any connections must be removed and the recreational vehicle moved to an approved parking location upon expiration of such permit.

2. An unoccupied recreational vehicle may be stored anywhere except in the required front or side yard areas of a lot not less than fifteen (15) feet from any lot line or public right-of-way. When so stored no connections shall be permitted.

B. Campgrounds

1. Location

A campground shall be located and maintained only in an AG-R District upon issuance of a special use permit and in accordance with the standards set forth in this Zoning Law.

2. Existing Campgrounds

In addition to the nonconforming use regulations set forth in Section 304, all existing campgrounds must comply with this Section whenever any addition, expansion or alteration (changes affecting lot size or layout, streets and utilities) of the use or operation is proposed.

3. Standards and Requirements for the Construction of Campgrounds

Before a special use permit for a campground is issued under Section 708, the Planning Board shall determine that the proposed use is designed and arranged in accordance with the following standards.

(a) Site

The campground shall be located on a well-drained site which is properly graded to insure rapid drainage so as to be free at all times from stagnant pools of water.

(b) Lots

Each campground shall be divided into lots. The total number of lots shall not exceed twelve (12) per gross acre. Each lot shall have a total area of not less than two thousand five hundred (2,500) square feet with a minimum width of thirty (30) feet. Only one recreational vehicle or tent shall be permitted to occupy any one lot. Each lot shall have a stand of sufficient size and durability to provide for the placement and removal of a recreational vehicle and for the retention of such recreational vehicle in a stable condition. The stand shall be suitably graded to permit rapid surface drainage.

(c) Setbacks

All recreational vehicles, or occupied tents situate in campgrounds shall not be located nearer than a distance of:

- Twenty-five (25) feet from an adjacent property line, except residential property.
- One hundred (100) feet from any adjacent residential property line.
- One hundred (100) feet from the right-of-way of a public street/ highway.
- Ten (10) feet from the nearest edge of any street located within the park.

(d) Accessibility

Each campground shall be easily accessible from an existing public road with entrances and exits designed and strategically located for the safe and convenient movement into and out of the campground to minimize conflicts with the movement of traffic on a public road. All entrances and exits shall be at right angles to existing public roads and of sufficient width to facilitate the turning movements of recreational vehicles.

(e) Street System

(1) Each campground shall have improved streets to provide convenient access to all lots and other important facilities within the campground.

(2) The street system shall be so designed to permit safe and convenient vehicular circulation within the campground.

(3) All streets shall have the following minimum width:

-One-way traffic movement - twelve (12) feet.

-Two-way traffic movement - twenty (20) feet.

(4) Except in cases of emergency, no parking shall be allowed on such streets.

(5) Adequate access shall be provided for each lot. Such access shall have a minimum width often (10) feet.

(f) Utilities

All campground sewer and water facilities shall comply with the regulations of the Genesee County Department of Health and the New York State Department of Environmental Conservation.

(g) Open Space

Any campground designed for twenty (20) or more sites shall provide a common open area suitable for recreation and play purposes. Such open space shall be conveniently located. The open space area shall be at least ten (10) percent of the gross land area of the campground but not less than one (1) acre.

(h) Improvements

Lighting, landscaping and buffer areas may be required by the Planning Board and shall be in keeping with surrounding development, the unique features of the site and the health and safety of occupants of the campground.

(i) Management

Every campground shall be managed from an office located on the premises. The management shall maintain the campground in a clean and attractive manner, and take reasonable steps to protect the health, safety and comfort of all persons accommodated therein.

(j) Removal of Wheels

Unless written consent is received from the Planning Board, it shall be unlawful to remove wheels from any recreational vehicle or otherwise permanently affix such recreational vehicle to the ground. Such removal shall be grounds for the revocation of the special use permit for such campground.

(k) Fence

The Planning Board is authorized to require that some or the entire campground be fenced if circumstances warrant. The Planning Board shall decide what type of fencing is suitable.

(l) Where dwellings are located within 1,000 feet of the campground, it shall be the responsibility of the campground owner to maintain relative quiet during the hours of 10:00 p.m. to 7:00a.m.

(m) Campground Special Use Permits

(1) Pursuant to Section 708.D, the Zoning Enforcement Officer shall inspect at least annually the operation of a campground to make sure it complies with provisions of this Zoning Law and any and all conditions prescribed by the Planning Board when issuing the special use permit.

(2) Before receiving a Special Use Permit for a campground, the owner thereof shall make an adequate showing that the subject property complies with this Section.

SECTION 511 **HOME OCCUPATIONS**

A. Purpose

The purpose of this provision is to allow for home occupations, which are compatible with the neighborhoods in which they are located. Some home occupations by the extent of the investment required therefore and/or the nature of their operation, have a tendency of increasing beyond the scope of a home occupation and thereby violating the use provisions of the zoning district in which such home occupation exists and adversely affecting surrounding property values.

B. Process

An applicant may apply to the Planning Board for a special use permit to establish a home occupation in the AG, AG-R or MDR Districts.

C. Conditions

The following conditions are intended to insure both that the home occupation is secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. The home occupation shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.

2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.

3. No more than two (2) nonresident persons shall be employed in the home occupation.

4. Not more than 25% of the floor area of the principal dwelling may be used for the home occupation and the total floor area to be utilized (including accessory buildings and structures) shall not exceed 500 sq. ft.

5. There shall be no exterior advertising of the home occupation, except for a maximum of two (2) signs not to exceed six (6) square feet each for which a permit has been obtained pursuant to the provisions of Section 506.D.1.

6. There shall be no exterior storage of materials used in the home occupation.

7. No home occupation shall result in:

a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

b. Hazard of fire explosion or other physical hazard to any person, building, or vegetation.

c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

8. Adequate parking shall be provided as set forth in Section 501. Such off-street parking shall be located not less than ten (10) feet from any property line.

9. No residential lot shall contain more than one (1) home occupation.

SECTION 512 ROADSIDE STANDS

- A. Roadside stands may be located in any district except EP
- B. Goods sold shall be farm produce or products derived there from including, but not limited to, fruits, vegetables, flowers, honey, jams, maple syrup, home canned fruits and vegetables, some of which shall be homegrown.
- C. There shall be a front yard setback of at least twenty (20) feet and side yard setbacks of at least twenty-five (25) feet each.
- D. Stands shall not exceed 500 sq. ft., excluding any awnings or roof overhangs.
- E. Off-street parking shall be provided for a minimum of three (3) vehicles with additional parking if traffic warrants.
- F. Signs are permitted as set forth in Section 506, D. 3.
- G. Roadside stands shall require a zoning permit.

SECTION 513 ANIMAL WASTE STORAGE FACILITIES

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation District (GCSWCD) for their review and determination as to acceptability. If a proposal is acceptable to GCSWCD then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

SECTION 514 SKILLED TRADE SHOP

The purpose of this provision is to allow for residents within the AG-R District, which are self-employed skilled trades persons (including carpenter, cabinet/furniture maker, plumber, electrician) to operate a shop for fabrication of fixtures, cabinets, furniture, etc. for installation by them at their various job sites. No retail sales of materials and/or products directly to the public shall be allowed on site. It is recognized that operation of such shops without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

A. Process

An applicant may apply to the Planning Board for a special use permit to establish a skilled trade shop in the AG-R District.

B. Conditions

The following conditions are intended to insure both that the skilled trade shop is secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. The skilled trade shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.
3. No more than one (1) nonresident persons shall be employed in the skilled trade shop.
4. Not more than 25% of the floor area (with a maximum of 500 sq. ft.) of the principal dwelling may be used for the skilled trade shop. Occupation of accessory buildings to be utilized shall not exceed 2,000 sq. ft.
5. There shall be no exterior advertising of the skilled trade shop, except for a maximum of two (2) signs not to exceed six (6) square feet each for which a permit has been obtained pursuant to the provisions of Section 506.D.1.
6. There shall be no exterior storage of materials used or products/fixtures made in the skilled trade shop.
7. No skilled trade shop shall result in:
 - a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.
 - b. Hazard of fire explosion or other physical hazard to any person, building, or vegetation.
 - c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.
8. Adequate parking shall be provided as set forth in Section 501. Such off-street parking shall be located not less than ten (10) feet from any property line.

9. No residential lot shall contain more than one (1) skilled trade shop. No residential lot shall contain a skilled trade shop together with a home occupation or any other non-residential use requiring a special use permit.

10. The Planning Board may require as a condition of the special use permit that the applicant install and maintain a buffer strip and/or fencing between the proposed skilled trade shop and neighboring residential uses if the Board determines such condition is a reasonable mitigation factor.

SECTION 515 **PONDS**

The purpose of this section is to provide for the construction of ponds that are adequately designed and located so as to not pose adverse impacts upon surrounding land uses. Farm water supply, conservancy and fire protection or other ponds may be located within the AG, AG-R, C, LC, I and INT Districts upon issuance of a special use permit provided the following criteria are met:

- The proposed pond is located not less than 100 feet from any property line. This setback distance shall be measured from the edge of the surface of the water at its highest level.
- The proposed pond design is deemed acceptable by the Genesee County Soil and Water Conservation District (GCSWCD).
- The pond is constructed in conformance with the design specifications in Subsection B of this Section, including any reseeding or re-vegetation requirements.
- Any soil excavated in the construction of a pond shall not be removed from the affected parcel without the specific authorization of the Planning Board in issuing the Special Use Permit.
- A storm water/erosion control basin or similar structure is exempt from provisions of this Section, Section 303 and/or Zoning Schedule A if it is part of a site plan for a commercial and/or industrial use(s), or subdivision development.

SECTION 516 **ADULT ESTABLISHMENT**

A. Purposes

The Town of Pembroke conducted a study of the potential secondary affects posed by adult establishments. This study, along with other similar studies, has shown buildings and establishments operated as adult establishments pose secondary effects which may have a detrimental and harmful impact to the health, safety, morals and general welfare of a community. In order to promote the health, safety, morals and general welfare of the residents of the Town of Pembroke, this Section is intended to control such secondary effects of adult establishments by restricting such uses to the Interchange (INT) District(s) of the Town, and otherwise regulate their operation.

B. Definitions

As used in this Section, the following terms shall have the meanings indicated:

1. Adult Establishment -A commercial establishment including but not limited to adult book store, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:

 a. An adult bookstore is a bookstore which has as a "substantial portion" (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined any one or more of the following:

 (1) Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical area"; or,

 (2) Photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

 b. An adult eating or drinking establishment is an eating or drinking establishment which regularly features any one or more of the following:

 (1) Live performances which are characterized by an emphasis upon the depiction or description of "specified anatomical areas" or "specified sexual activities"; or,

 (2) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas", and

(3) Employees who as part of their employment, regularly expose to patrons "specified anatomical areas", and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

c. An adult theater, is a theater which regularly features one or more of the following:

(1) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas"; or,

(2) Live performances which are characterized by an emphasis upon the depiction or description of "specified anatomical areas" or "specified sexual activities", and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

(3) An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.

d. An adult motel is a motel which makes available to its patrons in their room films, slide shows, video tapes or other visual representations with an emphasis on matter depicting, describing or related to "specified sexual activities" or "specified anatomical areas."

e. An adult massage establishment is any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barber shops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs, which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

f. A nude model studio is any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of New York State.

g. Any other adult commercial establishment is a facility- other than an adult bookstore, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio, or business or trade school - which features employees who as part of their employment, regularly expose to patrons "specified anatomical areas" and which is not customarily open to the general public during such features because it excludes minors by reason of age.

1. For the purpose of defining adult establishments, "specified sexual activities" are: (i) human genitals in a state of sexual stimulation or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

"Specified anatomical areas" are: (i) less than completely and opaquely concealed (a) human genitals, pubic region, (b) human buttock, anus or (c) female breast below a point immediately above the top of the areola; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

For the purpose of determining whether a "substantial portion" of an establishment includes an adult bookstore the following factors shall be considered: (1) the amount of floor area and cellar space accessible to customers and allocated to such uses; and (2) the amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment.

For the purpose of determining whether a bookstore has a "substantial portion" (equal to or greater than 25%) of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered: (1) the amount of such stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area and cellar space accessible to customers containing such stock; and (3) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.

2. Person - A person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

3. Substantial- For the purposes of the Section the term "substantial" shall mean an amount equal to or greater than 25 percent of the total.

C. Restrictions Affecting Adult Establishment

Adult establishments, including but not limited to adult bookstore, adult eating or drinking establishments, or adult theater shall be permitted subject to the following restrictions:

1. No such adult establishment shall be within one hundred (100) feet of another existing adult establishment.

2. No such adult establishment shall be located within one hundred (100) feet of the boundaries of any Residential (R), Medium Density Residential (MDR) or Agricultural Residential (AG-R) Zoning District or within five hundred (500) feet of any existing residential use located on another lot.

3. No such adult establishment shall be located within one thousand (1,000) feet of a pre-existing school, place of worship, playground or park.

4. No such adult establishment shall be located in any zoning district except the Interchange (INT) District(s).

5. Only one adult establishment shall be permitted on a zoning lot.

D. Prohibition Regarding Public Observation

No adult establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

SECTION 517 **COMMERCIAL COMMUNICATION TOWER**

No commercial communication tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

A. Shared Use of Existing Towers and/or Structures

At all times, shared use of an existing tower and/or structure (i.e., another Commercial communications tower, water tower, building, etc.) shall be preferred to the construction of a new commercial communication tower. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new communication tower. The installation of a commercial communications antenna(s) on an existing structure located within the AG, AG-R, LC, and C districts shall be considered a permitted accessory use not subject to Site Plan Review, Provided the following criteria are met:

1. The existing structure is not increased in height or otherwise modified so as to change its visual appearance,
2. The antenna(s) do not extend above such structure more than ten (10) feet, and
3. The applicant provides the necessary documentation to the Zoning Administration Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code
4. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.

B. New or Altered Towers and/or Structures

The Planning Board may, in its sole discretion, consider a new or altered (including tower or structure which are modified, reconstructed, or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

The applicant shall be required to submit a site plan in accordance with Section 708 (Site Plan Review provisions need to be added) for all commercial communication towers that are proposed to be erected, moved, reconstructed, changed or altered. Site Plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section. In addition to Section 708, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF- SEQR), and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

Where shared usage of an existing tower or other structure is found to be impractical, as determined in the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower or other structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection B of this Section. Any new commercial communication tower approved for a site with an existing tower or other structure site shall be subject to the standards of Subsections F through N of this Section.

E. New Tower at a New Location

The Planning Board may consider a new commercial communication tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the Planning Board, and submits a report as described in Subsection B of this Section.

F. Future Shared Usage of New Towers

The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived provided that the applicant demonstrates, in the sole discretion of the Planning Board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

1. The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
2. The kind of tower site and structure proposed;
3. The number of existing and potential licenses without tower spaces;
4. Available spaces on existing and approved towers; and
5. Potential adverse visual impact by a tower designed for shared usage.

G. Setbacks for New Towers

All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

1. All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this paragraph may be increased in the sole discretion of the Planning Board, or it may be decreased, again in the sole discretion of the Planning Board, in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Town Engineer and the Planning Board.

2. Accessory structures must comply with the minimum setback requirements in the underlying district.

H. Visual Impact Assessment

The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or

modification of an existing tower shall be subject to those guidelines and criteria listed below that the Planning Board, in its sole discretion, deems appropriate at the pre-submission conference:

1. Assessment of "before and after" views from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately-owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers.

2. Assessment of alternative tower designs and color schemes, as described in Subsection I below.

3. Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

I. New Tower Design

Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:

1. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.

2. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae).

3. The Planning Board may request a review of the application by the Town Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.

4 Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

5. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.

6. The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.

7. Space on communication towers shall be made available for public safety purposes (including the Genesee County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of (4) feet off the ground) shall take place prior to approval of the special use permit. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

K. Screening

Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

L. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking

Parking shall be provided in accordance with Section 501. No parking space shall be located in any required yard.

N. Fencing

Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the Planning Board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.

O. Maintenance and/or Performance Bond

Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

P. Removal of Obsolete/ Unused Facilities

Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

SECTION 518

CONTRACTOR'S YARD

A. Establishment

No person shall establish, operate or maintain a Contractor's Yard until they have obtained a special use permit issued by the Planning Board in accordance with all applicable provisions of this Local Law.

B. Location Requirements

Said use shall not be located within the required front and side yard setback, or one hundred (100) feet from any body of water. In reviewing this special use application the Planning Board shall take into account the nature and development of surrounding property, such as the proximity of surrounding residences.

C. Aesthetic Consideration

The Planning Board shall also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the Planning Board may consider collectively the type of road servicing the contractor's yard or from which the contractor's yard may be seen, the natural or artificial barrier protecting the contractor's yard from view, the proximity of the proposed contractor's yard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the contractor's yard. Required yards shall be mowed as needed and shall be kept free of unsightly growth. The planting of trees and shrubs to naturally screen the contractor's yard shall be encouraged.

D. Fencing

Before use, the equipment and materials storage area of a new contractor's yard shall be completely surrounded with a fence at least eight (8) feet in height which substantially screens said area and shall have a suitable gate which shall be closed and locked except during the working hours of said use. Such fence shall be erected in a manner acceptable to the Planning Board. All materials stored or deposited at the site shall be kept within the enclosure of the fence except during transportation of the same in the reasonable course of business. Where the topography, land forms, natural growth of trees or other considerations accomplish the purpose of this Section in whole or in part, the fencing requirements hereunder may be reduced by the Planning Board, provided however, that such natural barrier conforms with the purpose of this section.

E. Existing Contractor's Yards

All contractor's yards, existing at the time of adoption of this amendment to the Zoning Law shall file an acceptable site plan within sixty (60) days of the enactment of this amendment and upon written notice to the property owner and shall be limited to the size, area and scale of the use and operation at that time unless a special use permit is authorized in accordance with this regulations. Failure by an existing operator to file an acceptable site plan within the required time limit shall constitute a violation as set forth in Section 709.

F. Annual Review

Pursuant to Section 708 D, the Zoning Enforcement Officer shall at least annually inspect the use of the property in question to insure compliance with conditions, which have been imposed by the Planning Board in issuing such special use permit and other applicable provisions of this Zoning Law.

SECTION 519 **OUTSIDE SOLID FUEL BURNING DEVICES**

1. Outside solid fuel burning devices shall be permitted by a special use permit and require a site plan review.
2. Outside solid fuel burning devices shall not be installed in an MDR, R or C District or within 500 feet of such districts. When installed in AG, AG R or LC Districts, such units shall be installed and operated ensuring that the following criteria are met:
 - a. The outside solid fuel burning devices shall be located twenty-five feet from the property line.
 - b. The outside solid fuel burning devices shall be located one hundred (100) feet from any residence.
 - c. All outside solid fuel burning devices shall be constructed, established, installed, operated and maintained in conformance with the New York State Uniform Code.

d. Only firewood, untreated lumber, and other manufacturer approved fuels shall be burned in these units.

SECTION 520

COMMERCIAL WIND ENERGY SYSTEMS

The purpose of this section is to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system and to allow for the orderly development of land, protect property values, aesthetic conditions. This Section does not repeal, annul, impair, or interfere with any existing local law.

It is unlawful for any person to construct, install, maintain, modify, or operate a wind energy system that is not in compliance with this Section or with any condition contained in a Special Use or Zoning Permit issued pursuant to this Law.

A. PERMIT REQUIREMENTS

1. Special Use Permit

A Special Use Permit is required for Commercial Wind Energy Systems and for any wind energy system, or a component thereof, except for Non-commercial Wind Energy Systems located in County-adopted, State certified Agricultural Districts for primary on-farm use.

2. Zoning Permit

A Zoning Permit and Site Plan Review are required for the installation of a wind tower that is part of any wind energy system.

3. Expiration

a. The wind energy system is not installed and functioning within 2-years from the date the permit is issued; or

b. The Commercial Wind Energy System is unused, out of service or otherwise, for a continuous 12-month period.

4. Fees

a. The Application for a Special Use Permit for a Commercial or Non-commercial Wind Energy System, except for Non-commercial Wind Energy Systems locate in County-adopted, State-certified Agricultural Districts must be accompanies by the fee required for a Special Use Permit.

b. The application for a Zoning Permit for each tower in a Commercial Wind Energy System must be accompanied by the fee required for a Zoning Permit for an accessory use.

c. The application for a Zoning Permit for a tower in a Non-commercial Wind Energy System must be accompanied by the fee required for a Zoning Permit for a principle use.

5. Financial Assurance

The owner of a wind energy system, other than a Non-commercial Wind Energy System, must provide a performance bond, completion bond, or other financial assurance that guarantees the performance of the restoration of the land developed for the wind energy system.

B. RESTORATION REQUIREMENTS

1. A wind energy system that is out of service for a continuous 12-month period or any wind energy system found to be unsafe by the Building Code Enforcement Officer and not repaired by the owner to meet federal, state and local safety standards within six months will be deemed to have been abandoned. The Zoning Enforcement Officer may issue a Notice of Abandonment in form of a letter to the owner of a wind energy system that is deemed to have been abandoned. The Zoning Enforcement Officer will withdraw the Notice of Abandonment if the owner provides information with 30 days from the date of the Notice that causes the Zoning Enforcement Officer to determine that the wind energy system has not been abandoned.

2. The owner of a wind energy system must provide the Zoning Enforcement Officer with a written Notice of Termination of Operations if the operation of a wind energy system is terminated.

3. Within 3 months of receipt of Notice of Abandonment or within 6 months of providing Notice of Termination of Operations, the owner of a wind energy system must

- a. Remove all wind turbines, above ground improvements, and outdoor storage;
- b. Remove all foundations, pads, and underground electrical wires to a depth of 4 feet below the surface of the ground; and
- c. Remove all hazardous material as defined by NYSDEC from the property and dispose of the hazardous material in accordance with federal and state law.
- d. All disturbed areas will be decompacted and the topsoil will be replaced to original depth reestablishing original contours where possible

C. SPECIAL USE PERMIT OR ZONING PERMIT REQUIREMENTS

In addition to those criteria set forth under other Sections of this Law the Town shall consider the following factors when setting conditions upon Special Use Permits or Zoning Permits issued for all wind energy systems and may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense:

1. Proposed ingress and egress
2. Proximity to transmission lines to link the system to the electric power grid
3. Number of wind towers and their locations
4. Nature of land use on adjacent and nearby properties
5. Location of other wind energy systems in the surrounding area
6. Surrounding topography
7. Proximity to residential structure, residential zoning districts, or areas identified for future residential use
8. Design characteristics that may reduce or eliminate visual obtrusiveness
9. Possible adverse effect on migratory birds, and other animals and wildlife.
10. Possible adverse effects on stray voltage, interference with broadcast signals, shadow effect, and noise
11. Impact on the orderly development, property values, and aesthetic conditions
12. Possible adverse effects on groundwater quality or quantity
13. Recommendations of the Town Board
14. Any other factors that are relevant to the proposed system

D. STANDARDS

1. Location

a. A wind energy system may only be located in areas that are zoned Agricultural-Residential (AG-R) and Industrial (I) (Or an overly district as created by the Town).

b. A wind tower may not be located within one-quarter mile (1,320 ft.) of any State Forest, Public Park, or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a State, Federal, or local government designation; or within 1,000 feet of a State-identified wetland.

c. A wind tower may not be located within 2,500 feet from Important Bird Areas as identified by New York Audubon.

2. Set Backs

Each wind tower in a wind energy system must be set back (as measured from the center of the base of the tower):

- a. From the property line of the parcel on which the wind tower is located by a minimum distance equal to twice the total height of the wind tower, unless waived in writing by the abutting landowner.
- b. From any residence or building that is on any parcel by a minimum distance of 1,000 feet, unless waived in writing by the owner of such structure.
- c. From any public building that is on any parcel by a minimum distance of 1,000 feet.
- d. From the right-of-way of any public road by a minimum distance of 1,000 feet or twice its total height, whichever is greater?

E. SPACING AND DENSITY A wind tower must be separated from any other wind tower by a minimum distance equal to twice the height of the wind tower and by a sufficient distance so that the wind tower does not interfere with the other wind tower.

F. STRUCTURE A wind tower must be of a monopole construction to the extent practicable. If monopole construction is not practicable, a wind tower must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a wind tower may be guyed.

G. HEIGHT The total height of a wind energy system must be 175 feet or less. Other maximum building/structure height restrictions within other sections of this Zoning Law are not applicable. Wind energy systems higher than 175 feet may be allowed through incentive zoning provisions described in Article X of this Law pending Town Board approval.

H. CLEARANCE The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least 30 feet.

I. ACCESS AND SAFETY

1. Security

A wind tower, including any climbing aids must be secured against unauthorized access by means of a locked barrier. A security fence may be required.

2. Climbing Aids

Monopole wind towers shall have all climbing aids and any platforms locked and wholly inside the tower.

3. Operational Safety

Wind towers shall have an automatic breaking, governing or feathering system to prevent uncontrolled rotation, over speeding and excessive pressure on the tower structure, rotor blades and turbine components.

4. Lightning

All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.

5. Access Roads

All wind energy systems shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.

J. ELECTRICAL WIRES

1. Location

All electrical wires associated with a wind energy system must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices.

2. Transmission Lines.

All wind energy systems shall combine transmission lines and points of connection to local distribution lines.

3. Substations.

All wind energy systems shall connect the facility to existing substations, or if new substations are needed, minimize the number of new substations.

K. LIGHTING

A wind tower and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the leaser obtrusive lighting option available.

L. BUILDINGS AND OUTDOOR STORAGE

Any ancillary buildings and any outside storage associated with a wind energy system must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment (i.e. in an agricultural settings accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from road and adjacent residences.

M. AESTHETICS

1. Appearance, Color, and Finish

The exterior surface of any visible components of a wind energy system must be a non-reflective, neutral color. Wind towers that are located within view, or within one mile of each other must be of uniform design, including tower type, color, number of blades, and direction of blades rotation.

2. Visual Impact Assessment

The applicant shall complete a Visual Environmental Assessment Form (Visual EAF- SEQR), as well as a visual impact assessment of any proposed wind energy systems or any proposed modifications to existing wind energy systems. The visual impact assessment shall include:

a. "Before and after photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Planning Board may also request a balloon test.

b. Alternative tower designs.

c. Assessment of visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the wind energy system identified by the Planning Board.

d. Commercial Wind Energy System applications shall provide a view shed map of the proposed wind energy system with a radius of seven (7) miles from any portion of the wind energy system.

e. Commercial Wind Energy System applications shall provide an inventory of all aesthetic resources in the view shed defined item d.

3. Visual Impacts Offset Plan

The applicant may be required to prepare and implement a visual impacts offset plan to mitigate negative impacts on aesthetics of a proposed wind energy system. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the view shed.

N SIGNS

No wind tower, turbine, building, or other structure associated with a wind energy system may be used to advertise or promote any product or service. A weather resistant sign plate no greater than 2 sq. ft. in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other work or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a wind energy system so as to be visible from any public road.

O. AGRICULTURAL MITIGATION

The following shall apply to construction areas for wind energy systems located in County-adopted, State-certified Agricultural Districts. The applicant is required to coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. When required by the Town, the applicant shall hire an Environmental Monitor to oversee the construction and restoration in agricultural fields. The person or company hired as an Environmental Monitor shall be approved by the Town and paid by the applicant.

1. Siting

a. Minimize impacts to normal farming operations by allocating structures along field edges where possible.

b. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.

c. Avoiding dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.

d. All existing drainage and erosion control structures such as diversion, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be required to, as close original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

2. Construction

a. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.

b. Where necessary, culverts and water bars shall be installed to maintain natural drainage patterns.

c. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and lay-down areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.

d. Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designate in the field and on the on-site "work set" of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.

e. In cropland, hayland and improved pasture a minimum depth of 48 inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of 36 inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to 48 inches, the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.

f. All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and, when applicable, the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.*

g. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.

h. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.*

i. Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.

j. Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.*

*Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

3. Restoration

a. Restoration scheduling will be consistent with the seasonal limitations identified by Ag. and Markets and will be incorporated into the project's Agricultural District Notice of Intent (if applicable) as well as the Stormwater Management Plan (General Permit).

b. Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four (4) inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to the original depth and the original contours will be reestablished where possible. All rocks four (4) inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1st, unless approved on a site-specific basis by the landowner in consultation with Ag. and Markets. All parties involved should be cognizant that areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.

c. All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.

d. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

e. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.

f. Following restoration, all construction debris will be removed from the site.

4. Two Year Monitoring and Remediation.

a. The applicant will provide a monitoring and remediation period of no less than two (2) years immediately following the completion of initial restoration. The two (2) year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration. The Applicant will provide to the Town all reports, testing and data necessary to document compliance with subsections (a) through (e) herein.

b. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on-site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and Ag. and Markets.

c. Topsoil deficiency and trench settling shall be mitigated

with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amount of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.

d. When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation periods will not obviate the applicant's responsibility to fully redress all project impacts.

e. Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction-measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relative low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material, which is uplifted to the surface as a result of the deep shattering, will be removed.

P. NOISE Audible noise due to the operation of any part of a wind energy system shall not exceed 50 decibels (dBA) for any period of time, when measured at any residence, school, hospital, church, public park, public library or place of public assembly.

Q. INSURANCE Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Town Board in consultation with the Town's insurer and Attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.

R. SHADOW FLICKER

1. Shadow Flicker Maps. Commercial Wind Energy System applications shall prepare maps showing projected annual hours of shadow flicker impact for all sensitive areas/locations within the project area including, but not limited to, any residence, school, hospital, church or public library.

2. Shadow Flicker Duration Shadow Flicker for all sensitive areas/locations within the project area shall be limited to 30 hours per year and shall not exceed 30 minutes per day.

S. ELECTROMAGNETIC INTERFERENCE (EMI).

Commercial Wind Energy Systems shall be properly sited, filtered and /or shielded in order to avoid any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy system or the applicant shall mitigate any such interference.

T. WATER RESOURCES

Commercial Wind Energy Systems shall be properly sited and constructed in order to avoid any permanent or temporary negative effect upon the area's groundwater and surface water resources, or the applicant shall mitigate any such impacts. Such effects include, but are not limited to, the use of water resources, changes in water quality, alteration of the natural flow system, and the alteration of interactions between the groundwater and surface water.

U. SEVERABILITY

The provisions of this section are severable, and the invalidity of any section, subdivision, paragraph, or other part of this Zoning Law shall not affect the validity or effectiveness of the remainder of the Zoning Law.

SECTION 521

NON-COMMERCIAL WIND ENERGY SYSTEMS

(Local Law #2 of 2012)

A. Permit Requirements

4. Special Use Permit

A Special Use Permit is required for Non-Commercial Wind Energy Systems or a component thereof, except for Non-Commercial Wind Energy Systems located in County-adopted, State-certified Agricultural Districts for primary on-farm use.

5. Zoning Permit

A Zoning Permit and Site Plan Review are required for the installation of a Non-commercial Wind Energy Systems or a component thereof.

6. Expiration

A permit issued pursuant to this Zoning Ordinance/Law expires if:

a. The Non-Commercial Wind Energy System is not installed and functioning within 1 year from the date the permit is issued unless project requires more time, due to grant money issues, proof required. The Special Use Permit can be extended by the Planning Board to coincide with an extension granted by the Zoning Administration for the building permit or

b. The Non-Commercial Wind Energy System is out of service or otherwise unused for a continuous 12-month period.

7. Fees

a. The application for a Special Use Permit Non-Commercial Wind Energy System, except for Non-commercial Wind Energy Systems located in County-adopted, State-certified Agricultural Districts must be accompanied by the fee required for a Special Use Permit.

b. The application for a Zoning Permit for each tower in a Non-Commercial Wind Energy System must be accompanied by the fee required for a zoning permit for an accessory use.

B. Special Use Permit or Zoning Permit Requirements

In addition to those criteria set forth under other Sections of this Zoning Ordinance/Law, the Town Planning Board may consider the following factors when setting conditions upon Special Use Permits or site plans issued for all Non-commercial Wind Energy Systems and may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense:

1. Number of wind towers and their location.
2. Nature of land use on adjacent and nearby properties.
3. Location of other wind energy systems in the surrounding area.
4. Surrounding topography.
5. Proximity to residential structures, residential zoning districts, or areas identified for future residential use.

6. Design characteristics that may reduce or eliminate visual obtrusiveness.
7. Possible adverse effects on migratory birds, and other animals and wildlife.
8. Possible adverse effects of stray voltage, interference with broadcast signals, shadow flicker, and noise.
9. Impact on the orderly development, property values, and aesthetic conditions.
10. Any other factors that are relevant to the proposed system.

C. Standards

1. Location - A Non-commercial Wind Energy System may only be located in areas that are zoned Agricultural (AG), Agricultural-Residential (AG-R), Industrial (I), Commercial (C), and Limited Commercial (LC).

2. Setbacks - Each wind tower in a Non-commercial Wind Energy System must be set back 1.5 times the height of the tower from neighboring property lines.

3. Safety

a. Operational Safety. Wind towers shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

b. Lightning. All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.

c. Lighting. A wind tower and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.

4. Signs - No wind tower, turbine, building, or other structure associated with a Non-commercial Wind Energy System may be used to advertise or promote any product or service.

5. Noise - Audible noise due to the operation of any part of a Non-commercial Wind Energy System shall not exceed 60 decibels (dBA) for any period of time, when measured at any lot line adjacent to the wind energy system. The applicant shall provide a certification from the wind energy manufacture that the audible noise from the unit does not exceed 60 decibels (dBA) at a distance of 100 ft. from the installation site. The Planning Board may allow the decibel level to exceed 60 in extenuating circumstances.

6. Installation Requirements - According to manufacturer's recommendations and New York State Energy Research and Development Authority (NYSERDA) eligible installers under the Small Wind Program.

SECTION 522 INTER-MODAL SHIPPING CONTAINERS AND STORAGE

The purpose of this provision is to provide for Inter-modal Shipping Containers to be used for long term storage in AG, AG-R, R, and MDR.

A. Upon the adoption of this ordinance Inter-modal Shipping Containers, not exceeding forty (40) feet in length and sited according to Schedule A of this ordinance, shall be considered allowed nonconforming uses. Non-conforming containers moved after the adoption of this ordinance shall be required to comply fully with this ordinance.

B. An applicant may apply to the Planning Board for a Special Use Permit for the purpose of using an Inter-modal Shipping Container for long-term storage in the AG, AG-R, R, and MDR districts. Semi-trailers, whole or parts of, are not to be confused with Inter-Modal Shipping Containers for the purposes of this section.

1. An Inter-modal Shipping Container shall not be used for long-term storage on lots of less than forty (40) thousand square feet.
2. For the purposes of this law, containers shall not exceed forty (40) feet in length.
3. Containers shall be located in the rear yard in accordance with Schedule A of this Zoning Law.
4. There shall be a limit of one (1) container on any lot.
5. Screening may be necessary per the discretion of the Planning Board.
6. Other conditions may be imposed, as part of the Special Use Permit process.

SECTION 523

SOLAR ENERGY SYSTEMS

A. Permit Requirements

1. Special Use Permit

A Special Use Permit is required for Commercial Solar Energy Systems, Solar Farm or a component thereof. Residential Solar Energy Installations do not require a Special Use Permit.

2. Zoning Permit

A Zoning Permit and Site Plan Review are required for the installation of Commercial Solar Energy Systems, Solar Farm or a component thereof.

3. Expiration

A permit issued pursuant to this Zoning Ordinance/Law expires if:

a. The Commercial Solar Energy System or Solar Farm is not installed and functioning within 1 year from the date the permit is issued, unless project requires more time, due to extenuating circumstances, proof required. The Special Use Permit can be extended by the Planning Board to coincide with an extension granted by the Zoning Administration for the building permit or

b. The Commercial Solar Energy System or Solar Farm is out of service or otherwise unused for a continuous 12-month period.

4. Fees

a. The application for a Special Use Permit for A Commercial Solar Energy System or Solar Farm must be accompanied by the fee required for a Special Use Permit.

b. The application for a Zoning Permit for each Commercial Solar Energy System or Solar Farm must be accompanied by the fee required for a zoning permit for an accessory use.

B. Standards

1. Location

a. Commercial Solar Energy Systems may only be located in areas that are zoned Agricultural (AG), Agricultural-Residential (AG-R), Industrial (I), Commercial (C), and Limited Commercial (LC).

b. Solar Farms may only be located in areas that are zoned Agricultural (AG) and Agricultural-Residential (AG-R).

2. Setbacks: Each Commercial Solar Energy System must be set back according to Schedule A of the Zoning Law.
3. The requirements of this section shall apply to all solar energy systems modified or installed after the effective date of this section.
4. All solar energy systems shall be designed, erected and installed in accordance with all applicable codes and regulations, as referenced in the New York State Uniform Code and the New York State Property Maintenance Code.
5. Multiple uses on one lot. Construction and installation of a Commercial Solar Energy System or Solar Farm shall not be considered as creating more than one principal building and/or one principal use on any one lot in Agricultural (AG), Agricultural-Residential (AG-R), Industrial (I), Commercial (C), and Limited Commercial (LC) Districts.

C. Special Use Permit or Zoning Permit Requirements

In addition to those criteria set forth under other Sections of this Zoning Ordinance/Law, the Town Planning Board may consider the following factors when setting conditions upon Special Use Permits or site plans issued for all Commercial Solar Energy Systems and may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense:

1. Ingress and egress.
2. Size and location of panels.
3. Nature of land use on existing, adjacent and nearby properties.
4. Location of other Solar Energy Systems/Solar Farms in the surrounding area.
5. Topography.
6. Proximity to residential structures.
7. Design characteristics.
8. Possible adverse effects on wildlife.
9. Glare and reflectivity issues.
10. Any other factors relevant to the proposed system.

D. Design standards.

1. Height. Systems, equipment and structures shall not exceed the maximum height allowed in the applicable zoning district as set forth in Schedule A, of the Town of Pembroke Zoning Law.
2. Size. The size of a Solar Energy System or Solar Farm shall not exceed 20 acres.
3. Setbacks. A Solar Farm shall comply with the setback requirements of the zoning district in which it is located.
4. Distribution lines. New electricity distribution lines may be located above or below the ground.

5. Approval. All components must have a UL listing or equivalent.
6. Security. A security fence shall surround the perimeter of a Solar Farm.
7. Accessibility. The site of Solar Energy Systems and Solar Farms shall be accessible for all emergency service vehicles.
8. Signage. All signage shall be prohibited on a solar farm or its fencing except as authorized in a special use permit or required by New York State Building and Fire Code.

E. Compliance

It is unlawful for any person to construct, install, maintain, modify or operate a Solar Energy System or Solar farm that is not in compliance with this chapter or with any conditions contained in a special use or zoning permit issued pursuant to this chapter.

F. Abandonment

It is the responsibility of the property owner to remove all obsolete or unused Solar Energy Systems or Solar Farms within 12 months of cessation of operations. Reusable components are to be recycled whenever feasible.

G. Decommissioning Bond

Prior to issuance of a special use permit for a Commercial Solar Energy System or Solar Farm, the Planning Board shall determine if a bond must be required to be issued in the name of the Town of Pembroke in an amount specified by the Planning Board after consultation with the Town Attorney and Town Engineer, to be used by the Town for remediation in the event that all obsolete or unused commercial solar energy systems or solar farm components are not removed within 12 months of the cessation of operations as required herein.

H. Penalties

Any person, firm, corporation or entity which may violate any provisions of this section shall be guilty of a violation and, upon conviction thereof, shall be subject to penalties set forth in the Town of Pembroke Zoning Law. Any person, firm, corporation or entity which may violate any provisions of this section shall become liable to the Town for any actual expense or loss or damage occasioned by the Town by reason of such violation; in addition to any actual losses or damages sustained by the Town, such expense shall also include, but not be limited to, statutory costs, disbursements and reasonable attorney's fees in the event that an action is commenced to enforce this section. The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceedings to prevent a violation of this chapter or to restrain or enjoin the use or occupancy of premises or any part thereof in violation of this chapter.

ARTICLE VI **MOBILE HOMES AND MOBILE HOME PARKS**

SECTION 601 **MOBILE HOMES**

A. Mobile Home- Permanent Residence (Non-Farm)

1. Criteria

A mobile home may be placed and permanently occupied as a one (1) family residence (non-farm, see Subsection B below) on any lot in an AG, AG-R and MDR Districts provided it complies with Section 306 (Minimum Habitable Floor Area), Section 307 (Minimum Dimensional Criteria), and the following criteria are met and a zoning permit is issued:

a. The mobile home unit shall comply with the NYS Uniform Code Parts 606 and 1221.1 and be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Chapter XX Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

b. Placement of the mobile home must comply with the minimum area requirements for a one (1) family dwelling in the respective zoning district, including, but not limited to: lot size and width, yard areas, parking and finished grade.

c. The mobile home shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code (including foundation requirements and skirting), and shall be protected from ground frost heaves.

d. The water supply system and wastewater treatment system shall be approved by the Genesee County Health Department.

B. Mobile Home- Farm Worker Residence

1. Criteria

A mobile home may be placed and permanently occupied as a residence on any lot in an AG or AG-R District for a full-time farm worker even though the provisions of Section 307 (Minimum Dimensional Criteria) are not met provided it complies with Section 306 (Minimum Habitable Floor Area), the following criteria are met and a zoning permit is issued:

a. The farm owner shall annually certify in writing to the Zoning Administration Officer that the resident of the mobile home is a full-time farm worker on the farm on which the mobile home is located.

b. The mobile home unit shall comply with the NYS Uniform Code Parts 606 and 1221.1 and be constructed in accordance with regulations set forth in the Compilation of Federal

Regulation (CFR), Title 24 Housing and Urban Development, Chapter XX Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards

c. Placement of the mobile home must comply with the minimum yard area requirements (setbacks from property lines) for a one (1) family dwelling in the respective zoning district.

d. No more than one mobile home occupied by a full-time farm worker may be placed on a lot. Such mobile home shall be considered an accessory, or non-primary, use for the purposes of Section 301, Subsection A.

e. The mobile home shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code (i.e., foundation requirements, skirting, etc.), and shall be protected from ground frost heaves.

f. The water supply system and wastewater treatment system shall be approved by the Genesee County Health Department.

C. Mobile Home - Temporary Residence

1. Restrictions

A mobile home may be placed and temporarily occupied as a one (1) family residence on any lot where the appropriate permit(s) (zoning and/or building permit) have been issued for the construction or repair of a residence, for a maximum period of two (2) years under the following circumstances, upon the issuance of either a temporary use permit or emergency housing permit as required.

a. Home Building- If the owner of a vacant lot in either the AG, AG-R or MDR District has been issued an active, valid zoning permit by the Town of Pembroke for the construction of a dwelling on the lot in question (a temporary use permit is required).

b. Fire or Other Disaster - The existing dwelling on the lot has been damaged in such a manner as to make it uninhabitable (an emergency housing permit is required, see Section 703, Subsection C).

2. Criteria

Mobile homes occupied, as temporary residences shall meet the following criteria:

a. The mobile home units shall comply with the NYS Uniform Code Parts 606 and 1221.1 and be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Chapter XX Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

b. Placement of the mobile home must comply with the minimum yard area requirements (setbacks from property lines) for a one (1) family dwelling in the respective zoning district.

c. The water supply system and wastewater treatment system shall be approved by the Genesee County Health Department.

D. Mobile Home - Replacement of an Existing Unit

1. An existing mobile home which is occupied as a one (1) family dwelling on any lot in an AG, AG-R, MDR, C or PUD District may be replaced with another mobile home. The proposed replacement unit is not required to comply with Section 306 (Minimum Habitable Floor Area) or Section 307 (Minimum Dimensional Criteria); however, the following criteria must met:

a. The replacement mobile home unit shall be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Chapter XX Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

b. The location of the replacement mobile home shall not increase the degree of nonconformity (other than unit size, square footage) relative to the yard area requirements (eg. setbacks from property lines) that existed with the current mobile home.

c. The mobile home shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code (including foundation requirements and skirting), and shall be protected from ground frost heaves.

d. The water supply system and wastewater treatment system for the mobile home shall be approved by the County Health Department.

SECTION 602

MOBILE HOME PARKS

A mobile home park may be located in an Agricultural-Residential District provided the following criteria are met and a special use permit is issued.

A. Standards and Requirements for the Construction of Mobile Home Parks

Condition of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the mobile home park occupants. The site shall not be exposed to objectionable smoke, dust, noise, odors or other adverse influences, and no portion shall be subject to predictable sudden flooding, or erosion, and the site shall not be used for any purpose, which would expose persons or property to hazards.

1. Site Size, Density and Setback Requirements

- a. The minimum size for mobile home parks shall be ten (10) acres.
- b. The number of mobile home spaces shall not exceed five (5) per gross acre.
- c. Each mobile home park shall set aside at least ten (10) percent of the total acreage of the site as open space and recreation area.
- d. A setback of seventy-five (75) feet shall be observed from the right-of-way of any public road bordering the site to any mobile home in the park:
- e. A setback of fifty (50) feet shall be observed from any property line, excluding the right-of-way of any public road.
- f. The site shall be located and laid out so that no mobile home shall be closer than five hundred (500) feet to any existing single family or two family dwelling

2. Lot Size, Density and Setback Requirements

- a. The minimum size for a mobile home lot shall be as follows:
 - (1) For mobile homes having a width of less than twenty-four (24) feet, the minimum lot shall be eight thousand (8,000) square feet, with a minimum width of seventy (70) feet and a minimum depth of one hundred (100) feet.
 - (2) For mobile homes having a width of twenty-four (24) feet or more, the minimum lot shall be at least ten thousand (10,000) square feet, with a minimum width of eighty (80) feet and a minimum depth of one hundred (100) feet.
- b. No mobile home shall be closer than thirty (30) feet to another mobile home or other structure in the park.

c. Each mobile home located in a mobile home park shall have a front yard, a rear yard and two side yards. No side yard or rear yard space shall be less than fifteen (15) feet and no front yard shall be less than twenty-five (25) feet.

d. There shall be a minimum setback of twenty-five (25) feet observed from the edge of the abutting park street to any mobile home in the park.

e. Maximum height for buildings shall be thirty-five (35) feet.

3. Site Layout and Design Requirement

The layout and design of the Mobile Home Park shall conform to the following requirements:

A. Streets

(1) Mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets and/or roads to each mobile home lot. Each lot in the park shall have direct access to a street.

(2) All mobile home parks containing twenty (20) or more mobile home sites shall have access from two (2) points along a single public street/road, or if bordering on two (2) roads, access can be one for each road, as long as such access points are separated by at least one hundred (100) feet.

(3) Entrances to mobile home parks shall be on a public street/road and shall be designed so as to not interfere with the free movement of traffic on such adjacent public street/road. No parking shall be permitted on an entrance street for a distance of one hundred (100) feet from its intersection with the public street/road.

(4) The street system should provide convenient circulation by means of minor streets and properly located collector streets. Dead-end streets shall be limited in length to five hundred (500) feet and their closed end shall be provided with an adequate turn around sixty-five (65) feet in diameter cul-de-sac.

(5) Each mobile home lot shall have direct access to a street which meets the minimum standards established by the Town Highway Superintendent or Town Engineer.

(6) Grades of all streets shall not be more than eight percent (8%) and shall be sufficient to insure adequate surface drainage.

(7) Street intersections should generally be at right angles and in no case shall any angle or intersection be less than seventy-five (75) degrees.

(8) Park entrances and exits shall be so located to provide a minimum of sight distance on the adjacent public street/road in both directions from the interior road at the point of intersection of not less than three hundred (300) feet.

B. Parking

(1) Two (2) car parking spaces shall be provided for each mobile home.

(2) At least one (1) parking space shall be situate on the mobile home lot. The other parking space may be located in an adjacent parking bay along the street.

(3) Parking may be in tandem.

(4) Each parking space shall have dimensions of at least ten (10) feet by twenty (20) feet and shall have all weather surfacing.

C. Buffer Strip

(1.) A buffer strip shall be established within the mobile home park along all property lines. However, a buffer shall not be constructed so as to impair visibility for park entrances along a public street/road. No above ground structures shall be situated therein.

D. Recreation Area

(1.) Not less than ten (10) percent of the gross mobile home park site area shall be devoted to recreation facilities, generally provided in a location or locations convenient to all park residents.

(2.) Recreation areas may include space for community use facilities, such as indoor recreation areas, swimming pools, and hobby shops.

(3.) Where compliance with Section 702.A.3.e.(1) results in undue hardship, the Board of Appeals may grant exception there from where it finds that the individual mobile home lots are of sufficient size to provide area for outdoor recreation. In any event, the remaining centralized recreation area for the park cannot be less than one hundred (100) square feet times the number of mobile home lots in the park or five thousand (5,000) square feet, whichever is greater.

E. Landscaping

Mobile home parks shall be landscaped to provide an attractive setting for mobile homes and other improvements, to provide adequate privacy and pleasant views to minimize reflected glare, and to afford summer shade. Such landscaping shall include the planting and maintenance of at least the following:

(1) Trees and shrubs at suitable intervals along park streets, and within recreation areas.

(2) Special planting to screen objectionable views such as garbage and trash collection stations, nonresidential uses, and any unsightly objects or conditions on adjacent properties.

(3) All areas, which are not paved or occupied by mobile homes or other improvements shall be seeded and maintained as lawn.

4. Lot and Mobile Home Requirements

a. Each lot shall front on an approved interior street.

b. Interior lots shall not be permitted to front on more than one (1) street.

c. No more than one (1) mobile home may be placed on any lot.

d. No mobile home shall be located within a park except in an authorized space.

e. All mobile homes shall comply with the current Construction and Safety Standards as set forth by the United States Department of Housing and Urban Development and have a minimum habitable floor area of seven hundred twenty (720) square feet, exclusive of any porches, additions or other extensions; however, such units are not required to comply with Section 307 (Minimum Dimensional Criteria).

f. Mobile homes shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code.

g. No addition shall be made to a mobile home except for a canopy and/or porch open on three (3) sides.

h. One (1) accessory building, not to exceed one hundred (100) square feet in dimension, may be located on each lot.

i. Each lot shall be provided with approved connections for water and sewer in accordance with the regulations of the Genesee County and New York State Department of Health.

j. All utilities shall be underground.

k. No front or side yard shall be used for storage

5. Required Site Improvements

a. Water Supply System- All water supply systems shall be approved by the Genesee County Health Department.

b. Sewerage Disposal and Treatment - All sewerage disposal systems shall be approved by the Genesee County Health Department.

6. Electrical Systems

a. Except as otherwise permitted or required by this standard, all electrical installations in mobile home parks shall be underground and the residential distribution system designed and constructed in accordance with both the local electric utility and National Electrical Codes. The point of the electrical connection for the mobile home shall be within the area of the mobile home stand.

b. The mobile home park secondary electrical distribution system to mobile home lots shall be single phase, 120/240 nominal.

c. For the purpose of this section, where the park service exceeds two hundred forty (240) volts, transformers and secondary distribution panel boards shall be treated as services.

d. Mobile home lot feeder circuit conductors shall have adequate capacity for the load supplied, and shall be rated at not less than one hundred (100) amperes at 120/240 volts.

e. Provisions may be made for connecting a mobile home power supply assembly by a permanent wiring method, and the mobile home service equipment may provide for installation for at least one (1) fifty (50) ampere receptacle.

f. Mobile home service equipment may also be provided with a means for connecting a mobile home accessory building or structure or additional electrical equipment located outside a mobile home by a permanent wiring method.

7. Gas Distribution System

Gas equipment and installations within a mobile home park shall be designed and constructed in accordance with the applicable codes adopted by the local utility. Where the state or other political subdivision does not assume jurisdiction, such installations shall be designed and constructed in accordance with the appropriate provisions of the current edition of the American National Standard-National Fuel Gas Code.

8. Fuel Oil Distribution System

Distribution systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.

9. Bulk Fuel Storage

a. A mobile home park shall be provided with facilities for the safe and efficient storage of required bulk fuels. Such facilities shall be in accordance with applicable codes and regulations.

10. Lighting

a. Artificial lighting shall be provided to illuminate streets, walks, driveways and parking spaces for the safe movement of pedestrians and vehicles at night.

11. Community Service Buildings

a. Each park shall have one (1) or more buildings for the provision of laundry, sanitary and other community services.

b. Access to such community service buildings shall be directly from a park street and not from or across any mobile home lot.

c. Such community service buildings shall be permanent structures complying with the New York State Sanitary Code and all other applicable ordinances and statutes regulating buildings, electrical installations, and plumbing and sanitation systems.

B. Mobile Home Park Maintenance Standards

1. Refuse Disposal

a. The park owner shall provide for refuse pickup and disposal.

b. The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to create no health hazard, rodent harborage, insect breeding areas, accident or fire hazards or air pollution.

c. No refuse or other organic material shall be placed, stored or dumped in other than refuse containers anywhere in the park. The existence of any refuse or rubbish outside a container for more than twenty-four (24) hours shall be a violation of this Zoning Law.

2. Fire Protection

a. Mobile Home Parks shall be kept free of litter, rubbish and other flammable materials.

b. Fires shall be permitted only in stoves and other receptacles intended for such purposes.

3. Responsibilities of the Park Owner and Management

a. Upon receiving a special use permit, the park owner shall establish and operate the park in compliance with the provisions of this Zoning Law and all other applicable ordinances, statutes and regulations, and shall provide adequate services so as to maintain the park, its facilities and equipment in a safe, clean and sanitary condition.

b. The park management shall also supervise both the placement of each mobile home on the lot and the installation of all utility connections.

c. The owner of a mobile home park shall develop a regular program of park maintenance which shall attend to such items as lawn maintenance, maintenance of buffer strips and open drainage ditches, parking area repairs, cleaning and maintenance of community service buildings, and whatever regular maintenance operations are required by the water supply system, sewage disposal system, and other services provided by the park. The proposed maintenance program shall be presented to the Town Planning Board at the time the special use permit is applied for under Section 808 of this Zoning Law and, once approved, a copy thereof filed with the Town Clerk and Zoning Enforcement Officer. A copy shall also be furnished to all residents of the park and posted in a conspicuous place in the park.

4. Responsibilities of Park Occupants

a. Park occupants shall comply with the provisions of this Zoning Law and other applicable ordinances, statutes and regulations and shall maintain their mobile home lot and improvements in good repair and in a clean and sanitary condition.

5. Temporary Living Units

No occupied recreational vehicle shall be permitted in a mobile home park except in compliance with Section 510. Unoccupied recreational vehicles shall be stored in areas designated for the storage of such units.

C. Mobile Home Park Special Use Permits

1. Annual Inspection

Pursuant to Section 708.D, the Zoning Enforcement Officer shall inspect at least annually the operation of a mobile home park to make sure it complies with the provisions of this Zoning Law and any and all conditions prescribed by the Planning Board when issuing the special use permit.

2. Compliance With Regulations

Before receiving a special use permit for a mobile home park, the owner thereof shall make an adequate showing that the subject property and proposed use comply with the provisions of this Article.

D. Non-conforming Mobile Home Park

A non-conforming Mobile Home Park may not be expanded as to the number of existing units. An existing unit maybe replaced for a new unit, provided it is installed in accordance with Section 601 D. If a lot is empty in a non-conforming Mobile Home Park it may be filled in accordance with Section 610 D.

ARTICLE VII **ADMINISTRATION AND ENFORCEMENT**

SECTION 701 **DUTIES OF THE ZONING ENFORCEMENT OFFICER**

The responsibility of enforcing the provisions of this Zoning Law and conditions placed upon Special Use Permits are hereby conferred upon the Zoning Enforcement Officer and his/her duly authorized assistants, who shall have the powers conferred upon them by this Zoning Law, those as may be reasonably implied there from and those powers conferred upon them by other applicable laws. The Zoning Enforcement Officer and duly authorized assistants shall be appointed by the Town Board and receive such compensation as determined by the Town Board. All references to duties and authority of the Zoning Enforcement Officer shall be deemed to also include any duly authorized assistants.

A. Violations and Written Orders

When the Zoning Enforcement Officer is advised by the Zoning Administration Officer that buildings or premises under construction are in violation of the provisions of this Zoning Law, or determines that any existing buildings or premises are in violation of the provisions of this Zoning Law, or any conditions attached, he/she shall issue a written notice of violation to the owner and/or other responsible party directing that said violation be remedied. Said written notice shall specify the nature of the violation found to exist, the remedy ordered, the time permitted for such remedial action, the penalties and remedies which may be invoked by the Town and the violator's rights of appeal.

B. Records

The Zoning Enforcement Officer shall maintain a permanent record of all matters considered and all actions taken by him/her. Such records shall form a part of the records of his/her office and shall be available for the use of the Town Board and other officials in the Town.

C. Monthly Report

The Zoning Enforcement Officer shall submit a monthly written report to the Town Board. Said report shall cite all actions taken by the Zoning Enforcement Officer including all complaints of violations received, all violations found by him/her, and any actions taken by him/her in connection with each such violation during the previous month. A copy of this monthly report shall also be provided to the Planning Board Chairperson and the Zoning Board of Appeals Chairperson. Any and all costs incurred by the Town, in its sole discretion, for review of Zoning and/or Permit Applications shall be borne by the Applicant, including but not limited to, Engineering, Legal, and other consultant fees. The Applicant shall be billed in a timely manner and shall reimburse the Town within 30 days of receipt of said bill.

SECTION 702 **DUTIES OF THE ZONING ADMINISTRATION OFFICER**

A. Applications and Permits

It shall be the duty of the Zoning Administration Officer, or his/her duly authorized assistants, to process applications and issue the permits required by this Zoning Law.

B. Inspection and Review

Except as otherwise specifically provided by law or regulation, or except as herein otherwise provided, the Zoning Administration Officer shall administer all of the provisions of laws and regulations applicable to the construction, alteration, repair, removal and demolition of buildings and structures, and the installation and use of materials therein and the location, use and occupancy thereof. He/she shall have the right to enter any building or premises with the consent of the owner, or by a court order, during reasonable hours in the course of his/her duties.

C. Revocation of Certificate of Compliance

On service of the above described written notice of violation issued by the Zoning Enforcement Officer, the Certificate of Compliance for such building or use shall be held null and void. A new Certificate of Compliance shall be required for any further use of such building or premises.

D. Records

The Zoning Administration Officer shall maintain a permanent record of all matters considered and all action taken by him/her during the previous month. Such records shall form a part of the records of his/her office and shall be available for the use of the Town Board and other officials of the Town. The records to be maintained shall include at least the following:

1. Application File

A separate, permanent file shall be established for each application for a permit required by this Zoning Law at the time said application is filed. Such file shall contain one (1) signed copy of the application and all supporting documents and plans, notations regarding pertinent dates and fees, etc., one (1) copy of any resolution and/or decision of the Planning Board and/or Board of Appeals adopted in connection with the application, and the date the permit applied for was issued or denied by the Zoning Administration Officer, together with a copy of such permit or denial.

2. Monthly Report

The Zoning Administration Officer shall submit a monthly written report for the Town Board. Said report shall cite all permits and certificates issued and denied. A copy of this monthly report shall also be provided by the Zoning Administration Officer to the Tax Assessor, Planning Board Chairperson and Zoning Board of Appeals Chairperson.

SECTION 703

CERTIFICATES AND PERMITS

The following certificates and permits are hereby established for the equitable enforcement and administration of the provisions of this Zoning Law.

A. Zoning Permit

The Zoning Administration Officer is hereby empowered to issue a zoning permit for any plans involving the construction or alteration of a building or structure or part of any building or structure including signs, or the change in use of any land, building or structure or part thereof, where he/she determines that such plans comply with the provisions of this Zoning Law. A zoning permit is not a building permit. An applicant may need both permits.

B. Temporary Use Permit

Upon written direction of the Planning Board, the Zoning Administration Officer is hereby empowered to issue a temporary use permit pursuant to Sections 51O.A.1.c and 708.B.4. Except as otherwise provided in Section 51O.A.1.c. and 601.C.1, a temporary use permit may only be effective for a consecutive period not exceeding twelve (12) months, and such permit may be extended by the Planning Board for an additional consecutive period not exceeding six (6) months.

C. Emergency Housing Permit

The Zoning Administration Officer is hereby empowered to issue a nonrenewable emergency-housing permit when a dwelling unit is rendered uninhabitable (e.g. fire, flooding, etc.), for a period not exceeding two years in conformance with Section 601.C.1.b.

D. Special Use Permit

The Zoning Administration Officer is hereby empowered to issue a special use permit when granted by the Planning Board as provided for in Section 708.

SECTION 704

APPLICATION PROCEDURES

A. Application

Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be affected, the size and location of all buildings or structures to be constructed, altered or extended as well as unaffected structures that shall remain, the intended use of each building or structure, the exact location of all utility and other easements

and rights-of-way and any other information with regard to the lot affected and neighboring lots as may be necessary for compliance with requirements of this Zoning Law. The applicant is solely responsible for the accuracy of all information, data and site plans submitted pursuant to this Zoning Law. Four (4) copies of the application, together with the layout sketch, shall be submitted. The Zoning Administration Officer shall carefully consider the application, layout sketch and any supporting documents for compliance with this Zoning Law and either issue or deny the zoning permit in a timely manner.

B. Issuance of Zoning Permit

The Zoning Administration Officer shall issue a zoning permit only after the site plan, if required, has been approved by the Planning Board and any required variances and/or special use permit have been obtained.

C. Installation of Foundation

The Zoning Administration Officer shall be notified when the site is prepared for installation of the foundation for any building or structure, and shall inspect the site to check the proposed location thereof.

D. Completion of Construction

A zoning permit shall expire if construction is not substantially completed within a period of one (1) year from the date of said permit. The Zoning Administration Officer may issue a six (6) month extension for good cause shown. Only two (2) such extensions shall be permitted.

E. Location of Permit

The zoning permit shall be located in a place readily visible to the public during the construction process.

SECTION 705 **FEES FOR PERMITS, AMENDMENTS, VARIANCES, SPECIAL USE PERMITS, SITE PLAN REVIEW AND PLANNED UNIT DEVELOPMENTS**

Fees may be charged for the processing of applications for the various permits, amendments, and variances required and/or permitted by the provisions of this Zoning Law together with site plan review and Planned Unit Developments. The fees shall be set by separate resolution of the Town Board and may be changed from time to time in the same manner. Any and all costs incurred by the Town, in its sole discretion, for review of Zoning and/or Permit Applications shall be borne by the Applicant, including but not limited to, Engineering, Legal, and other consultant fees. The Applicant shall be billed in a timely manner and shall reimburse the Town within 30 days of receipt of said bill.

SECTION 706 **CERTIFICATES OF COMPLIANCE**

No land shall be used, occupied or changed in use and no building hereafter erected, altered, or extended shall be used or changed in use until a Certificate of Compliance has been issued by the Zoning Administration Officer in accordance with the provisions of this Zoning Law.

SECTION 707 **ZONING BOARD OF APPEALS**

A. Organization

The Town Board shall appoint members to the Zoning Board of Appeals as authorized by the provisions of Section 267 of the Town Law. The Town Board shall also designate the Chairperson thereof. In the absence of a chairperson the Board of Appeals may designate a member to serve as Acting Chairperson. The present Board of Appeals consists of seven (7) members, any future changes by the Town Board to the number of members shall comply with the provisions of NYS Town Law Section 267 and/or any other applicable laws.

B. Meetings, Minutes and Records

Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals 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, decisions and other official actions.

C. Filing Requirements

Every rule, regulation, amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record.

D. Hearing Appeals

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the Zoning Enforcement Officer. The concurring vote of a majority of the entire Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer, or to grant a use or area variance. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire ZBA is necessary to override a County Planning Board recommendation of disapproval or approval with modification. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.

E. Time of Appeal

Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer or Town Clerk. The cost of sending or publishing any notice relating to such appeal shall be borne by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer, from whom the appeal is taken, certifies to the Board of Appeals, after notice of appeal shall have been filed with the Zoning Enforcement Officer, that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Enforcement Officer from whom the appeal is taken and undue cause shown.

F. Public Hearing Notice and Referrals

A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal. Such public hearing shall be advertised by publication in a paper of general circulation within the Town of a notice of such hearing at least five (5) days prior to the date thereof. When required by the provisions of Section 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.

At least thirty (30) days before the date of the public hearing unless such time limit is waived by the Planning Board, the secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing and all pertinent information for those appeals involving a use variance. The Planning Board shall inform the Zoning Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify no recommendation on the application.

The Zoning Board of Appeals shall send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an MDR or Residential District, or five hundred (500) feet when the involved property is located in any other district, at least ten (10) days before the date of the hearing.

G. Time of Decision

The Zoning Board of Appeals shall decide upon an appeal within sixty-two (62) days after the conduct of the public hearing. Prior to rendering its decision the Board shall first complete the SEQR process. Said time of decision may be extended by mutual consent of the applicant and Zoning Board of Appeals. All decisions shall be in writing stating the decision, the facts found and the reasons for the

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decision.

H. Filing of Decision and Notice

The decision of the Zoning Board of Appeals on an appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant by regular mail.

I. Permitted Action by the Zoning Board of Appeals

1. Interpretations, Requirements, Decisions and Determinations

The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determinations as in its opinion ought to have been made.

2. Use Variances

The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Administration Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this Zoning Law.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every use allowed under the zoning regulations for the particular district where the property is located:

a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

d. That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area Variances

The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Administration Officer, to grant area variances from the area or dimensional requirements of this Zoning Law.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

c. Whether the requested area variance is substantial;

d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and

e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of Conditions

The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

J. Solar Access

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Pursuant to Chapter 742 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Zoning Law the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

K. Rehearing

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reviewed may be made by any members of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

SECTION 708 **PLANNING BOARD**

A. Organization

The Planning Board shall consist of seven (7) members appointed by the Town Board as provided for in Section 271 of the Town Law. The Town Board shall designate a member of said Planning Board to act as chairperson thereof, and upon its failure to do so, the Planning Board shall elect a chairperson from its own members. The Planning Board shall elect such other officers as necessary to conduct its business.

B. Powers and Duties

1. Site Plan Review

Review of site plans in accordance with NYS Town Law Section 274-a as set forth in Subsection C of this Section, for any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings unless otherwise required by this Zoning Law (i.e. special use permit).

2. Special Use Permits

Granting of special use permits in accordance with NYS Town Law Section 274-b as set forth in this Zoning Law based upon the criteria set forth in Subdivision D.8 of this Section.

3. Review Use Variances

Review use variance applications referred to the Planning Board in accordance with Section 707.F and make a recommendation to the Zoning Board of Appeals.

4. Temporary Uses and Structures

Grant permits for temporary uses and structures only as follows.

a. Except as otherwise provided in Sections 510.A.1.c and 601.C.1, the Planning Board may direct the Zoning Administration Officer to issue a temporary use permit for a period of time not exceeding twelve (12) months, for incidental nonconforming uses and structures as follows:

(1) Temporary uses incidental to a construction project.

(2) Temporary real estate sales office incidental to a subdivision.

(3) Other similar temporary incidental uses which:

(a) Do not have a detrimental effect upon the lawful use of land and activities normally permitted in the district in question, and

(b) Contribute materially to the welfare and well-being of the Town.

b. Temporary use permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.

c. Temporary use permits may be reissued only once for an additional consecutive period not exceeding six (6) months.

C. Site Plan Review

The Planning Board, at a regular or special meeting, shall review and approve, approve with modifications, or disapprove a site plan in connection with any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings.

1. Notice and Public Hearing

The Planning Board may, in its sole discretion, hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for

site plan review is received by it and public notice thereof shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least ten (10) days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an MDR or Residential District, or five hundred (500) feet when the involved property is located in any other district, at least ten (10) days before the date of the hearing. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

2. Submission of Site Plan and Data

The applicant shall submit to the Town Clerk ten (10) copies of a site plan and supporting data in a form satisfactory to the Planning Board, including, but not limited to, the following information presented in graphic form and accompanied by a written text.

- a. Survey of property showing existing features, including contours, utility easements, large trees, buildings, structures, streets, rights-of-way, zoning and ownership of surrounding property.
- b. Layout sketch showing proposed lots, blocks, building locations and land use area.
- c. Traffic circulation, parking and loading spaces, and pedestrian walks.
- d. Landscaping plans including site grading, landscape design, open space and buffer zone.
- e. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.
- f. Preliminary engineering plans, street improvements, storm drainage, water supply, sanitary sewer facilities and fire protection
- g. Engineering feasibility study of any anticipated problem, which may arise from the proposed development, as required by the Planning Board.
- h. Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
- i. Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
- j. Together with any other information requested by the Planning Board.

3. Site Plan Review Criteria

The town Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:

- a. Harmonious relationship between proposed uses and existing uses.
- b. Maximum safety of vehicular circulation between site and street, including emergency vehicle access.
- c. Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.
- d. Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.
- e. Adequacy of municipal facilities to serve the proposal including streets, water supply and wastewater treatment systems, storm water control systems, and fire protection.

4. Area Variances

Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one (1) or more features which do not comply with the zoning regulations, applications may be made to the Zoning Board of Appeals for an area variance pursuant to NYS Town Law Section 274-a, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

5. Modifications and Conditions

The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making the changes or additions.

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.

6. Waiver of Requirements

The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

7. Reservation of Park Land on Site Plans Containing Residential Units

a. Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Planning Board or Zoning Law, a park or parks suitably located for playground or other recreational purposes.

b. Land for park, playground or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.

c. In the event the Planning Board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan, which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

d. Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to NYS Town Law Section 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of re-subdivision of such plat, nothing shall preclude the additional reservation of park land or money donated in lieu thereof.

8. Performance Bond or Letter of Credit as a Condition of Site Plan Approval

The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.

9. Performance Standards

In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may in its discretion reject any uses if it determines that insufficient evidence has been submitted to show compliance with these environmental standards. However, final responsibility for compliance with all environmental laws and regulations lies with the applicant.

10. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Article are submitted to the Town Clerk. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a site plan review is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

11. Changes and Revisions

Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

D. Special Use Permit

The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those, which are compatible with the general spirit of the Zoning Law if certain standards and conditions are met. Each such use is listed in this Zoning Law as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Law shall be followed and the Planning Board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the Planning Board as set forth in Paragraph 4 of this Subsection.

1. Application

Applications for special use permits shall be made in writing on the appropriate form obtained from the Zoning Administration Officer. Four (4) copies of each application, including site plan, shall be submitted to the Zoning Administration Officer, who shall review the application for completeness prior to forwarding it to the Town Clerk and the Planning Board. One (1) copy shall be retained by the Zoning Administration Officer. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this Zoning Law.

2. Area Variance

Where a proposed special use permit contains one (1) or more features which do not comply with the Zoning Law, application may be made to the Zoning Board of Appeals for an area variance pursuant to Section 274-b of Town Law, without the necessity of a decision or determination of the Zoning Administration Officer.

3. Notice and Public Hearing

The Planning Board shall hold a public hearing as part of the site plan review process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for a special use permit is received by it and public notice thereof shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least ten (10) days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an MDR *or* Residential District, or five hundred (500) feet when the involved property is located in any other district, at least ten (10) days before the date of the hearing. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

4. Conditions

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said special use permit, any such conditions must be met in connection with the issuance of the special use permit by the Zoning Administration Officer.

5. Waiver of Requirements

The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

6. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the public hearing. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a special use permit request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification.

All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

7. Abandonment of Special Use Permit

A special use permit shall expire when there occurs a cessation of such use or activity, for which said special use was originally issued, for a period of one (1) year. Upon evidence that a special use permit has been abandoned the Zoning Administration Officer shall issue a notice of abandonment to the owner of record for the property by registered mail. If after sixty (60) days the owner has not provided satisfactory proof that the special use did not cease, the Planning Board shall revoke the special use permit.

8. Standards Applicable for all Special Use Permits

The Planning Board may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards

and conditions contained elsewhere in this Zoning Law.

a. The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous and shall be in harmony with the orderly development of the district.

b. The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.

c. The proposed use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact on adjacent properties.

d. When a commercial or industrial special use abuts a residential property the Planning Board may find it necessary to require screening of sufficient height and density (i.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.

e. Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.

f. The proposed use shall meet the off-street parking and loading requirements of similar uses.

g. Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.

h. Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards.

i. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a minimum

j. A special use permit shall not be issued for a use on a lot where there is an existing violation of this Zoning Law unless the Planning Board determines in its sole discretion the special use permit resolves the existing violation.

k. As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.

l. In addition to the general standards for special permits as set forth herein, the Planning Board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements, it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this Zoning Law.

m. The above standards are not intended to apply to uses whose regulation has been preempted by the State or Federal government, i.e., mining.

9. Revocation of Special Use Permit

Revocation of a Special Use Permit may occur if its recipient fails to abide by its terms and conditions. The revocation procedure is as follows:

a. The Zoning Officer(s) shall notify the recipient, in writing, of any violations of Town codes or provisions of the Special Use Permit.

b. The recipient shall have thirty (30) days to correct all deficiencies to the satisfaction of the Zoning Officer(s).

c. If after thirty (30) days any deficiencies remain, the Zoning Officer(s) will then make a recommendation to the Planning Board for revocation of the Special Use Permit. If conditions warrant, additional time for compliance may be granted by the Planning Board.

d. The Planning Board, after holding a Public Hearing, is authorized to revoke a Special Use Permit by majority vote if compliance cannot be obtained.

SECTION 709 **VIOLATION AND PENALTY**

A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy, or change the use of, any building, structure, or land or part thereof in a manner not permitted by this Zoning Law or without the issuance of a valid zoning permit or certificate of compliance as required by this Law.

B. It shall be further unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.

C. Appearance Ticket - The Zoning Enforcement Officer may issue an appearance ticket to any person who fails to respond to a notice of violation and written order to correct the violation.

D. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, alteration, repair or use of any building, structure or land, to violate any of the applicable provisions of this Zoning Law, or any lawful order, notice, directive, permit or certificates issued or made hereunder.

E. Any violation of this Section and/or this Zoning Law shall be deemed an offense punishable by a fine and/or imprisonment as set forth in Section 268 of NYS Town Law. Each and every week such violation continues shall be deemed a separate and distinct violation.

F. The Zoning Enforcement Officer may, with permission of the Town Board, engage the Town Attorney or any other attorney approved by the Town Board to initiate legal action to enforce provisions of this Zoning Law.

G. In addition to the foregoing remedies, the Town of Pembroke and/or its appropriate officials and authorities may maintain an action for injunction to restrain, correct or abate any violation of this Zoning Law and/or maintain an action at law for damages sustained as a result of any violation of this Zoning Law and/or seek any other remedy permitted by law including Town Law Section 268. Damages shall include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

SECTION 710 **COMPLAINT OF VIOLATION**

Whenever a violation of this Zoning Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, signed, and shall be filed with the Zoning Enforcement Officer who shall properly record such complaint, investigate it and take appropriate action in a timely manner.

SECTION 711 **STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)**

A. The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above mentioned activities.

B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Town is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified as follows.

Zoning Text Amendment	Town Board
Zoning District Amendment	Town Board
Special Use Permits	Planning Board
Zoning Permit (if necessary)	Planning Board
Site Plan Review	Planning Board
Variances (if necessary)	Zoning Board of Appeals

When a project involves two (2) or more separate zoning actions, the board (agency) having final (last) approval would typically be the lead agency. Nothing in this Section shall be interpreted to override

the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

C. The SEQR process may extend the various procedural time limits set forth throughout this Zoning Law. For those actions taken under this Zoning Law subject to SEQR all time frames and deadlines otherwise set forth in this Zoning Law may be delayed until a Determination of Significance has been made and, if required, a Draft Environmental Impact Statement has been filed. An application is not complete, and, therefore, the review clock does not start, until a Determination of No Significance (Negative Declaration) has been made or until a Draft Environmental Impact Statement has been filed.

ARTICLE VIII **AMENDMENTS**

SECTION 801 **INITIATING AMENDMENTS**

A. Initiating Amendments

The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Zoning Law.

B. Petitions

Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner, filed in triplicate with the Town Clerk, and shall be accompanied by the required fee.

C. State Environmental Quality Review (SEQR)

Amendments of the Zoning Law may be subject to the State Environmental Quality Review process (SEQR). The Town Board should identify the type of action said zone change constitutes under SEQR regulations. Depending on the size of the zone change and several other factors it may be a TYPE I or an UNLISTED action. To make a decision, the Town Board should consult Part 617 of Article 8 of Environmental Conservation Law (New York).

If it is determined that an environmental impact statement needs to be prepared for the proposal in question, all time frames and deadlines otherwise set forth in this Zoning Law shall be delayed until a draft environmental impact statement has been filed. An application is not complete, and, therefore, the review clock does not start, until a determination of no significance has been made or until a draft environmental impact statement is completed.

SECTION 802 **REFERRAL OF PROPOSED AMENDMENTS TO THE TOWN
PLANNING BOARD AND COUNTY PLANNING BOARD**

A. Referral to Town Planning Board

All proposed amendments other than those requested by the Planning Board shall be referred to the Planning Board for its recommendation thereon. The Planning Board shall submit its report prior to the public hearing. Failure of the Planning Board to report within the required time shall be deemed to be approval of the proposed amendment.

B. Referral to County Planning Board

Where required by Section 239 (m) of the Town Law or other applicable statute a proposed amendment shall be referred to the Genesee County Planning Board, which Board shall report its recommendations to the Town Board within thirty (30) days from the date of such referral. Failure of the Genesee County Planning Board to report within said period shall be deemed an approval of the proposed amendment by the said Board. In the event that the Genesee County Planning Board disapproves the amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such contrary action.

SECTION 803 **HEARING ON PROPOSED AMENDMENT**

Before adopting any amendments to this Zoning Law the Town Board shall give notice of a public hearing thereon to such persons and in such manner as required by Section 264 of Town Law or other applicable law and shall hold a hearing thereon pursuant to such notice.

SECTION 804 **PETITION PROTESTING AMENDMENT**

In case of a protest against such change signed by the owners of twenty (20) per cent or more, either of the land included in such proposed change, or of the land immediately adjacent thereto and extending one hundred (100) feet there from or of the land directly opposite thereto, and extending one hundred (100) feet, from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the Town Board.

SECTION 805 **PERIODIC REVIEW BY PLANNING BOARD**

From time to time, at intervals of not more than three (3) years, the Planning Board shall reexamine the provisions of this Zoning Law and the location of district boundary lines, and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

ARTICLE IX **LEGAL STATUS PROVISIONS**

SECTION 901 **PROVISIONS ARE MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this Zoning Law shall be considered as the minimum requirements to promote and protect public health, safety, comfort, convenience, prosperity, and other aspects of the general welfare, and in particular:

- A. To promote the purposes set forth in the preamble to this Zoning Law and in the statements of legislative intent for the respective districts or groups of districts.
- B. To provide a gradual remedy for existing conditions which are detrimental thereto.

SECTION 902 **CONFLICT WITH OTHER LAWS**

Whenever any provision of this Zoning Law, or any other law, ordinance, or resolution of any kind, impose overlapping or contradictory regulations over the use of the same land, or over the use, location or size of certain buildings or other structures, or contain other restrictions covering the same subject matter, the provisions which are more restrictive or impose higher standards or requirements shall govern.

SECTION 903 **EXISTING ZONING PERMITS**

In all cases where:

- A. A zoning permit has previously been lawfully issued for the proposed construction of a new building or other structure, or for an enlargement or alteration of an existing building or other structure which requires the construction or extension of a foundation, and
- B. The adoption of this Zoning Law or any amendment thereto, would make such new, extended or altered building or structure nonconforming, such construction may nevertheless continue in accordance with said zoning permit and a certificate of compliance may be issued for such nonconforming building or structure.

SECTION 904 **NEW YORK STATE UNIFORM FIRE PREVENTION
AND BUILDING CODE**

No provision of this Zoning Law shall be construed to repeal, modify or constitute an alternative to the New York State Uniform Fire Prevention and Building Code (referred to as the Uniform Code). Town residents and other persons using this Zoning Law should make sure they refer to the Uniform Code and the Town of Pembroke Code Enforcement Officer to determine its applicability to their specific project.

SECTION 905 **EXISTING PRIVATE AGREEMENTS**

This Zoning Law is not intended to abrogate or annul any easement, covenant, or any other private agreement.

SECTION 906 **SEPARABILITY CLAUSE**

It is hereby declared to be the legislative intent that, if any provision or provisions of this Zoning Law or the application thereof to any building or other structure, or tract of land, are declared by a court of competent jurisdiction to be invalid or ineffective in whole or in part, or to be inapplicable to any person or situation, the effect of such decision shall be limited to the provision or provisions which are expressly stated in the decision to be invalid or ineffective, or the zoning lot, building or other structure, or tract of land immediately involved in the controversy. All other provisions of this Zoning Law shall continue to be separately and fully effective, and the application of any such provision to other persons or situations shall not be affected.

SECTION 907 **REPEALER**

The ordinance entitled "The Zoning Ordinance for the Town of Pembroke," adopted on February 8, 1978, together with all changes and amendments thereto, are hereby repealed and declared to be of no effect.

SECTION 908 **EFFECTIVE DATE AMENDMENTS**

This Zoning Law was originally adopted by the Pembroke Town Board on December 30, 1991, and has subsequently been amended as set forth in records on file at the Pembroke Town Clerk's Office.

ARTICLE X

INCENTIVE ZONING

SECTION 1001

PURPOSE AND INTENT

The purpose and intent of these provisions are to offer incentives to applicants who provide amenities that assist the Town to implement specific physical, cultural and social policies in the Comprehensive Plan as supplemented by the local laws and ordinances adopted by the Town Board.

SECTION 1002

DISTRICTS DESIGNATED FOR INCENTIVES

All zoning districts are designated as eligible for zoning incentives. Incentives may be offered to applicants who offer an acceptable amenity to the Town in exchange for the incentive.

SECTION 1003

AMENITIES FOR WHICH INCENTIVES MAY BE OFFERED

A. The following amenities may be either on or off the subject application:

- (1) Affordable housing
- (2) Passive and active open space and related improvements
- (3) Parks
- (4) Child-care or elder-care facilities
- (5) Utilities
- (6) Road improvements
- (7) Health or other human-service facilities
- (8) Cultural or historical facilities
- (9) Other facilities or benefits to the residents of the community
- (10) Any combination of amenities and/or cash in lieu of any amenity(ies)

B. These amenities shall be in addition to any mandated requirements pursuant to other provisions of the Zoning Law.

SECTION 1004 INCENTIVES PERMITTED

The following incentives may be granted by the Town Board to the applicant on a specific site:

- A. Decreases in required minimum lot sizes
- B. Changes of use or zoning classifications
- C. Changes in setbacks or height
- D. Reduction to open space
- E. Any other changes in the provisions of the Zoning Law.

SECTION 1005 CRITERIA AND PROCEDURE FOR APPROVAL

A. Applications for incentives in exchange for amenities shall be submitted to the Town Board in order to preliminarily evaluate the adequacy of amenities to be accepted in exchange for the requested incentive, the following information shall be given by the applicant:

- (1) The requested incentive.
- (2) The proposed amenity.
- (3) The cash value of the proposed amenity.
- (4) A narrative which:
 - a. Describes the benefit to be provided to the community by the proposed amenity.
 - b. Gives preliminary indication that there is adequate sewer, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and amenity, if it is an on-site amenity, may place on these facilities beyond the demand that would be placed on them as if the district were developed to its fullest potential.
 - c. Explains how the amenity helps implement the physical, social or cultural policies of the Comprehensive Plan as supplemented by the local laws and ordinances adopted by the Town Board.

B. The Town Board shall review the proposal and inform the applicant whether or not the proposal is worthy of further consideration. If it is deemed worthy of further consideration, the applicant may then submit two (2) sketch plans to the Planning Board.

(1) The first sketch plan

a. The first sketch plan shall show how the site will be developed, with the amenity, if it is on-site, and the incentive. In addition to meeting the requirements of the Zoning Law for Site Plan Review, the plan shall also show existing development, property owners' names and tax account numbers for all property within 200 feet of the property lines of the proposed project or such other distance as specified by the Town Board.

b. If the incentive will result in a setback or open space reduction, the drawing shall show this reduction in relation to the principal structures on-site and on adjacent properties, as well as property line locations.

(2) The second sketch plan should meet the requirements of the Zoning Law for Site Plan Review; show existing development, property owner's names and tax account numbers for all properties within 200 feet of the property lines of the project site or such other distance as specified by the Town Board; but shall only show how the site would be developed exclusive of any amenity or incentive.

(3) The applicant shall also submit such additional information and plans as may be required by the Planning Board, including such additional information and plans as may be required under other sections of the Zoning Law, which, in its judgment, are necessary in order to perform a thorough evaluation of the proposal.

C. The Planning Board will review the proposal and report to the Town Board with its evaluation of adequacy with which the amenity(ies)/incentive(s) fit the site and the relation to adjacent uses and structures. The Planning Board's review shall be limited to the planning design and layout considerations involved with the project review or such other issues as may be specifically referred by the Town Board. The Planning Board's report shall be submitted to the Town Board within 70 days from the date of the Planning Board meeting at which the proposal is first placed on the agenda. This time period may be exceeded/suspended upon the consent of the applicant or for good cause by the Town Board.

D. The Town Board will review the Planning Board's report. The Town Board will notify the applicant as to whether it is willing to further consider the proposal. If the Town Board decides to further consider the proposal, it shall hold public hearing. For Town Board public hearings on incentive zoning requests, the Town Clerk shall give notice of the hearing at least five (5) days prior to the date of the hearing.

E. All applicable requirements of the State Environmental Quality Review (SEQR) Act shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sewer, water, transportation, waste disposal and fire protection facilities to:

(1) First, serve the remaining vacant land in the district as through it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal: and

(2) Then, serve the on-site amenity and incentive, given the development scenario in subsection E (1) above.

F. Following the hearing and in addition to compliance with all SEQR requirement, the Town Board shall, before taking action, refer to the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other town Boards and officials for review and comment.

G. In order to approve and amenity/incentive proposal, the Town Board shall determine that the proposed amenity provides sufficient public benefit to provide the requested incentive. In no circumstances, however, shall the Town Board be compelled to approve any amenity/incentive proposal and it may deny any such proposal in its sole and absolute discretion. The Town Board may also impose such conditions upon its approval, as it may deem appropriate to promote the health, safety and welfare of the community.

H. Following the approval by the Town Board, the applicant may proceed to apply for any additional permits or approvals as may be required by the Zoning Law or Ordinance or any other law or regulation, including, where appropriate, site plan approval under the Zoning Law. No such additional permit or approval by any board or agency of the Town shall materially alter any condition imposed by the Town Board under Paragraph G thereof and, in the event that any permit or approval by any agency outside the Town materially alters any such condition, the project may not proceed until any unless the Town Board approves of the modification.

SECTION 1006 **CASH PAYMENT IN LIEU OF AMENITY**

If the Town Board finds that a community benefit is not suitable on site or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified prior to the acceptance of the funds. Cash payments shall be made prior to the issuance of a building permit. Cash payments in lieu of amenities are not to be used to pay general and ordinary town expenses.

ADDENDUM A

The Recycling Operations Code of the Town of Pembroke (Local Law No. 2 of the Year 1985)

SECTION 1 TITLE

This local law shall be known as “The Recycling Operations Code of the Town of Pembroke, New York”.

SECTION 2 LEGISLATIVE INTENT

By enactment of this local law, the Town of Pembroke declares its intent in so doing to regulate, control and license the activities or businesses known as recycling operations or junkyards, including, but not limited to, motor vehicle “graveyards,” second-hand parts collection areas, the processing of second-hand or used metals, wooden products or other materials of whatsoever composition for resale, or the dumping or storage of second-hand or used materials of whatsoever composition for resale or otherwise.

The town board hereby declares that such activities or businesses may constitute a hazard to property and persons thereby creating a public nuisance. Such materials are often highly inflammable and explosive, and motor vehicles in this state or condition can also constitute attractive nuisances to children and adults. The presence of recycling operations or junkyards also tends to detract from a wholesome and attractive environment and often lessens the value of the surrounding lands and properties unless such areas are properly maintained and operated.

SECTION 3 DEFINITIONS. (As used in this local law.)

- (a) The term “person” shall mean an individual, an association, a partnership, or a corporation
- (b) The term “motor vehicle” shall mean all vehicles propelled or drawn by power, other than muscular power, originally intended for use on public highways.
- (c) The term “junkyard” shall mean any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or second-hand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts there-from or for the purpose of reclaiming for use some or all of the materials therein, whether metal, galas, fabric or otherwise, or for the purpose of disposing of the same or for any other purpose; such term shall not include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles, which taken together do not equal in bulk tow motor vehicles; such term shall also include second-hand parts collection areas, or areas for the processing or recycling of second-hand or used metals, wooden products or other materials of whatsoever composition for resale or areas for the dumping or storage of second-hand or used materials of whatsoever composition for resale or otherwise.

- (d) The term “town” shall mean Town of Pembroke, New York.
- (e) The term “town board “ shall mean the Town Board of the Town of Pembroke, New York.
- (f) The term “town clerk” shall mean the Town Clerk of the Town of Pembroke, New York.
- (g) The term “zoning enforcement officer” shall mean the Zoning Enforcement Officer of the Town of Pembroke, New York.

SECTION 4 LICENSE REQUIRED.

No person shall engage in or conduct a junkyard on real property within the town, either for himself or for and on behalf of an person directly or indirectly as agent, employee or otherwise without first obtaining a temporary license or a license and then reapplying and obtaining a renewal thereof as hereinafter provided.

SECTION 5 APPLICATION FOR LICENSE

Each applicant shall fill out and execute under oath an application for a license to operate a junkyard within the town which application shall be supplied by the town clerk.

- (a) Said application shall include the following information: Name, age, address and citizenship of applicant, any record applicant has of convictions for any type of larceny or receiving of stolen goods, a description of the exact type of business he intends to conduct and its location, the nature of materials he intends to handle, estimated number of employees, names and addresses of the owner or owners of the land, and nature of his right of occupancy, whether by lease, ownership, or otherwise.
- (b) At the time of making such application, the applicant shall submit to and file with the town clerk a map or plan of the property upon which he intends to conduct the junkyard, the specific area on such real property which he proposes to use for such purpose, showing the location and type of the visual barrier proposed by him and the location of any buildings thereon, the location of any streets or highways abutting or passing through such real property and the location of any water, sewer, gas mains, water drainage tiles and ditches as well as the general drainage pattern of such real property.
- (c) In signing the application, the applicant shall agree that if granted the license, he will conduct the junkyard pursuant to the regulations hereinafter set forth, and upon his failure to do so, such license may be revoked by the town board in accordance with the procedures set forth in Section 6 (f) herein.
- (d) A hearing on the original application filed by an applicant shall be held before the town board on the first Monday of the months of February, May, August, and November of each year or at such other time as determined by the town board. Applications must be received twenty-one (21) days prior to the date of the hearing. At least two (2) weeks’ notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address set forth in the

application and shall be published once in the newspaper having a general circulation within the town, which publication shall not be less than seven (7) days before the date of the hearing. Hearings on subsequent annual applications filed by the same applicant shall be held at the discretion of and at a time fixed by the town board, and in accordance with the notice provisions hereinabove specified..

i. License Requirements.

At the time and place set for such hearing the town board shall hear the applicant and all other persons wishing to be heard on the application for a license to operate, establish or maintain a junkyard. In considering such application, the town board shall take into account the suitability of the applicant with reference to his ability to comply with the visual barrier requirements hereinafter set forth, or other reasonable regulations required by it concerning the proposed junkyard, to any record of convictions the applicant has for any type of larceny or receiving stolen goods,, and to any other matter within the purpose of this section.

ii. Location Requirements.

In passing upon the same, the town board shall take into account after proof of legal ownership or right of the applicant to use such real property for the license period, the nature and development of the surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke or other causes.

iii. Aesthetic Considerations

At the hearing, the town board may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the general welfare of its citizens by considering whether or not the proposed location can be reasonable protected from having an unfavorable effect thereon. In this regard, the town board may consider collectively the type of roads servicing the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed junkyard to establish residential as well as the reasonable availability of other suitable sites for the junkyard.

iv. Other Laws

The town board must also determine if said junkyard complies with the town's zoning regulations and other applicable local, state and federal laws, rules and regulations including regulations covering nonconforming, pre-existing uses.

(e) Grant or Denial of Application

After such hearing or consideration of subsequent applications without a hearing the town board shall, within two (2) weeks, make a finding as to whether or not the application or reapplication should be granted, giving notice of their finding to the applicant by registered mail, return receipt, to the address set forth in the application.

SECTION 6 THE LICENSE

- (a) The fee for the license is hereby filed in the sum of Fifty and 00/100 Dollars (\$50.00) and shall be paid at the time of filing the application with the Town Clerk. The sum covers both the cost of issuing the license itself and the cost of making the necessary inspections of the premises to ascertain compliance with the regulations hereinafter set forth. It is nonrefundable.
- (b) Upon approval of the application by the town board, the town clerk shall issue a license to the applicant.
- (c) Such license shall be placed and at all times displayed in a conspicuous location at the licensee's place of business.
- (d) Such license shall be effective from the date of its issuance until the 1st day of September of the year of such issuance, or the following year if issued after April 1st. Anew application for a license must be made annually if the licensee desires to continue the operation of said junkyard.
- (e) Such license is personal with the licensee. It does not go with the title of the real property, nor may it be sold, assigned, transferred, or otherwise disposed of. In any of these instances, a new application must be filed and the above-described fee paid.
- (f) Such license may be revoked by the town board after a public hearing of which the licensee shall have notice and an opportunity to be heard. Upon the revocation of a license, the town board may require the removal of autos, parts, and other materials situate at such junkyard. Such items shall also be removed at the discretion of the town board in the case of an applicant who is denied a license to operate a junkyard.

SECTION 7 ENFORCEMENT

This local law shall be enforced by the zoning enforcement officer. No license for a junkyard shall be issued except in compliance with the provisions of this local law together with any other applicable laws whether local, state or federal.

SECTION 8 REGULATIONS

- (a) The licensee shall personally manage or be responsible for the management of the junkyard for which the license is granted.
- (b) The licensee shall maintain an office and a sufficient number of employees on the premises to assure the proper and safe conduct of the junkyard so as to minimize the fire hazard therefrom and to prevent unreasonable trespass thereon by children or adults.

- (c) The said junkyard shall be surrounded by a visual barrier as follows:
 - (i) A non-see-through fence of at least eight (8) feet in height shall be erected along those sides of the junkyard bordering on a public highway, which fence shall be the parallel thereto and not nearer than fifty (50) feet from said highway right-of-way.
 - (ii) Those sides of the junkyard not bordering on a public highway shall be enclosed either by a fence of the type described in paragraph “i” above, or some other type of visual barrier which substantially screens said junkyard from the public view and does not contain spaces through which children or adults can readily enter the junkyard area.
 - (iii) Where topography, natural growth of timber, or other considerations accomplish the purposes of this paragraph in whole or in part, the fencing requirements set forth in paragraph “i” and “ii” may be reduced by the town board, upon granting the license, provided, however, that such natural barrier conforms with the purposes of this local law.
- (d) The licensee shall maintain roadways for adequate fire protection.
- (e) The junkyard shall be locked by a secure gate after business hours.
- (f) The area of the junkyard shall not be used as a dump area or as a place for burning and disposal of junk or trash.
- (g) No equipment such as cranes, bulldozers, high-lifts, etc., shall be parked outside of the junkyard area. Trucks loaded with material for transport or any other reason shall also not be parked outside of the junkyard area for a period not to exceed twenty-four (24) hours.
- (h) The zoning enforcement officer, or his agent, shall be granted access to the junkyard area at all reasonable hours for the purpose of inspection.
- (i) An inspection by the zoning enforcement officer shall be made within one week after an application for a license to operate a junkyard has been submitted to the town clerk.

SECTION 9 VIOLATION OF LOCAL LAW CONSTITUTES AN OFFENSE; PENALTIES THEREFOR.

- (a) The owner or licensee of any junkyard who commits or permits any acts in violation of any of the provisions of this local law shall be deemed to have committed an offense against such local law and, if convicted thereof, shall be liable for each such violation and/or the penalties assessed therefore. Each week any violation continues or is permitted to exist, shall constitute a separate violation.
- (b) For each violation of this local law, the person liable therefore, shall be subject to a fine of not more than One Hundred and 00/100 dollars (\$100.00) or imprisoned

for a period not exceeding fifteen (15) days, or by both such fine and imprisonment.

- (c) A conviction for violation of Section “8” of this local law shall, at the discretion of the town board, constitute and effect an immediate forfeiture of the license to operate a junkyard, without prejudice to the licensee thereafter reapplying for such license upon correcting said violation.
- (d) In addition to the above-mentioned penalties and punishment, the town board may also maintain an action or proceeding in the name of the town, in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this local law.
- (e) In lieu of, or in addition to, proceeding in accordance with subparagraphs “(a)” through “(d)” above, the town board and the licensee may agree to an appropriate schedule or timetable to bring the junkyard into compliance with the provisions of this local law.

SECTION 10 ESTABLISHED JUNKYARDS: TEMPORARY LICENSES

Any person currently operating a junkyard on real property located within the town shall apply for a license therefore within thirty (30) days after the effective date of this local law, in accordance with the application and hearing provisions of SECTION “5” herein. If the junkyard presently complies with the regulations set forth in SECTION “8” herein, the town board shall issue a license therefore. If, however, the junkyard does not comply with the regulations of said section, the town clerk shall issue a temporary license for period of three (3) months, which license shall be renewable for three (3) additional such periods. The licensee shall utilize such period(s) of time so as to arrange his place of business to comply with the provisions of said section. If, at the end of said temporary license period(s) the person has not so complied, he shall immediately discontinue the operation of said junkyard, and at the discretion of the town board remove any autos, parts, or other materials located thereat and involved in said junkyard business.

In the event that a junkyard business is sold, assigned, transferred, or otherwise disposed of, the town board may, without a hearing, extend a temporary license to the new owner for a period not to exceed sixty (60) days pending a final determination of said new owner’s license application submitted in the manner set forth in SECTION “5” herein.

SECTION 11 PETITION FOR REVIEW AND COMPLIANCE

Any resident of the town may petition the zoning enforcement officer to enforce the provisions of this local law against any licensee violating the same. Such petition must allege such violation and be signed by the person alleging the same. Upon receipt of such signed petition, the zoning enforcement officer shall take all actions necessary to investigate the allegations contained therein and enforce the terms of this local law so that said junkyard business is in compliance with the terms and requirements thereof.

SECTION 12 **JUDICIAL REVIEW**

Any applicant for a licensee or existing licensee aggrieved by any final determination of the town board may petition to have such determination reviewed under Article 78 of the New York Civil Practice Law and Rules.

SECTION 13 **OTHER LAWS**

Unless otherwise specified therein, compliance with the provisions of this local law shall not preclude, or otherwise operate to excuse compliance with, the requirements of other applicable local, state, and/or federal laws including, but not limited to, zoning regulations of the Town of Pembroke.

SECTION 14 **SAVING CLAUSE**

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by a court to be invalid, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which such judgment shall have been rendered.

SECTION 15 **EFFECTIVE DATE AND REPEAL**

This local law shall take effect immediately upon filing with the Secretary of State in accordance with Section 27 of the New York Municipal Home Rule Law. The existing Junkyard Ordinance of the Town of Pembroke is hereby repealed.

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ADDENDUM B

TOWN OF PEMBROKE LOCAL LAW NO. 3 OF 2003 TOWN OF PEMBROKE LAND SEPARATION LOCAL LAW

ARTICLE I PURPOSE

This Local Law is enacted by the Town Board of the Town of Pembroke pursuant to the provisions of Section 10 of Municipal Home Rule Law to regulate the division of land into individual lots, when such divisions of land fail to meet the threshold for review as a subdivision as set forth in the Town of Pembroke Land Subdivision Regulations. It is declared to be the policy of the Town of Pembroke to consider land separations as part of a plan for the orderly, efficient, and economical development of the Town. This means, among other things, that lots created by land separations shall be of such character that they can be used safely for building purposes without danger to health, or peril from fire, flood, or other menace; that proper provision shall be made for drainage, water supply, wastewater treatment, and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in compliance with the Town of Pembroke Zoning Law and in harmony with the development pattern of the neighboring properties.

ARTICLE II TITLE

This Local Law shall be known as "the Town of Pembroke Land Separation Local Law"

ARTICLE III DEFINITIONS

Clerk of Planning Board: The individual appointed by the Pembroke Town Board.

Formal Offer to Sell: Any offer to sell land, which involves a form of public offering including but not limited to real estate listings, auction listings, media advertising (printed, radio, television, etc.) or use of signs.

Land Separation: Any division of land into four or fewer lots within a three-year period, where all such developable lots or parcels: (1) front on an existing public street, (2) do not require the extension of municipal facilities, and (3) comply with all the area requirements (i.e., lot width, lot area, etc.) set forth in the Zoning Law or have received all necessary area variances. Any division of agricultural land for the purpose of continued agricultural use shall be considered a land separation and subject to the Town of Pembroke Land Separation Local Law. The three-year period shall commence running upon the final approval by the Planning Board of the first application to divide the original parcel. Public acquisitions by purchase of strips of land for the widening or opening of streets, or for the installation or construction of municipal facilities, shall not be included within this definition nor subject to these regulations. Land separation shall also include the division of land to allow the transfer of property between adjacent parcels, provided nonconforming lots or parcels are not created, no existing degree of nonconformity is increased and the proposed division does not involve the alteration of lot lines or dimensions of any lots or sites shown on a subdivision plat previously approved and filed with the County Clerk. Land separations shall be processed in compliance with the Town of Pembroke Land Separation Local Law unless the Planning Board deems it necessary for the

protection of public health, safety, and welfare (i.e. storm water drainage, topography, etc.) that a land separation be processed as a subdivision.

Lot: A parcel of land intended for transfer of ownership or site development, that is presently occupied or capable of being occupied by a principal building or use and uses accessory to the principal building or use.

Municipal Facility: Facilities operated by either a municipality or governmental agency for the provision of potable water; collection, treatment and/or disposal of waste water; lighting, stormwater and/or erosion control; or provision of/for transportation (streets, highways, etc.).

Property Owner: The owner of the property subject to the proposed land separation, or his/her duly authorized representative (such authorization shall be provided in writing).

Subdivision: Division of land into lots that is not considered a land separation as defined herein. Subdivisions shall include, but are not limited to the division of land into five or more lots in a three year period, or division into any number of lots when such lots: (1) do not front on an existing public street, or (2) require the extension of municipal facilities. This definition shall apply when land is divided for the purpose, whether immediate or future, of transfer of ownership or development, and shall include re-subdivision. Once the division of land is determined to be a subdivision, the Town of Pembroke Subdivision Regulations shall apply to all such lots, including any previous lots divided within the prior three year time period, regardless of whether said lots have been sold singly or collectively. The three-year period shall commence running upon the final approval by the Planning Board of the first application to divide the original parcel. Public acquisitions by purchase of strips of land for the widening or opening of streets shall not be included within this definition nor subject to said subdivision regulations. Once a subdivision has been created, any subsequent division of lots from the original tract of land, irrespective of when such division(s) occurs, shall be subject to review as a subdivision, unless such proposed lot(s) are greater than one-half mile from any point on the boundary lines of a lot(s) created by a previous subdivision.

Zoning Law: The officially adopted Zoning Law of the Town of Pembroke together with all amendments thereto.

ARTICLE IV **PROCEDURE**

Whenever any land separation is proposed, before any formal offer to sell any lots in such land separation, or any other part thereof, is made, and before any contract for sale is executed by the property owner, the property owner shall submit a sketch plan and obtain written approval of such sketch plan in accordance with the procedures set forth in Section 1, 2 and 3 of this Article. Before any land is transferred or any permit for the erection of a structure is issued for such land, final authorization of said land separation shall be obtained as set forth in Section 4 of this Article.

SECTION 1 **SUBMISSION OF SKETCH PLAN**

A property owner shall, prior to undertaking a land separation, submit to the Clerk of the Planning Board at least seven days prior to any regular meeting of the Board, a completed application for and eight copies of a Sketch Plan of the proposed land separation. The Sketch Plan shall show: (1) The entire parcel being divided, proposed lot lines, and (2) Any existing easements, deed restrictions or covenants affecting the property. At that time, the property owner shall also pay the Land Separation fee established by separate resolution of the Town Board.

SECTION 2 **REQUIREMENTS AND CLASSIFICATION**

The property owner shall attend the meeting of the Planning Board to discuss his/her proposal as set forth in the Sketch Plan. Classification of the Sketch Plan will be made at this time by the Planning Board as to whether the proposal qualifies as a land separation, or must be processed as a subdivision. When it deems necessary for protection of the public health, safety and welfare, the Planning Board may require a land separation to be processed as a subdivision in compliance with the Town of Pembroke Land Subdivision Regulations.

SECTION 3 **PLANNING BOARD PRELIMINARY DECISION**

The Planning Board shall review the Sketch Plan to determine whether it meets the purpose of these regulations as set forth in Article I. Prior to rendering its preliminary decision, the Planning Board shall first complete the SEQR (State Environmental Quality Review) process. The Planning Board shall, where it deems necessary, make specific recommendations in writing to be incorporated by the applicant into the proposal prior to submitting it for final authorization. When deemed necessary by the Planning Board, the applicant may be required to resubmit his/her revised proposal for review by the entire Planning Board prior to submitting it for final authorization.

SECTION 4 **FINAL AUTHORIZATION**

Within 180 days of Planning Board approval, the property owner shall provide the Planning Board Chairperson, or his/her designee, three prints of a property survey prepared by a NYS Licensed Land Surveyor. This survey shall meet all the recommendations made by the Planning Board relative to the sketch plan. Upon determination that the survey complies with the Planning Board's recommendation, the Chairperson, or other duly designated Officer of the Planning Board, will sign the application and provide the property owner with a copy of such application. Failure of the property owner to submit the required survey documentation to the Planning Board Chairperson, or his/her designee, within the 180-day time period will render the Planning Boards approval null and void.

SECTION 5 **FILING OF SURVEY(S) WITH COUNTY CLERK**

Within sixty (60) days of obtaining final authorization from the Planning Board Chairperson, or his/her designee, the property owner shall file the survey(s) at the Genesee County Clerk's Office. Failure of the property owner to file such documentation with the Genesee County Clerk within the specified time period will render both the Planning Board's approval and final authorization null and void.

ARTICLE V **WAIVERS OR MODIFICATIONS**

Where the Planning Board finds that special circumstances exist in a proposed Land Separation, it may waive or modify specific requirements of this Local Law, subject to appropriate conditions, provided that such waiver or modification shall not have the effect of nullifying the intent and purpose of the Town of Pembroke Land Separation Local Law, Subdivision Local Law, Zoning Law, Comprehensive Plan, or any existing master plan and official map. In granting said waivers or modifications, the Planning Board may require such conditions as will, in its' judgment, substantially secure the objectives of the standards or requirements so waived or modified.

ARTICLE VI **FEES**

The Town of Pembroke has a Fee Schedule on file at the Town Clerk's Office. Copies of this Schedule are available and any fees due the Town must be paid in full before approvals are considered.

ARTICLE VII **VIOLATION AND PENALTY**

- A. Any violation of this Local Law shall be deemed an offense punishable by a fine and/or imprisonment as set forth in Section 268 of NYS Town Law. Each and every week such violation continues shall be deemed a separate and distinct violation.

- B. It shall be further unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.

- C. Appearance Ticket - The Zoning Enforcement Officer may issue an appearance ticket to any person who fails to respond to a notice of violation and written order to correct the violation.

- D. The Zoning Enforcement Officer may, with permission of the Town Board, engage the Town Attorney or any other attorney approved by the Town Board to initiate legal action to enforce provisions of this Local Law.

- E. In addition to the foregoing remedies, the Town of Pembroke and/or its appropriate officials and authorities may maintain an action for injunction to restrain, correct or abate any violation of this Local Law and/or maintain an action at law for damages sustained as a result of any violation of this Local Law and/or seek any other remedy permitted by law including Town Law Section 268. Damages shall include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

ARTICLE VIII

SUPERSEDING AND REPEALER CLAUSE

All applicable statutes, laws and local ordinances; in conflict with the provisions of this Local Law, including Sections 276 and 277 of New York State Town Law, are hereby superseded to the extent necessary to give this Local Law full force and effect.
Town of Pembroke Local Law No. 1, of 1992 is hereby repealed.

ARTICLE IX

EFFECTIVE DATE

This Local Law shall take effect immediately upon its filing with the New York State Secretary of State.

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ADDENDUM C												
Zoning Schedule A							Town of Pembroke (12/11/2013)					
ZONING DISTRICT	PERMITTED USES	Article III. MINIMUM LOT SIZE (Sq. Ft.) ⁽¹⁾	MINIMUM FRONTAGE (Feet)	MINIMUM YARD SIZE (Feet)			MAX. HEIGHT (Feet)	MAX. LOT COVERAGE (%)	MIN. FLOOR AREA/UNIT (Sq. Ft.)		MINIMUM MANDATORY OFF STREET PARKING SPACE/UNIT	SITE PLAN
				FRONT	REAR	SIDE			Primary Unit	Other Unit(s)		
AG	Single Family	40,000 ⁽⁴⁾	200 ⁽⁴⁾	50	50	25	35	20	720	n/a	2	YES
	Non-Residential	80,000	300	75	50	25	35	20	n/a	n/a	DETERMINED BY USE	YES ⁽³⁾
AG-R	Single Family	40,000	200	50	30	25	35	20	720	n/a	2	NO
	Two-Family	40,000	200	50	30	25	35	20	720	500	2	NO
	Multi-Family	40,000 +4,000	250	50	30	25	35	20	n/a	500	2	YES
	Non-Residential	80,000	250	50	30	25	35	20	n/a	n/a	DETERMINED BY USE	YES ⁽³⁾
R	Single Family (w)	20,000	100	50	30	15	35	25	720	n/a	2	NO
	Single Family (w&s)	16,000	75									
	Two-Family (w)	30,000	150	50	30	15	35	25	720	500	2	YES
	Two Family (w&s)	20,000	100									
MDR	Single Family	20,000	100	50	30	15	35	25	720	n/a	2	NO
	Two-Family	30,000	150	50	30	15	35	25	720	500	2	NO
	Multi-Family	40,000 +4,000	250	50	30	15	35	20	n/a	500	2	YES
	Non-Residential	40,000	150	50	30	15	35	20	n/a	n/a	DETERMINED BY USE	YES ⁽³⁾
LC	Residential	⁽⁵⁾	⁽⁵⁾	⁽⁵⁾	⁽⁵⁾	⁽⁵⁾	⁽⁵⁾	⁽⁵⁾	⁽⁵⁾	⁽⁵⁾	2	YES ⁽³⁾
	Limited Commercial	40,000	200	75 ⁽²⁾	30	35	35	35	n/a	n/a	DETERMINED BY USE	YES ⁽³⁾

ADDENDUM C **Zoning Schedule A** (page 2) **Town of Pembroke** (12/11/2013)

ZONING DISTRICT	PERMITTED USES	Article III. MINIMUM LOT SIZE (Sq. Ft.) (1)	MINIMUM FRONTAGE (Feet)	MINIMUM YARD SIZE (Feet)			MAX. HEIGHT (Feet)	MAX. LOT COVERAGE (%)	MIN. FLOOR AREA/UNIT (Sq. Ft.)		MINIMUM MANDATORY OFF STREET PARKING SPACE/UNIT	SITE PLAN
				FRONT	REAR	SIDE			Primary Unit	Other Unit(s)		
C	Residential	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	2	YES (3)
	Commercial	40,000	200	75	30	35	35	35	n/a	n/a	DETERMINED BY USE	YES (3)
INT	Commercial/Industrial	40,000	200	75 (2)(6)	30	35	60 (7)	35	n/a	n/a	DETERMINED BY USE	YES (3)
I	Industrial	80,000	200	75	30	35	35	35	n/a	n/a	DETERMINED BY USE	YES (3)
EP	EARTH PRODUCTS - Refer to SECTIONS 409 and 607											
PUD	PLANNED UNIT DEVELOPMENT - Refer to SECTION 410											
FPO	FLOOD PLAIN OVERLAY ZONE - Refer to SECTION 411											

- NOTES:**
- (1) Excluding highway Right-of-Way.
 - (2) Except Route 77 from the Thruway to Corfu shall be 125 feet.
 - (3) Agricultural uses (farms) shall be exempt, except for animal waste storage facilities.
 - (4) Minimum and Maximum
 - (5) Same as Ag-R District Requirements
 - (6) In the Interchange District the front yard setback for a public highway used as a 'service road', with no through traffic in an identified industrial or corporate park, shall be a minimum of fifty (50) feet. Front yard setbacks to all other public highways shall be as set forth in Schedule A.
 - (7) Freestanding Signs in Interchange limited to 35 feet in height
 - (w) serviced by public water
 - (w&s) serviced by public water and public sewer

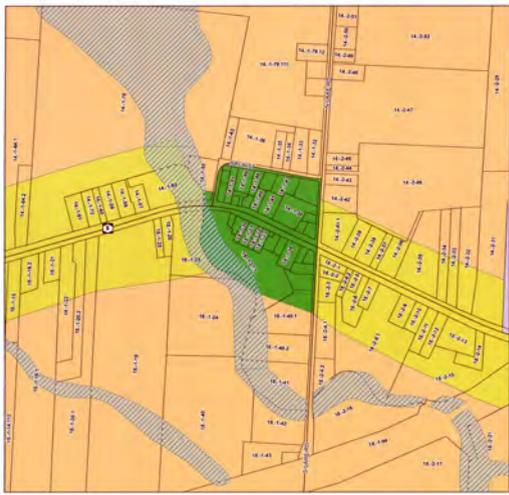
ZONING MAP

DATE ADOPTED: 2-8-78

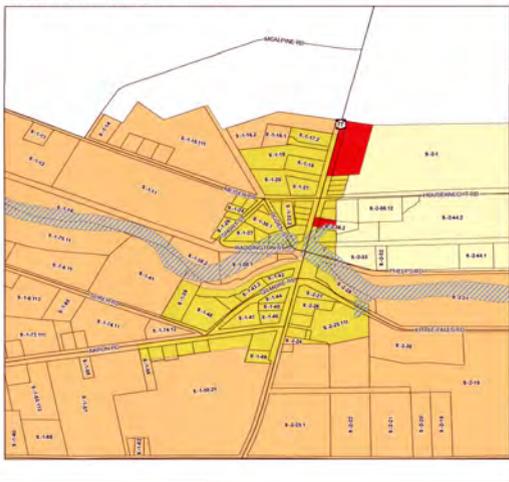
TOWN OF PEMBROKE

GENESSEE COUNTY, NEW YORK

MAP VIEW A - Pembroke City

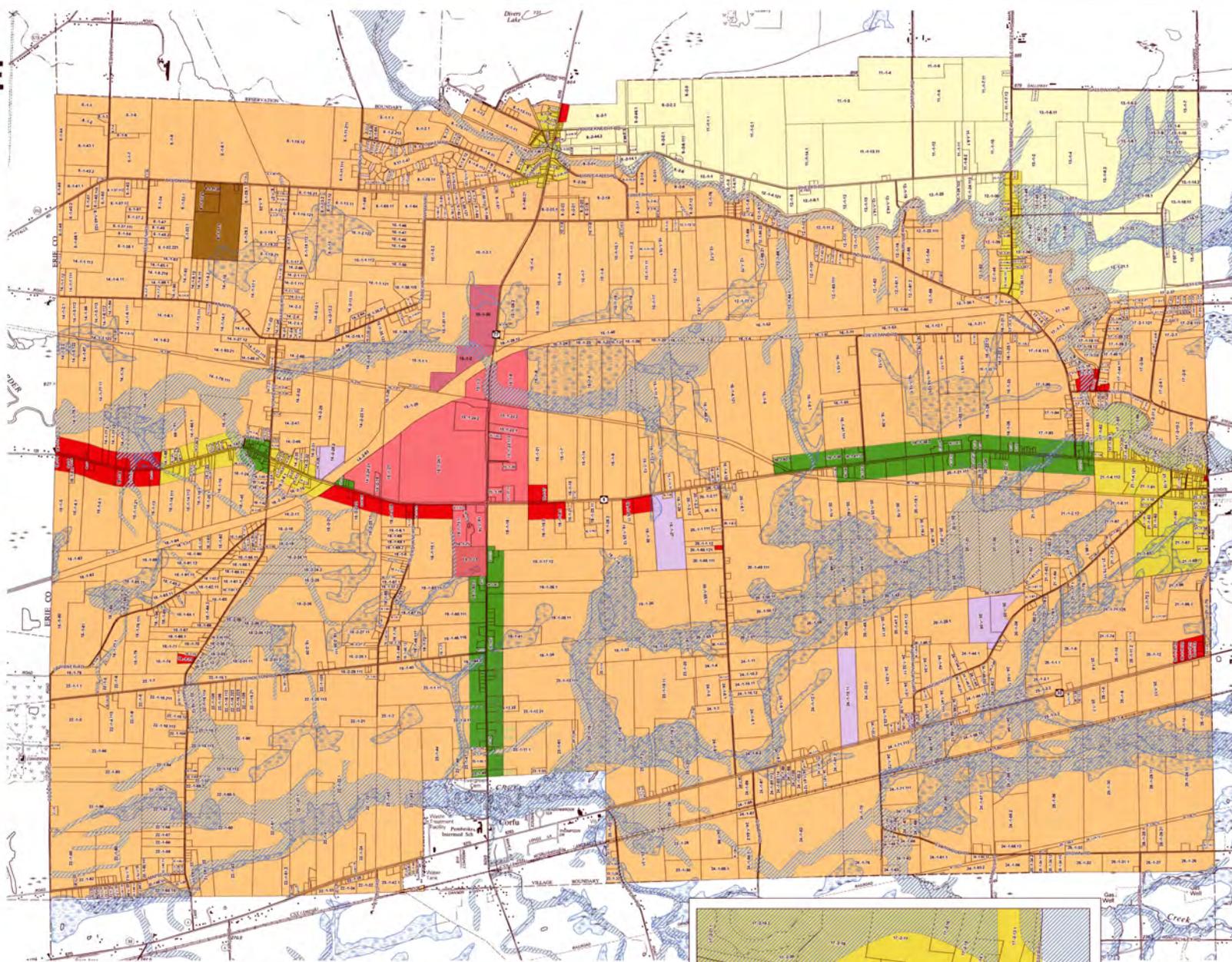


MAP VIEW B - Indian Falls



REVISIONS

DATE	DATE	DATE	DATE
Enactment	Map Rev.	Enactment	Map Rev.
Feb. 13, 1980	Sept. 28, 1981	July 8, 1992	July 16, 1992
Apr. 16, 1980	Sept. 28, 1981	June 30, 1993	July 13, 1993
June 21, 1980	Sept. 28, 1981	June 14, 1995	Sept. 7, 1995
Aug. 16, 1980	Sept. 28, 1981	Sept. 13, 1995	Sept. 7, 1995
Apr. 11, 1981	Sept. 28, 1981	Aug. 14, 1997	Oct. 1, 1997
Oct. 27, 1982	June 7, 1983	July 12, 2000	July 20, 2000
June 18, 1983	Nov. 29, 1983	Nov. 12, 2003	Jan. 14, 2004
Aug. 14, 1987	Aug. 20, 1987	Oct. 13, 2004	Nov. 17, 2004
Feb. 20, 1988	June 15, 1989	May 12, 2006	May 15, 2006
April 13, 1988	June 16, 1989	Oct. 25, 2011	June 8, 2014
Dec. 30, 1991	Nov. 1991	Dec. 11, 2013	June 8, 2014
		Nov. 8, 2018	Nov. 20, 2018



NYS DEC Wetlands	Zoning District	Earth Products
FEMA Flood Hazard Areas*	Agricultural	Industrial
2009 Tax Parcels	Agricultural - Residential	Interchange
	Medium Density Residential	Limited Commercial
	Commercial	



All dimensions of the depth of zoning districts (boxed text) are measured from the roadway centerline. (Section 205-B, Town of Pembroke Zoning Law)



MAP VIEW C - East Pembroke

ARTICLE I: ENACTMENT AND INTENT

SECTION 101 TITLE

The title of this code is the "Zoning Local Law of the Town of Shelby, Orleans County, New York", and shall include this text, and zoning map. All existing Zoning Ordinances and Local Laws of the Town of Shelby, Orleans County, New York, are hereby repealed upon the effective date of this Local Law.

SECTION 102 PURPOSE

This Zoning Local Law is adopted pursuant to the Town Law of the State of New York, to promote and protect the public health, safety and general welfare and in furtherance of the following related and more specific purposes:

- A. To protect the open, rural and natural character of the land.
- B. To preserve the town's natural resources and habitats.
- C. To guide and regulate the orderly growth, development and redevelopment of the Town of Shelby in accordance with a well-considered plan and with long-term objectives, principles and standards deemed beneficial to the interest and welfare of the people.
- D. To encourage the use of alternative energy systems and protect solar and wind access.

SECTION 103 APPLICATION OF REGULATIONS

The regulations set by this Local Law shall be the minimum regulations within each district and shall apply uniformly to each class or kind of structure or use of land, except as hereinafter provided:

- A. No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all the regulations herein specified for the district in which it is located.
- B. No building or structure shall hereafter be erected or altered which:
 - 1. Exceeds the height limitation for any structure within a specified district;
 - 2. Accommodates or houses a greater number of dwelling units than is permitted within a specified zoning district;
 - 3. Occupies a greater percentage of lot area than is permitted by the zoning schedule; or
 - 4. Has narrower or smaller yards or other open spaces than herein require, or in any other manner contrary to the provisions of this Local Law or the requirements of the Codes of New York State.

- C. No part of a yard or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with the regulations set forth herein, shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building except as provided in Sections 601 and 602.
- D. No yard or lot existing at the time of enactment of this Local Law shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Local Law shall meet or exceed the minimum requirements established herein.

SECTION 104 CONFLICTS WITH OTHER LAWS

Whenever the requirements of this Local Law are in conflict with the requirements of any other lawfully adopted rules, regulations, codes, or local laws, the most restrictive of such rules, regulations, codes, or those imposing the higher standards shall govern.

SECTION 105 VALIDITY AND SEVERABILITY

Should any section of or provision of this Local Law be decided by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the Local Law as a whole, or any part thereof, other than the part so decided to be unconstitutional or otherwise invalid.

SECTION 106 FEES

Permit fees shall be collected and paid according to the fee structure in effect at the time of application. A fee schedule is posted at the Town Clerk's Office and Zoning Officer's Office.

SECTION 107 VIOLATIONS AND PENALTIES

Any person, firm or corporation who violates, disobeys, neglects or refuses to comply with any provision of this Local Law Ordinance shall be guilty of an offense, and upon conviction thereof, shall be subject to a fine of a minimum of one hundred dollars (\$100.00) and not exceeding three hundred and fifty (\$350.00) or imprisonment for a period not to exceed six (6) months or both for conviction of a first offense; for a conviction of a second offense both of which are committed within a period of five years, punishable by a fine not less than three hundred and fifty dollars (350.00) nor more than seven hundred dollars (\$700.00) or imprisonment for a period not to exceed six (6) months or both; for a third or subsequent offense all of which are committed within a period of five years, punishable by a fine not less than seven hundred dollars (\$700.00) nor more than one thousand (\$1000.00) or imprisonment for a period not to exceed six (6) months, or both. Each week's continued violation shall constitute a separate additional violation and offense.

SECTION 108 ACTIONS

- A. If the Zoning Enforcement Officer discovers a project commencing or operating without the required permits, he shall undertake enforcement actions as authorized by this Local Law and other provisions of NYS Law.
- B. The Town may maintain an action for a temporary restraining order, temporary injunction, or injunction to restrain, correct, or abate any violation of this Local Law or any failure to comply with any of the provisions of this Local Law.

SECTION 109 ENFORCEMENT OF ZONING LOCAL LAW

Any building or structure erected, or any use conducted without a zoning permit or certificate of compliance, where required, or not in conformity with the provisions of this Local Law, may be removed, closed or halted at once by the Zoning Enforcement Officer with the issuance of a stop order, with assistance, if deemed necessary, of any appropriate Town office or employee.

SECTION 110 CONSISTENCY WITH COMPREHENSIVE PLAN

The provisions and regulations of this zoning Local Law and interpretations thereof, shall be made in accordance with the objectives of the Town's Comprehensive Plan.

SECTION 111 EFFECTIVE DATE

This Local Law shall take effect 30 days after the adoption and filing with the Department of State as provided by the NYS Town Law and Municipal Home Rule Law.

SECTION 112 AMENDMENTS TO ZONING

- A. Procedure

The Town Board may from time to time on its own motion, on petition or on recommendation of the Planning Board, and in accordance with the laws of the State of New York, amend, supplement or repeal the regulations, provisions or district boundaries of this Local Law, after public notice and hearing.

- B. Filing of Petition

A petition to amend, change or supplement the text of this Local Law or any zoning district as designated on the Zoning Map established herein shall be filed with the Town Clerk and accompanied by the appropriate fees. The Clerk shall transmit the documentation to the Town Board. A petition for a change to the Zoning Map shall contain a map which clearly describes the affected property and its boundaries and shall indicate the existing zoning district and the requested zoning change. In addition, every petition for a change to the Official Zoning Map shall contain an environmental assessment form completed and signed by the petitioner, or agent, in accordance with the procedures set forth in State Environmental Quality Review (SEQR) regulations.

C. Referral to Planning Board

Every such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board for report thereon before the public hearing and within 45 days after the date of referral by the Town Board. If the Planning Board shall fail to file such a report, it shall be conclusively presumed that the Planning Board has approved the proposed amendment, supplement or change.

D. Public Hearing; Notice; Referrals; Recording of Actions

The Town Board by resolution adopted shall fix the time and place of a public hearing on the proposed amendments and cause notice to be given as provided by Town Law or Municipal Home Rule Law.

Unless otherwise provided, the provisions of the Town Law of the State of New York pertaining to public hearings, official notices, referrals to the County Planning Board, and proper recording of zoning actions taken by the Town Board shall apply to all amendments to this Local Law.

E. Notification of Property Owners

For zoning map amendments initiated by petition, all property owners within a distance of 500 ft. of any proposed change or amendment shall be notified by mail.

The applicant shall place one (1) sign on the property for which a rezoning is requested. Said sign shall be provided by the Zoning Officer. The sign shall be placed in a location which is easily read from a public street. The sign shall specify the date, time and place of the public hearing and a telephone number to call for more specific information. Such sign shall be placed on the site not less than ten (10) days prior to the public hearing and shall be brought to the hearing by the applicant or his designated representative.

F. Disposition Final; Rehearing on Petition

The disposition of a petition for amendment by the Town Board shall be final and disapproval or denial of the proposed amendment shall void the petition. No new petition for an amendment which has been previously denied by the Town Board shall be considered by it, except for a vote to table or to receive and file, and no public hearing shall be held on such amendment within a period of one (1) year from the date of such previous denial unless the Planning Board shall submit a recommendation, with reasons stated therefore, certifying that there have been substantial changes in the situation which would merit a rehearing by the Town Board. Such rehearing may be granted only upon a favorable vote of a majority of the Town Board plus one (1).

ARTICLE II: DEFINITIONS

SECTION 200 WORD USAGE

For the purpose of this Local Law, certain words and terms used herein shall be interpreted as follows:

- A. The word "person" includes a firm, association, partnership, trust, company or corporation as well as an individual.
- B. Words used in the present tense include the future tense.
- C. All words in the plural number include the singular number and all words in the singular number include the plural number, except as to the number of permitted structures, unless the natural construction of the wording indicates otherwise.
- D. The word "building" includes the word "structure".
- E. The words "shall" and "must" are mandatory and not discretionary; "may" is permissive.
- F. The words "used" or "occupied" include the words intended, designed or arranged to be used or occupied".
- G. The word "lot" includes the words "plot", "parcel", "tract" or "site".
- H. The word "premises" includes a lot and all buildings or structures thereon.
- I. To "erect", to "construct" and to "build" a building or structure each have the same meaning and also include to "excavate" for a building and to "relocate" a building by moving it from one location to another.

SECTION 210 DEFINITIONS

ACCESSORY BUILDING OR STRUCTURE: A detached building or structure which: (1) is customarily incidental and subordinate to, and serves a principal building; (2) is subordinate in area, extent or purpose to the principal building served; (3) contributes to the comfort, convenience or necessity of occupants of the principal building use; and, (4) is located on the same parcel as the principal building. This definition shall include private garages. This definition shall exclude devices previously used for highway use, such as truck trailers.

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

AGRICULTURAL PRODUCT PROCESSING FACILITY: A facility in which agricultural products, which are not produced on the premises, are altered for the purpose of canning, freezing, or other packaging, or are converted or incorporated into other products.

AGRICULTURAL PRODUCT DISTRIBUTION CENTER: A facility in which agricultural products, which are not produced on the premises, are graded, sorted, and/or packaged for the purpose of distribution by truck, rail, or other means.

AGRICULTURE/ (FARMING): The use of land for agricultural production purposes including, tilling of the soil, dairying, pasture, animal and poultry husbandry, apiculture, arboriculture, horticulture, floriculture, viticulture, and accessory uses for packing, storing, processing and retail sales of products, provided that the operation of any such accessory uses shall be secondary to that of the principal agricultural production activities.

AIRPORT: Any area of land designed for the operation of general aviation aircraft, including hangars for storage and servicing, taxiways, landing strips and accessory uses.

AIRSTRIP, PRIVATE: An airport, as defined above, used solely for the benefit of the landowner and for emergency landing when necessary. For the purpose of this Local Law, Private Airports shall meet the same regulations as "Airport."

ALTERATION: As applied to a building or structure; (1) the change or rearrangement in the supporting members of a building or structure such as bearing walls, columns, beams or girders or in the exit facilities; (2) an enlargement of a building or structure, whether by extending on a side or by increasing in height; (3) the moving from one location or position to another; or (4) any alteration whereby a structure is adapted to another or different use, including any separation into rooms or spaces by the installation of non-bearing partitions; or (5) the installation, replacement or alteration of mechanical systems.

ALTERNATIVE ENERGY SYSTEMS: Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure. Current examples include windmills, solar collectors and solar greenhouses, heat pumps, or other related devices. For the purposes of this Local Law, this definition shall apply to individual residences and businesses. Commercial generating plants, the prime function of which is selling energy, are excluded.

AMUSEMENT CENTER: Any indoor place or enclosure in which is maintained or operated for the amusement, patronage, or recreation of the public three (3) or more coin-controlled amusement devices, including the type commonly known as bagatelle, baseball, football, pinball, and video games.

ANIMAL HOSPITAL OR VETERINARY CLINIC -- The premises or buildings used for the diagnosis, treatment or other care of the ailments of domesticated, household or farm animals, which may include related facilities, such as laboratories, offices and temporary quarters for such animals.

ANIMAL HUSBANDRY: The raising or keeping of one (1) or more cows, cattle, horses, mules, hogs, sheep, goats, donkeys, oxen, or other similar animals, or the raising or keeping of more than four (4) ducks, chickens, rabbits, geese, quail, chinchillas, mink, or any similar small animals, but not including dogs and cats. Such uses include the pasturing, feeding, and sheltering of such animals.

ANIMAL UNIT: The equivalent of 1000 pounds of farm animal.

ANTENNA(E): A system of electrical conductors that transmit or receive electronic frequency signals. Such signals shall include, but not be limited to radio, television, cellular, paging, and personal communication services (PCS).

APARTMENT: A dwelling unit within a two-family or multi-family dwelling that is intended to be leased or rented. This term shall not be deemed to include a motel, hotel, boarding house or travel trailer.

AUTOMOBILE WRECKING: The dismantling or disassembling of used motor vehicles, mobile homes or manufactured housing; or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

BAIT AND TACKLE SHOP: Store for retail sales of live bait, fishing equipment and small fishing accessories.

BED AND BREAKFAST INN: An owner-occupied building designed, used and occupied as a single-family residence having, as an accessory use therein, public lodging rooms and facilities for, and serving food and drink prepared within the building to, preregistered transient guests. All bed-and-breakfasts shall comply with the applicable provisions of the New York State Uniform Fire Prevention and Building Code and the rules and regulations promulgated thereunder. All bed-and-breakfasts are for the purpose of such code and this chapter, classified as B-2 (transient occupancy) for the purpose of construction, conversion and alteration under said code, rules and regulations. The parcel improved by the bed-and-breakfast shall provide or establish off-street parking spaces for the members of the owner's family residing in the dwelling unit as well as at least one (1) parking space per room or unit let. Notwithstanding any other provision of this Local Law, a single exterior sign or display may be established on the site of the bed-and-breakfast. Said sign or display shall not exceed eight (8) square feet in area. No freestanding sign shall be located less than fifteen (15) feet from the front property line nor less than five (5) feet from the side property line. No freestanding sign may be located less than fifty (50) feet from any other freestanding sign. Further, said sign or display shall be unobtrusive as reasonably possible and may be illuminated by no more than two (2) seventy-five watt light bulbs which shall be shielded so as to prevent glare.

BUFFER AREA: A continuous strip of land area covered with grass, vegetation, trees, fencing, embankments or berms, designed to provide a physical screen to limit visibility between uses and reduce the escape and/or intrusion of litter, fumes, dust, noise, or other noxious or objectionable elements.

BUILDING: Any structure that is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals, or property.

BUILDING CODE: The Codes of New York State, which govern building construction, renovation and property maintenance.

BUILDING COVERAGE, PERCENT OF: The percent of building coverage of any lot shall be equal to one hundred (100) times the ratio of the gross horizontal area of all principal and accessory buildings that have roofs on them (including covered breezeways, covered porches,

covered cantilevered structures, etc.) measured from the exterior faces of the exterior walls but shall not include any structure (such as a patio or deck) that does not have a roof, divided by the horizontal area of the lot.

BUILDING HEIGHT: The vertical distance measured from the mean level of the ground surrounding the structure to the highest point of the structure, but not including chimneys, spires, tanks, and similar projections

BUILDING LINE: A line formed by the intersection of a horizontal plane at an average grade level and a vertical plane that coincides with the exterior surface of the building or a projected roof or porch. The vertical plane will coincide with the most projected surface, excluding steps and overhanging eaves less than two (2) feet in width. All yard and setback requirements are measured to the building lines.

BUILDING PERMIT: A document issued by the Code Enforcement Officer authorizing the construction and occupancy of structures in accordance with the Codes of New York State.

BUILDING, PRINCIPAL: A building in which is conducted the main or principal use of the lot on which said building is situated. In any residential district any dwelling shall be deemed to be a principal building on the zone lot on which the same is located.

BUSINESS: Includes the purchase, sale or any other transaction involving the handling, servicing or disposition of any article, substance or commodity, tangible or intangible, and includes offices, recreational and amusement enterprises and any operation where the above-described activities are conducted in return for remuneration of any type. For the purpose of this Local Law, "business" shall have the same meaning as commercial, and reference to commercial districts or zones shall be interpreted as referring to business districts.

BUSINESS, DRIVE-IN: A traffic-generating facility where a product is sold or a service performed for customers while they are in or near their motor vehicles in off-street parking or service areas. This term includes convenience store, drive-in banking, restaurant, fast food service, drive-in photo processing, drive-in outdoor theatres, autowash or similar use. This term shall not include retail gasoline services.

BUSINESS, GENERAL: Any establishment engaged in the sale of goods or services not otherwise identified in this section.

BUSINESS, NEIGHBORHOOD: Small commercial establishments, containing less than 10,000 square feet in gross floor area, catering primarily to nearby residential areas or tourists and providing convenience and/or specialty goods and services including but not limited to grocery stores, gift shops, drug stores, beauty salons, barber shops, carryout dry cleaning and laundry pickup stations.

BUSINESS, RETAIL: A commercial activity designed for and primarily characterized by the on-premises sale of goods directly to the ultimate individual and household consumer, but also including servicing, preparation, storage and wholesale business transactions related to such goods and customarily associated therewith but clearly incidental thereto. This term shall not include commercial activity which may also be similarly characterized, but which is separately identified as a use permitted within a zoning district.

BUSINESS, SERVICE: A business primarily involved in the provision of services, rather than goods, to other businesses or to the general public. This term shall not include any service activity which may also be similarly characterized, but which is separately identified as a use permitted within a zoning district.

CAMP: See Dwelling, Seasonal.

CAMPING UNITS: See Recreational Vehicle

CAMPGROUND: A parcel of land used or intended to be used, let or rented for transient, vacation and recreational occupancy by travel trailers, campers, tents, recreational vehicles, motor homes and the motor vehicles propelling or carrying the same, but excluding mobile homes or manufactured housing designed for year-round occupancy or as a place of residence.

CAR WASH: A structure or building designed for the washing, waxing, or similar treatment of automotive vehicles as its principal function. A **GAS STATION** having portable washing equipment shall not be deemed to be a carwash where such is an accessory service to the principal service of the **GAS STATION**.

CARPOR: A roofed structure without enclosing walls, used for the storage of one or more vehicles.

CEMETERY OR BURIAL GROUND: A tract of land for the disposal or burial of deceased human beings or remains in a grave, mausoleum, vault, columbarium or other receptacle. The provisions of this Local Law shall apply to all cemeteries and burial grounds including those owned by a religious corporation, municipal corporation, or a cemetery corporation owning a cemetery operated, supervised or controlled by or in connection with a religious corporation.

CERTIFICATE OF COMPLIANCE: A certificate issued by the Zoning Enforcement Officer upon completion of the change in use of an existing building or upon the completion of a project requiring site plan approval. Said certificate shall acknowledge compliance with all requirements of the Town's Code, Ordinances, Local Laws, Variances and Special Permits in existence as of the date of the issuance of the Certificate of Compliance.

CERTIFICATE OF OCCUPANCY: A certificate issued by the Code Enforcement Officer upon completion of construction or alteration of a building. Said Certificate shall acknowledge compliance with all of the requirements of the Codes of New York State.

CHARTER BOAT SERVICES: A waterfront facility having docks and moorings for small boats, where engagement of services include a boat, crew, and captain for a fee, or other remuneration.

CHURCH: See **PLACE OF WORSHIP**

CLEAR SIGHT TRIANGLE: An area of unobstructed vision at street intersections defined by lines of sight between points at a given distance from the intersection of street right-of-way lines.

CLUB: Any organization catering to members and their guests, or a building or premises used for recreational, general, social, or athletic purposes not open to the general public. Clubs shall not be

conducted primarily for gain, and vending stands, merchandising, or commercial activities shall not be conducted except as required for the membership and purposes of such club. For the purpose of this Local Law, this term shall include: religious organizations; lodges; fraternal organizations; mutual benefit societies; snowmobiling, archery or hunting clubs; and other similar organizations.

CLUSTER DEVELOPMENT: A development of residential lots, some of which may contain less area than the minimum lot area required for the zone within which such development occurs, while maintaining the density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

COMMERCIAL USE: Includes the purchase, sale or any other transaction involving the handling, servicing or disposition of any article, substance or commodity, tangible or intangible, and includes retail or wholesale trade, services, offices, recreational and amusement enterprises and any operation where the above-described activities are conducted in return for remuneration of any type.

COMMERCIAL VEHICLE: Any vehicle in excess of twenty (20) feet in length carrying a valid commercial New York State registration license plate, which is used for the transportation of persons, animals or goods, primarily for profit, or carries a permanently affixed business identification sign exceeding one (1) square foot in area; or any vehicle used for earthmoving or construction purposes.

COMMERCIAL VEHICLE: Every type of motor vehicle driven or used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, motor coaches carrying passengers, and trailers and semi-trailers, including tractors when used in combination with trailers and semi-trailers.

COMMON AREA: Space reserved for use by any and all residents of a housing development including, but not limited to, halls, stairways and landings in apartment houses.

COMMUNICATION TOWER: See "TELECOMMUNICATIONS FACILITY".

CONFERENCE/ RESORT COMPLEX: Grounds or facilities used or designed for use by the public or for groups for meetings, conferences or recreational purposes. This definition shall not include membership clubs or public parks and playgrounds, as defined under "Public and Semi-Public Buildings and Grounds."

CONVENIENCE STORE: A retail store containing less than 3,000 square feet of gross floor area that is designed and stocked to sell primarily food, beverages and household supplies to customers who purchase relatively few items. Such an establishment may include the sale of prepared foods, such as sandwiches, soups, ice cream, etc. for consumption on or off the premises and may include indoor seating for such purposes. A convenience store shall meet all of the requirements for a "gas station" if it includes the retail sale of gasoline or other vehicular fuels.

COUNTY PLANNING BOARD: The Planning Board of the County of Orleans.

CORNER LOTS: See LOT, CORNER.

COVERAGE: That percentage of the plot or land area covered by the building area.

CURB CUT: The opening along a street at which point vehicles may enter or leave the roadway.

DAY CARE, CHILD: The care for a child on a regular basis provided away from the child's residence for less than twenty-four (24) hours per day by someone other than the parent, step-parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child

DAY CARE HOME, FAMILY: A residence in which child day care is provided on a regular basis for more than three (3) hours per day per child for three to six children for compensation or otherwise.

DAY CARE HOME, GROUP FAMILY: A residence in which child day care is provided on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise.

DAY CARE CENTER, CHILD: A program or facility which is not a residence in which child day care is provided on a regular basis to more than six (6) children for more than three (3) hours per day per child for compensation or otherwise.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION: The New York State Department of Environmental Conservation (NYS DEC)

DEPARTMENT OF HEALTH: The New York State Department of Health and any other health board or department established pursuant to the laws of the State of New York and having authority for the regulation of matters pertaining to the public health of the Town.

DEVELOPMENT: Any change made to improved or unimproved real estate including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, excluding normal maintenance to farm roads.

DISTRIBUTION CENTER: A truck terminal facility at which any storage of goods or chattels is minor, transitory and merely incidental to the purpose of facilitating the transportation of goods or chattels.

DRIVE-IN SERVICE: See BUSINESS, DRIVE-IN

DRIVEWAY: A roadway providing a means of access from a street to a property or off-street parking area. An accessway may also be deemed a driveway.

DWELLING: Any building or portion thereof designed or used exclusively as a residence or sleeping place for one (1) or more persons.

SINGLE FAMILY: A detached residential dwelling designed for and occupied by one family only.

TWO-FAMILY: A detached or semi-detached building where not more than two (2) individual family or dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common cellar.

MULTI-FAMILY: A building or portion thereof used or designed as a residence for three (3) or more apartment or dwelling units.

SEASONAL DWELLING: A dwelling unit intended for occupancy only during certain seasons of the year, principally for recreational use by the owner, including beach cottages, hunting cabins, vacation cottages, summer cottages, and vacation lodges. This definition does not include recreational vehicles, travel trailers, or other vehicles.

DWELLING UNIT: One room or rooms connected together for owner occupancy or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities, designed for occupancy by one family.

EASEMENT: A specified (limited) use of private land for a public or quasi-public purpose.

EFFICIENCY APARTMENT: A multiple dwelling unit in which the sleeping area and living room are one.

ESSENTIAL SERVICES AND PUBLIC UTILITIES: Erection, construction, operation or maintenance by municipal agencies or public utilities of telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities, but shall not include telecommunications facilities as defined herein, and shall not include wind energy facilities (including infrastructure supporting wind energy facilities), landfills, waste transfer stations or other facilities with the primary purpose of handling or disposing of household or industrial waste.

EXCAVATION (Quarry, Sand Pit, Gravel Pit, Topsoil Stripping): A lot or land or part thereof used for the purposes of extracting stone, sand, or gravel for sale, as an industrial or commercial operation, but does not include the process of grading a lot preparatory to the construction of a building which has an approved zoning permit.

EXTERIOR SOLID FUEL HEATING DEVICE: Any contrivance, apparatus or part thereof, including a boiler, fire box, exchanger, grate fuel gun, fuel nozzle, chimney, smoke pipe, exhaust conduit and like devices used for the burning of combustible fuels for the creation of heat or energy from exterior location into an interior location.

FAMILY: One or more persons, usually but not necessarily related by blood, marriage or adoption, living together as a single, not-for-profit housekeeping unit.

FAMILY DAY CARE HOME: See DAY CARE, HOME (FAMILY)

FARM: See AGRICULTURE

FARM ANIMAL: This term shall include horses, cows, goats, sheep, pigs, rabbits, fowls, llamas, and other similar animals.

FARM BUILDING: Any building used for the housing of agricultural equipment, produce, livestock or poultry or for the incidental or customary processing of farm products, and provided that such building is located on, operated in conjunction with, and necessary to the operating of the farm as defined herein.

FARMER: Any person who grosses an income of \$10,000 from agriculture and who files a Schedule F, IRS Farm Income Form, with their Federal Tax Return.

FARM MARKET: A structure with more than 120 square feet of gross floor area intended for the display and sale of farm produce and other agricultural products or crafts.

FARM PRODUCE STAND OR SEASONAL ROADSIDE STAND: Retail outlet, consisting of non-permanent structures (movable and temporary), for the sale of agricultural products grown principally by the operator during the harvest season. (See also "Farm Market.")

FARM WORKER HOUSING: Dwelling units located on an active farm located in a State Certified Agricultural District which are accessory to the agricultural use and are occupied by employees of the farm or members of the farm household and their guests. Farm worker housing may consist of single or two family dwellings or buildings, including single or double-wide trailers and mobile/manufactured homes, and/or apartments.

FENCE: A barrier, as of wooden or metal posts, rails, wire mesh, etc. , used as a boundary, decorative enclosure, means of protection or confinement.

FENCING, FARM: Any barrier, fencing, screening or buffering that specifically meets the needs of agricultural land use.

FLAG LOT: A type of lot (commonly flag-shaped in configuration) in which street frontage is provided by a strip of land which is narrow in relation to the remainder of the lot and which extends from the main body of the lot to the street. A lot which does not physically front on or abut a street, but which has access to a street by means of an easement over other property, shall be deemed to be included in this definition. The portion of the lot that provides access to the interior portion of the lot shall not be less than twenty (20) feet in width, shall not be considered buildable and shall not be used in the calculation of the minimum lot area requirements for the zone district. The interior portion of the lot shall meet the minimum lot area requirements for the zone district.

FLAG LOT, ACCESS PORTION: The panhandle portion of a flag lot having at least twenty (20) feet in lot width and which provides an access corridor between a public road, street or highway right-of-way to the interior portion of a flag lot.

FLAG LOT, INTERIOR PORTION: That portion of a flag lot having sufficient lot area, width and depth to meet the minimum requirements of the zone district, and which excludes the access portion of the lot.

FLOOD HAZARD AREA: Areas subject to a 1% or greater chance of flooding in any given year as shown on the FEMA Flood Insurance Rate Map. Refer to Town of Shelby - Flood Hazard Ordinance.

FLOOR AREA, GROSS: The sum of the gross horizontal areas of the floor(s) of a building or buildings, measured from the inside faces of exterior walls or from the center line of walls separating two uses or dwelling units.

FLOOR AREA, HABITABLE: The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business, as defined in the Codes of New York.

FRONTAGE: All of the property abutting one side of a road, street, or thoroughfare, measured along the road, street or thoroughfare line.

FUEL OIL STORAGE: Premises used for the storage of fuel oil, kerosene or other combustible fuel in tanks for the sale by motor vehicle or other means of conveyance to purchasers at some other location, and excluding gasoline storage tanks used at gasoline stations for retail sales or tanks used by individuals when fuel is not sold.

FUNERAL HOME : A building or portion thereof, with or without an accessory dwelling unit, used principally for preparing cadavers for interment, including embalming, holding wakes or conducting funeral services. The term shall include a mortuary, but shall not include a crematorium.

GARAGE, PRIVATE: An accessory building which provides for the storage of motor vehicles or household items by the occupants on the lot upon which it is erected, with no provision for repairing or servicing such vehicles for profit. A garage cannot serve as the principal use on any lot.

GARAGE, PUBLIC: Any garage other than a private garage, operated for gain, available on a rental basis for the storage of motor vehicles, recreational vehicles, boats or other tangible personal property.

GASOLINE STATION : Any building, land area or other premises or portion thereof used or intended to be used primarily for the retail dispensing or sales of vehicular fuels and which may include, as an accessory use, the sale and installation of lubricants, tires, batteries and similar accessories. A convenience store shall meet all of the requirements of a "gasoline station" if it includes the retail sales of gasoline or other vehicular fuels.

GRAVEL OR SAND PIT: See "Extraction of stone and other mining operation."

GREEN SPACE: Land areas covered only by grass, trees or other vegetation.

HARD SURFACE: Minimum 3 inches of asphalt, 4 inches of concrete or 6 inches of crushed stone.

HISTORIC DISTRICT OR LANDMARK: Any area in the Town identified as a site of historical or cultural significance with certain rules and regulations governing both land and structures therein.

HOME BUSINESS: An accessory use, other than a "Home Occupation" as defined herein, that is conducted within a single family, occupied dwelling or an attached or detached accessory structure (including a barn) for gainful employment and involves the manufacture, provision or sale of goods and/or services principally on the premises.

HOME OCCUPATION: Any occupation or profession conducted as an accessory use entirely within a dwelling or accessory building by the occupants of the dwelling, which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. By definition, a home occupation involves no client or customer visits to the dwelling, is not evident by observation from the street or any of the adjoining properties, and meets all of the criteria specified in Section 695 of this Local Law. (See also "Home Business.")

HOSPITAL: An institution providing health services and medical or surgical care, primarily for temporary inpatients, to persons suffering from illness, disease, injury, deformity or other abnormal physical or mental condition, and including as an integral part of the institution related facilities such as laboratories, outpatient facilities or training facilities.

HUNTING/ FISHING CLUB: A facility, whether open to the public or limited to members of a group, which offers such activities as game hunting, fishing, trap or skeet shooting, target shooting, target practice, game farms, and related uses such as assembly halls or sales of bait or equipment. The term includes rod & gun clubs and sportsmen's clubs.

INDUSTRY, HEAVY: A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials or a use engaged in storage of or manufacturing processes using flammable or explosive materials or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

INDUSTRY, LIGHT: A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but exclusive of basic industrial processing and storage of flammable or toxic materials. "Light industry" is also exclusive of uses that require heavy, noisy or otherwise objectionable disturbances, such as vibration, dust and odors.

JUNK YARD: A lot, land or structure or part thereof used for the collection, storage, disassembly, packing, sorting, salvage, buying, selling or exchange of waste paper, rags, scrap, or discarded materials or machinery, or parts of any sort. More than two (2) abandoned, unregistered, disabled, dismantled, or partly dismantled vehicles, or pieces of equipment, allowed to remain unhoused on a premise for a period of more than thirty (30) days shall constitute a junkyard. Also, the unhoused storage, sale, or abandonment of waste paper, rags, scrap metal, discarded materials, or the collecting, dismantling, storage, salvaging or abandonment of machinery, appliances or vehicles not in operating condition shall constitute a junkyard. Automobile junkyards as defined in General Municipal Law, Section 136 shall be included within this definition.

KENNEL: Any premises, and/or structure in or on which four (4) or more dogs, or ten (10) or more cats or a comparable number of other domestic animals which may be considered to be

household pets of at least four (4) months of age, are housed and maintained for commercial or non-commercial purposes for a continuous period of 24 hours or more.

LOADING SPACE, OFF-STREET: Space logically and conveniently located for public pickups and deliveries, scaled to delivery vehicles expected to be used and accessible to such vehicles.

LOT: A parcel or area of land, the dimensions and extent of which are determined by the latest official records or recordings.

CORNER LOT: A parcel of land at the junction of, and fronting on two or more intersecting streets, roads, or thoroughfares.

THROUGH LOT: An interior lot having frontage on two parallel or approximately parallel streets, roads, or thoroughfares.

LOT AREA: The square footage or acreage contained within the boundaries of a lot. Any portion of a lot included in a public road, street or highway right-of-way shall not be included in calculating lot area.

LOT DEPTH: The mean distance from the right of way line of the street to the rear lot line measured in the general direction of the side lines of the lot.

LOT FRONTAGE: The linear distance along a lot line which adjoins the road or highway which provides access to the lot.

LOT LINE: The property lines bounding the lot:

1. Lot Line, Front: The line separating the lot from a street right-of-way.
2. Lot Line, Rear: The lot line opposite and most distant from the front lot line.
3. Lot Line, Side: Any lot line other than a front or rear lot line.

LOT OF RECORD: A parcel of land properly recorded with the County Clerk and assigned a unique tax parcel identification number at the time of passage of this Local Law.

LOT WIDTH: The width of the lot between side lot lines at the front building line as prescribed by the front yard and setback regulations.

MANUFACTURED HOME: A factory-manufactured home, built on a permanent steel-framed chassis in accordance with federal Department of Housing and Urban Development (HUD) standards and designed to be transported to a site in one section, which is intended to be used as permanent living quarters by a single family unit when connected to the required plumbing, heating and electrical utilities. For the purpose of this Local Law, the removal of transport wheels and/or the anchoring of the home to a permanent foundation shall not remove it from this definition. A "Single-Wide Manufactured Home" is a manufactured home with a width at its narrowest dimension of less than 20 feet.

MANUFACTURED HOME PARK: Any site, lot, field, plot, parcel or tract of land on which two (2) or more manufactured homes are parked or located and are occupied or intended for occupancy on the premises, and for which either the said premises or manufactured home is offered to the public for a fee of any type, including cost sharing. This includes the rental of the premises and/or the manufactured homes.

MANURE STORAGE FACILITY: A facility constructed as an accessory use to an animal husbandry use, riding stable, or kennel, intended to collect, hold, process, store, treat, or distribute animal solid and liquid waste. Included within this definition are storage tanks, lagoons, seepage pits, drains, and collection systems intended to handle animal waste. Not included within this definition are systems designed and constructed to handle human waste.

MARINA: A lot, building, structure, pier, dock or portion thereof located with shoreline frontage and access to navigable water and used for the launching, mooring, rental, sale, fueling and/or repair of watercraft and including such boat storage, boat launch facilities, and such sales of bait, tackle and marine supplies as may be accessory to such marinas. The term "marina" shall include "yacht club," but shall exclude non-commercial facilities that are accessory to a single or two-family residence.

MEDICAL OFFICES/CLINICS: A facility or institution, whether public or private, where medical or dental care is furnished to persons on an outpatient basis by one (1) or more doctors or dentists; a place for the care, diagnosis and treatment of sick, ailing, infirm or injured persons and those who are in need of medical or surgical attention but who are not provided with board or room or kept overnight on the premises; a facility for human ailments operated by a group of physicians, dentists, chiropractors or other licensed practitioners for the treatment and examination of outpatients.

MINING: The use of an area of land to remove minerals, metals or other items of value from the ground for a profit, including gas and oil wells.

MODULAR HOME: A factory-manufactured dwelling having no permanent support frame and designed to be transported to a site in one or more sections for erection, construction, or installation as a permanent structure. Modular Homes shall be affixed to a permanent site-built foundation and shall meet the requirements of the Codes of New York State. For the purposes of this Local Law, Modular Homes shall be regulated as a dwelling.

MOTEL: A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units, designed primarily for transient automobile travelers and providing accessory off-street parking facilities. A restaurant, tearoom or similar establishment located on the same premises as a motel shall be considered as an accessory use. The term motel includes facilities designated as tourist courts, motor lodges and similar uses.

MOTOR VEHICLE: Any vehicle designed to be propelled or drawn by power other than muscle power, except electrically driven wheelchairs being operated or driven by an invalid. This term shall include automobiles, trucks, buses, motorcycles, tractor-trailers, boats, motorhomes, snowmobiles, all-terrain vehicles and garden and lawn tractors.

MOTOR VEHICLE REPAIR SHOP: A building, or portion of a building, arranged, intended or designed to be used for making repairs to motor vehicles for compensation.

MOTOR VEHICLE SALES: Any area of land, including structures thereon, the principal use of which is the display or sale of new and/or used automobiles, motorcycles, trucks, cargo trailers, boats, recreational vehicles or other vehicles, and which may or may not include the repair of vehicles as an accessory use. Enclosed showrooms and open display areas are included in this definition. The sale of motor fuels is not included in this definition.

MOTOR VEHICLE SALES AREA: An open area, other than a street, used for the display, sale or rental of new or used motor vehicles or trailers in operable condition where no repair work is done.

NON-CONFORMING BUILDING, STRUCTURE OR USE: A building, structure, or use of land which was lawfully existing prior to the adoption or amendment of this Local Law, but which fails to conform to the regulations of the zoning district in which it is now located by reason of such adoption or amendment.

NON-CONFORMING LOT: A lot of record existing at the date of the enactment of this Local Law which does not have the minimum width, depth or area for the district in which it is located.

NURSING OR CONVALESCENT HOME: A structure designed or used for residential occupancy and providing limited medical or nursing care on the premises for occupants, but not including a hospital.

OFFICE BUILDING: A building in which office use comprises more than fifty (50) percent of the total floor area. This does not include home occupations, where offices are a secondary or incidental use.

OPEN STORAGE: An unenclosed area used for temporary or seasonal storage of vehicles, materials, building supplies, stock, or supplies for later use in conjunction with a permitted principal use, accessory use, or special permitted use.

PARK, PRIVATE, NON-COMMERCIAL: Outdoor recreation facilities, operated by a non-profit organization and open only to bona fide members of such non-profit organization.

PARK OR RECREATION AREAS, PUBLIC: Outdoor recreation facilities or other entertainment facilities operated as a non-profit enterprise by the Town of Shelby, any other governmental entity or any non-profit organization and open to the general public.

PERCOLATION RATE: The rate in minutes per inch as determined by following the test procedure as set forth in the most recent edition of the New York State Waste Treatment Handbook as published by the New York State Department of Health. Said percolation rates must be obtained from the area of the site on which a septic system leach bed is intended to be constructed, or would normally be constructed. For the determination of minimum lot sizes in accordance with this Local Law, such percolation tests must be taken in native soil.

PARKING SPACE: Space available for the parking of one motor vehicle and having an area of not less than 200 square feet (10 by 20 feet), exclusive of passageways and driveways providing access thereto.

PARKING, OFF-STREET: An off-street area with an appropriate means of vehicular access to a street, intended for the temporary storage of vehicles.

PERMITTED USE (or USE OF RIGHT): A land use listed in the Zoning District regulations of this Local Law as permitted.

PINBALL AND VIDEO GAME ARCADE: See "Amusement Center."

PLACE OF WORSHIP: Any church, synagogue, temple mosque or similar structure used for worship or religious instruction including social and administrative rooms accessory thereto.

PLANNING BOARD: The Planning Board of the Town of Shelby.

POND, FARM: Any artificially constructed body of water whose use is to enhance the agricultural process, or for protection, conservation water supply, or flooding or drainage control.

PRINTING/PUBLISHING ESTABLISHMENT: A business for the printing of books, magazines or other publications, excluding retail sales of such products on the premises.

PRINCIPAL BUILDING: A building in which is conducted the main or principal use of the lot on which said building is located.

PRINCIPAL USE: The main or primary purpose for which a building, structure or lot is to be used.

PROFESSIONAL OFFICES: The office or place of business where professional services are offered and does not involve the sale of goods, or the keeping of a stock in trade. Professional offices include but are not limited to, medical doctors, dentists, attorneys, architects, engineers, planners, accountants, real estate brokers, insurance brokers, psychologists and chiropractors.

PUBLIC AND SEMI-PUBLIC USES: This definition is intended to include, but not be limited to, any one (1) or more of the following uses, including grounds and accessory buildings necessary for their use:

1. Cemeteries and associated uses.
2. Churches, places of worship, parish houses and convents.
3. Public or semi-public parks, playgrounds and recreational areas when authorized or operated by a governmental authority, school, or religious institution.
4. Nursery schools, elementary schools, high schools, colleges, or universities.
5. Public libraries and museums.
6. Not-for-profit fire, ambulance and public safety buildings.
7. Administrative office buildings and related facilities operated by public agencies.
8. Proprietary or not-for-profit hospitals for the care of human beings, nursing homes, convalescent homes for adults, or homes for the aged as the same are defined under the Public Health Law or the Social Services Law of the State of New York, provided that they are duly licensed by the State of New York.

9. Not-for-profit membership corporation or club established for cultural, social, or recreational purposes.
10. Day care centers approved by the New York State Department of Social Services.

RECREATION, COMMERCIAL INDOOR: A building, structure or portion thereof used principally for indoor recreation, sports or leisure activity, conducted as a commercial enterprise or otherwise as a principal use. The term includes, but is not limited to, billiard parlors, bowling halls, live or motion-picture theaters, amusement or video game centers, indoor sports facilities, gymnasiums, physical fitness centers, martial arts schools and dance schools. The term does not include adult entertainment establishments, special events facilities or indoor recreation as a community facility or as an accessory use for an institutional use, membership club or nonprofit organization.

RECREATION FACILITY, OUTDOOR: Land developed by a private sponsor with facilities for passive recreation, e.g., trails and picnic areas, and/or with facilities for active outdoor individual or organized recreation, e.g., ball fields, tennis courts, swimming pools, ski trails, and ice-skating areas. This definition includes golf courses, hunting and/or fishing clubs, and open air theaters or drive-in theaters. This definition does not include arenas, stadia or other facilities for the accommodation of more than 200 spectators, campgrounds, or racetracks or other facilities featuring activities involving motorized vehicles. Nothing in this definition shall be read as limiting or regulating the use of snowmobiles or ATVs on public or private trails.

RECREATIONAL VEHICLE: A vehicle type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic types are:

A. Travel Trailer

A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and of a body width of no more than eight feet and six inches (8'6"), excluding awnings, and a body length of no more than forty (40) feet when factory equipped for the road.

B. Tent Camper

A portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle.

C. Truck Camper

A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck campers are of two basic types:

1. Slide-in camper - A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.
2. Chassis-mount camper - A portable unit designed to be affixed to a truck chassis.

D. Motorhome - A vehicular unit built on a self-propelled motor vehicle chassis.

RESIDENTIAL CONVERSION: The conversion of the use of a building from non-residential to residential use or the structural alteration of an existing residential structure to increase the number of residential units in the structure.

RESTAURANT: Any establishment, however designated, at which food or drink is sold for consumption to patrons seated within an enclosed building or on the premises.

RESERVOIR SPACE: Any temporary storage space for a vehicle waiting for service or admission. Such space shall be in addition to drives, aisles or parking space required by this Local Law. One (1) reservoir space shall be twenty-four (24) feet long and ten (10) feet wide.

RETAIL BUSINESS: See BUSINESS, RETAIL.

RIDING STABLE: A horse stable used for the purpose of renting horses or ponies for rides, riding lessons, or for training of horses for specific purposes.

RIGHT-OF-WAY: Land set aside for use as a street, alley, or other means of travel.

RIGHT-OF-WAY LINE: The line determining the street or highway limit of public ownership. For the purposes of this Local Law, the right-of-way line and the street line shall have the same meaning.

ROAD

- Major: Streets or highways connecting through roads with each other and also handling internal movement within the town.
- Secondary: Streets serving to connect major roads with each other and also to handle internal movement within the town.
- Local: Streets which primarily function to give direct access to abutting property. Local roads are the internal part of the system to provide movement within residential or to other land use areas.
- Private: Roads, streets, or highways whose primary function is to serve private needs on private property. Private roads for commercial purposes shall be built to Town Standards. Example: Road for manufactured home parks, subdivisions, campgrounds.

ROADSIDE STAND: (See FARM PRODUCE STAND):

ROOMING or BOARDING HOUSE: A dwelling other than a hotel, motel or tourist home, where more than two (2) persons are housed or lodged for hire with or without meals. A rooming house is distinguished from a bed and breakfast or tourist home in that it is designed to be occupied by longer term residents as opposed to overnight or weekly guests.

SATELLITE DISH ANTENNA: Shall mean a combination of: an antenna whose purpose is to receive communications or other signals from orbiting satellites and other extraterrestrial sources; and a low noise amplifier whose purpose is to carry signals into the interior of a building, but shall not include a telecommunications facility as defined herein.

SCHOOL OR COLLEGE: An institution or place of learning, including private, public and parochial facilities that provide a curriculum of elementary and secondary academic instruction, as well as higher education, including kindergartens; elementary, middle, junior and senior high schools; and two-year, four-year and advanced degree institutions. This definition shall not include day care centers (nursery schools) or specialized, trade, professional or business schools as defined below.

SCHOOL, SPECIALIZED, TRADE, PROFESSIONAL OR BUSINESS: A school giving regular instruction in: trades or specialized skills such as welding, hair dressing, cosmetology, or massage; or professional subjects, such as the dramatic or graphic arts, business, dancing, languages, music, or sciences; or business skills such as computer programming, stenography and secretarial courses. For the purpose of these regulations, such schools shall be deemed to be commercial service establishments.

SEASONAL SERVICE RESTAURANT: A restaurant which operates only seasonally. Included are coffee shops, lunch counters, and ice cream parlors.

SERVICE ESTABLISHMENT: See Business, Service

SETBACK: The horizontal distance between the street line, rear or side lines of the lot and the front, rear or side lines of the building. For the purpose of measuring setbacks, the building shall include an enclosed porch, but shall not include any open porch, patio, deck or steps that are no higher than four (4) feet above ground level. All measurements shall be made at right angles to or radially from the lot lines to the building lines. Setbacks from street lines to building lines are defined as "front setbacks". Setbacks from side lot lines are "side setbacks". Setbacks from rear lot lines are "rear setbacks".

SHOPPING CENTER: A group of stores, shops and similar establishments occupying adjoining structures or two (2) or more commercial buildings located on a single lot or adjacent lots, with such buildings developed as part of a single integrated development with a common architectural design.

SIGN: Any device, structure, or object for visual communication that is used for the purpose of bringing the subject thereof to the attention of others.

AWNING SIGN: Any visual message incorporated into an awning attached to a building.

BANNER SIGN: Any sign intended to be hung either with or without frames, possessing characters, letters or illustrations applied to paper, plastic or fabric of any kind, stretched across or hung over a public right-of-way.

BILLBOARD SIGN: Any sign that attracts attention to an object, product, service, place activity, institution, organization or business not available or located on the lot where the sign is located.

CHANGEABLE LETTER SIGN: A sign where the supporting frame or structure is permanent and only the letters, displays or illustrations thereon are changeable or temporary.

CONSTRUCTION SIGN: Any sign giving the name or names of principal contractors, architects and lending institutions responsible for construction on the site where the sign is placed, together with other information included thereon.

DIRECTIONAL SIGN: A sign limited to providing information on the location of an activity, business or event.

FREESTANDING SIGN: Any sign not attached or part of any building but separate and permanently affixed by any other means in or upon the ground. Included are pole signs, pylon signs and masonry wall-type signs.

ILLUMINATED SIGN: Any sign illuminated by electricity, gas or other artificial light either from the interior or exterior of the sign which includes reflective and phosphorescent light.

OFF-PREMISES SIGN: A sign unrelated to a business or a profession conducted, or to a commodity, or service sold or offered, upon the premises where such sign is located.

PORTABLE SIGN: A sign where on its own trailer wheels or otherwise designed to be moveable and not structurally attached in the ground or to a building, a structure or another sign.

PROJECTING SIGN: A sign which is attached to the building wall or structure and which extends horizontally from the place of such wall or structure.

REAL ESTATE SIGN: Any sign which is used to offer for sale, lease or rent the property upon which the sign is placed.

REPRESENTATIONAL SIGN: A three-dimensional sign built so as to physically represent the object advertised.

ROOF SIGN: Any sign erected or constructed wholly upon and over the roof of any building and supported solely on the roof structure.

DIRECTORY SIGN: A listing of two (2) or more business enterprises, consisting of a matrix and sign components.

TEMPORARY SIGN: A sign related to a single activity or event having a duration of no more than thirty (30) days.

WALL SIGN: A sign which is painted on or attached to the outside wall of a building with the face of the sign in the plane parallel to such wall, and not extending more than fifteen (15) inches from the face of such wall.

WINDOW SIGN: A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material, or located inside within four (4) feet of the window, but not including graphics in connection with customary window display of products.

SIGN AREA: The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines the said sign.

SIGN STRUCTURE: The support, uprights, bracing and framework for the sign. In the case of a sign structure consisting of two (2) or more sides where the angle formed between any two (2) of the sides or the projections thereof exceed thirty degrees (30°), each side shall be considered a separate sign structure.

SIGHT DISTANCE: The maximum extent of unobstructed vision along a street from a vehicle located at any given point on the street.

SITE PLAN: A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, right-of-ways, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

SITE PLAN, FINAL: A complete and exact subdivision or site plan, prepared for official recording as required by statute, to define property rights and proposed streets and other improvements.

SITE PLAN, PRELIMINARY: A tentative subdivision or site plan, in lesser detail than a final plan, showing approximate proposed streets and lot layout as a basis for consideration prior to preparation of a final plan.

SITE PLAN, SKETCH: An informal plan, not necessarily to scale, indicating salient existing features of a tract and its surroundings, and the general layout of the proposed subdivision or site.

SITE PLAN REVIEW: A review and approval process, conducted by the Planning Board, whereby Site Plans are reviewed utilizing criteria stated in this Local Law.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade.

SPECIAL PERMIT USES: Those uses that are specifically permitted in a given district only when conditioning criteria enumerated in this Local Law are met.

STORAGE FACILITY, SELF-SERVICE: Any building or group of buildings on a single parcel made of individual storage compartments, which are rented or leased to individuals or businesses for storage of nonhazardous materials, personal property and equipment.

STREETLINE: The limit of the street width or highway right-of-way, whichever is greater.

STRUCTURE: Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. For example, structures include buildings, manufactured homes, walls, fences, signs, sheds, billboards and poster panels, docks, and/or

similar construction types. For the purpose of regulating setbacks and other zoning requirements, a shed or other assembly of materials that is not a motor vehicle, is larger than 12 feet by 10 feet in gross floor area and is placed on wheels or skids shall be included in the definition of "structure."

SUB-DIVISION: The division of a parcel of land into two or more parcels, which is subject to approval by the Town Planning Board pursuant to adopted Subdivision Regulations.

SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent (50%) of the assessed value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred.

SWIMMING POOL: Any body of water, or receptacle for water, with a surface area less than 1920 square feet having a capability of a depth of twenty-four (24) inches or more at any point, used or capable to be used for swimming, bathing, or wading, and permanently installed or constructed either above or below ground.

TAVERN: Any establishment, licensed by the State of New York, that engages in the sale for on premise consumption of alcoholic and non-alcoholic beverage(s).

TELECOMMUNICATIONS FACILITY: Any commercial equipment used in connection with the provision of wireless communication services, including cellular telephone services, personal communications services, radio and television broadcast communications and private radio communications services, and are regulated by the Federal Communications Commission, both in accordance with the Telecommunications Act of 1996 and other federal laws. A Telecommunication Facility shall include monopole, guyed, or latticework tower(s), as well as antenna(s), switching stations, principal and accessory telecommunication equipment and supporting masts, wires, structures, and buildings.

TEMPORARY USE: An activity or use conducted for a specified limited period of time, which may not otherwise be permitted by the provisions of this Local Law not exceeding six months. This term shall include those uses incidental to construction projects, festival tents/refreshments stands, temporary real estate sales offices incidental to a subdivision project, and similar type uses.

TOURIST FACILITIES: Uses and amenities including rest rooms, snack bars, information areas, public cultural and recreational facilities, places of public assembly and self service laundries.

TOWN BOARD: The Town Board of the Town of Shelby.

TOWNHOUSE: An independent single family dwelling unit which is one (1) of a series of dwelling units, having a common party wall between each adjacent unit, each with private outside entrance.

USE: The specific purposes for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

UTILITY SHED: Wood, metal or masonry building for the storage of personal property. This excludes any devices previously used for highway use, such as truck trailers or manufactured homes.

VARIANCE: A variance is any departure from the strict letter of these regulations granted by the Zoning Board of Appeals as it applies to a particular piece of property. Variances run with the land and are not particular to any one landowner.

AREA VARIANCE: A variance which permits deviation from strict compliance with the dimensional requirements of the zoning regulations, as long as the purposes for which the premises area intended to be used are permitted by the Zoning Local Law.

USE VARIANCE: A variance which permits a use of land not permitted by the Zoning Local Law.

WATER DEPENDENT USES: Land uses, structures and/or economic activities that would not exist without a waterfront location.

WATER ENHANCED USES: Land uses that receive added value or importance because of proximity to a shoreline, often functioning as support services for water uses and water dependent uses.

WAREHOUSE: A building or part of a building used or intended to be used primarily for the storage of goods or products that are to be sold retail or wholesale from other premises or sold wholesale from the same premises; for the storage of goods or products to be shipped on mail order; for the storage of equipment or materials to be used or installed at other premises by the owner or operator of the warehouse; or for similar storage purposes, or stored for use in connection with industrial assembly operations. The term "warehouse" shall not include a retail establishment whose primary purpose is for the sale of goods or products stored on the premises. However, this definition is may include purely incidental retail sales as an accessory use.

WHOLESALE ESTABLISHMENT: A business which is primarily involved in sales to other businesses, either directly or as a broker, rather than to the general public.

WINDMILL: An alternative energy device which converts wind energy by means of a rotor to mechanical or electrical energy. A wind generator may also be deemed a windmill.

YARD: An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided herein. (See also SETBACK)

YARD, FRONT: The space within and extending the full width of the lot from the front lot line to the part of the principal building which is nearest to such front line. Corner lots and through lots shall have two (2) front yards.

YARD, REAR: An open space extended across the entire width of the lot between the rear wall of the principal building and the rear line of the lot, and unoccupied except for accessory building and open porches. Corner lots and through lots do not have a rear yard.

YARD, SIDE: An open space on the lot with a principal building between the principal building and the side line of the lot extending through from the front yard to the rear yard, into which space there shall be no extension of building parts other than two (2) feet for rain water leaders, window sills, and other such fixtures and open steps.

YARD SALE: The temporary displaying, for no more than three (3) consecutive days in the same location, of household items and clothing for sale on a yard, porch or in a barn or garage. This term shall include garage sales, barn sales, porch sales, tag sales and other sales similar in nature.

ZONING BOARD OF APPEALS: The Zoning Board of Appeals of the Town of Shelby.

ZONING CERTIFICATE OF COMPLIANCE: See "Certificate of Compliance."

ZONING ENFORCEMENT OFFICER: The official designated to administer and enforce this Local Law by granting or denying development permits in accordance with its provisions.

ZONING PERMIT: A document issued by the Zoning Enforcement Officer authorizing the use of lots, structures, uses of land and structures, and the characteristics of the uses in conformity with this Local Law.

ARTICLE III: PERMITS AND PROCEDURES

SECTION 300 PERMITS REQUIRED

- A. No building or structure shall be erected, enlarged, structurally altered or moved, no new use shall be established, and no building permit shall be granted pursuant to the Codes of New York State, until a zoning permit therefore has been issued by the Zoning Officer. No alterations to an existing building shall be made without a zoning permit, unless such alterations are exempt from a building permit pursuant to the Codes of New York State. No zoning permit, nor any certificate of occupancy or compliance pursuant to the Codes of New York State, shall be issued for any building where said construction, addition, alteration, moving or use thereof would be in violation of any of the provisions of this Zoning law, or where any necessary Town Planning Board Subdivision approval has not been granted.
- B. Permit applications shall be filed with the Zoning Enforcement Officer.

SECTION 301: PRE-APPLICATION CONFERENCE

Pre-application conferences with the Town's Planning Board are encouraged for all applications seeking permits for uses that may require a special use permit and/or site plan review (most nonresidential uses or nonfarm uses.)

SECTION 302 APPLICATION PROCEDURE AND REQUIRED INFORMATION

- A. Application for a zoning permit shall be made with the Zoning Enforcement Officer on forms approved by the Town Board. Forms shall be made available at the Offices of the Zoning Enforcement Officer and the Town Clerk.
- B. Information

All information on the application form shall be completed.
- C. Map required

One copy of a property map shall be submitted with all applications. The map shall be either:

 1. Sketch Map: A sketch map is required with all applications for a zoning permit for one or two family dwellings, their customary accessory uses, or farm use. The sketch map shall be drawn to scale and show the dimensions and location of the lot, exact size and location of all existing and proposed buildings on the lot, proposed location of water and sewage disposal systems, parking areas and driveway location, natural water courses, ponds, surface drainage patterns or location of existing or proposed easements.

2. Site Plan: A site plan is required with applications for all other uses, including application for residential uses in a Historic Zone. The requirements and procedures for site plan approval are in Article X.
- D. Approval of Water and Sewage Disposal Systems: Evidence of approval of the water supply and the sewage disposal system plans by the Orleans County Health Department or its agent, or design plans signed by a licensed engineer, shall be submitted at the time of application. Applications lacking such information shall not be accepted.
 - E. Approval of the County Highway Superintendent or Town Highway Superintendent is required for any driveway pipes or culverts on County or Town roads.
 - F. Evidence of Property Ownership or Intent to Purchase. Copies of deeds, titles, purchase agreements, or other proof of ownership or intent to purchase shall be attached to an application before it will be accepted.
 - G. Licenses: Any use currently licensed by Federal, State, County or Town Agencies and already operating within the Town shall present evidence of currently valid licenses before any expansion permits are considered.
 - H. Fee: The appropriate non-refundable fee established by the Town Board in its fee structure shall be collected at the time of application. This fee structure shall be filed and posted at the Offices of the Town Clerk and the Zoning Enforcement Officer.

SECTION 303 ZONING PERMIT TYPES

Under the terms of this Local Law, the following types of Zoning Permits may be issued:

- A. Permitted Use. A zoning permit for a permitted use may be issued by the Zoning Enforcement Officer on his own authority.
- B. Site Plan Approval. A zoning permit for a permitted or special permit use that requires Site Plan Review may be issued by the Zoning Enforcement Officer after special permit and/or site plan approval from the Planning Board, as more fully described in Article X.
- C. Zoning Permit after a Request for Variance. A Zoning Permit for a use or structure which requires a variance may be issued by the Zoning Enforcement Officer upon order of the Zoning Board of Appeals, after a public hearing, as more fully described in Article VIII.

SECTION 304 ZONING PERMIT GRANTED

When all requirements of this Local Law have been met, the Zoning Enforcement Officer shall issue a Zoning Permit and return one approved copy of the map to the applicant no later than five (5) days after approval. The Zoning Enforcement Officer shall file one copy of the approved permit in the Town Clerk's office.

SECTION 305 TERMINATION OF PERMIT

- A. Any zoning permit for which construction or use has not commenced within one (1) year after issuance shall be automatically revoked.
- B. The Zoning Enforcement Officer may grant an extension for time of completion. Unless such an extension is requested and approved, further work as described in the canceled permit shall not proceed until a new permit has been obtained.
- C. If a project is not initiated within six (6) months of the issuance of the extension, the permit issued shall be considered null and void.

SECTION 306 CERTIFICATE OF ZONING COMPLIANCE

- A. The applicant shall notify the Zoning Enforcement Officer when the structure or use is ready for final inspection. The Zoning Enforcement Officer shall then make a final inspection. If satisfied that the regulations pertaining to the project have been complied with and that the project has been completed as specified on the approved application, the Zoning Enforcement Officer shall issue a certificate of Zoning Compliance granting permission to occupy or use the structure. Permission to occupy a building or structure also requires approval from the Code Enforcement Officer.
- B. The Certificate of Zoning Compliance may be issued at the same time, and may be administered using the same form as, the Certificate of Occupancy or Compliance issued pursuant to the Codes of New York State.

SECTION 307 FLOOD PLAIN CERTIFICATE

The applicant shall notify the Zoning Enforcement Officer for inspection. The Applicant shall comply with Local Flood Hazard Law before any permit(s) are approved.

SECTION 308 STOP WORK ORDER

A stop work order may be issued when the Zoning Enforcement Officer discovers a project commencing without required permits. A fee will be charged for the removal of any structure erected without the proper permits stop work order.

ARTICLE IV: ESTABLISHMENT AND DESIGNATION OF ZONING DISTRICTS

SECTION 400 ESTABLISHMENT OF DISTRICTS

The Town of Shelby is hereby divided into zoning districts as hereinafter set forth and as the same may, from time to time, be amended.

HA	Hamlet
AR	Agricultural/ Residential
RR	Rural Residential
WDO	Waterfront Development Overlay
WR	Waterfront Residential
GB	General Business
LI	Light Industrial
I	Industrial
F	Flood Hazard Overlay District
HD	Historic District
PD	Planned Development District
MR	Maple Ridge Overlay
A	Adult Business Overlay
M/E	Mining/Excavation Overlay Wind Energy Overlay Zone
WRPOD	Wildlife Refuge Protection Overlay District

SECTION 401 ZONING MAP

- A. Said districts are bounded as shown on the map entitled "Zoning Map of the Town of Shelby adopted by the Town Board and certified by the Town Clerk which accompanies, and which, with all explanatory matter, is hereby made a part of this Local Law.
- B. Changes made in zoning district boundaries, or other matters portrayed on the zoning map under the provisions set forth herein, shall be permanently affixed to the zoning map promptly after an amendment has been approved by the Town Board and shall convey information as to the date and nature of the change. No amendment to this Local Law, which involves matters portrayed on the zoning map, shall become effective until such change and entry has been made on said zoning map and has been attested to by the Town Clerk.

SECTION 402 INTERPRETATION OF DISTRICT BOUNDARIES

- A. District boundaries indicated as approximately following the center lines of streets or highways shall be construed as following such center lines.
- B. District boundaries indicated as approximately following lot lines shall be construed as following such lot lines.

- C. District boundaries indicated as being approximately parallel to the center lines or right-of-way lines of streets or highways shall be construed as being parallel thereto and at such distances there from as indicated on the zoning map. If no distance is given, such dimensions shall be determined by the use of the scale shown on said zoning map.
- D. District boundaries indicated as approximately following a stream, lake or other body of water shall be construed to follow the center lines of such stream or other body of water.
- E. Boundaries indicated as parallel to or extensions of features indicated in subsections A through D above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.
- F. In case of uncertainty as to the true location of a district boundary line in a particular instance, the Zoning Enforcement Officer shall request the Zoning Board of Appeals to render its determination.

SECTION 403 APPLICATION OF REGULATIONS

The regulations set by this Local Law shall be the minimum regulations within each district and shall apply uniformly to each class or kind of structure or use of land, except as hereinafter provided:

- A. No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all the regulations herein specified for the district in which it is located.
- B. No building or structure shall hereafter be erected or altered which:
 1. Exceeds the height limitation for any structure within a specified district;
 2. Accommodates or houses a greater number of dwelling units than is permitted within a specified zoning district;
 3. Occupies a greater percentage of lot area than is permitted by the zoning schedule; or
 4. Has narrower or smaller yards or other open spaces than herein required, or in any other manner contrary to the provisions of this Local Law or the requirements of the Codes of New York State.
- C. No part of a yard or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with the regulations set forth herein, shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building except as provided in Sections 601 and 602.
- D. No yard or lot existing at the time of enactment of this Local Law shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Local Law shall meet or exceed the minimum requirements established herein.

ARTICLE V: DISTRICT REGULATIONS

SECTION 500 HAMLETS (HA)

A. PURPOSE

The purposes of the Hamlet Zone are to recognize the crossroads community as a unique area where residences and businesses co-exist in close proximity, providing necessary basic services and other small business uses as well as a distinct residential environment.

B. PERMITTED USES

1. One and Two Family Dwellings subject to the requirements of Section 619
2. Farm Produce Stands
3. Agriculture, except for animal husbandry

C. CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT USE REGULATIONS. ARTICLE VII.)

1. Bed & Breakfast
2. Farm Market
3. Home Business
4. Multi-Family Dwelling
5. Neighborhood Business
6. Professional Offices
7. Motor Vehicle Repair Shop
8. Gasoline Station
9. Essential Services and Public Utilities
10. Public and Semi-Public Buildings and Grounds
11. Restaurant
12. Seasonal Services Restaurant

D. PERMITTED ACCESSORY USES

1. Home occupations
2. Farm produce stands
3. Signs as regulated in Section 600.
4. Private garages; Off-street parking and loading areas
5. Private recreational facility (swimming pool, etc.)

6. Other uses and structures customarily incidental to permitted principal uses.

Accessory uses shall not be used on a commercial basis except home occupations and approved home businesses.

E. SPECIFICATIONS

Minimum Setback Requirements	
Front (1):	35 Feet from Town roads; 50 feet from County and State highways
Side:	15 feet
Rear:	30 feet (principal uses) 5 feet (accessory uses)
Lot Width:	125 feet
Road Frontage:	125 feet
Minimum Lot Size:	25,000 sq. ft.
Building Height:	35 Feet (except Agricultural Storage Facilities and Airport Structures.
Maximum Building Coverage:	30%
Minimum "Green Space":	20%

- (1) Front setbacks are to be measured from the right-of-way. If measured from the center of the roadway, add 50 feet for State highways, 40 feet for County highways, and 30 feet for Town roads.

F. OTHER PROVISIONS AND REQUIREMENTS

1. Buffer Strip

Commercial structures shall provide a natural buffer strip to be perpetually maintained so as to provide visual screening and separation between commercial and residential uses.

2. Refuse Containers

Commercial refuse containers shall be placed on concrete slabs and visually screened, while providing rodent control.

SECTION 510 AGRICULTURAL/ RESIDENTIAL DISTRICT (AR)

A. PURPOSE

The purpose of the Agricultural/ Residential (AR) District is to protect agricultural lands and uses from incompatible uses and development; to maintain an open rural character of the community; to assure compatible types and densities of development; to provide for low density, rural development; and to protect the natural environment.

B. PERMITTED USES

1. Agriculture
2. One and Two Family Dwellings subject to the requirements of Section 619
3. Farm Produce Stands
4. Public Park or Recreation Area

C. PERMITTED ACCESSORY USES

1. Home occupations
2. Family Home Day Care
3. Signs, as regulated in Section 600.
4. Private garages; Off-street parking and loading areas
5. Private recreational facility (swimming pool, tennis court, etc.)
6. Farm Produce Stands
7. Other uses and structures customarily incidental to permitted principal uses.
8. Farm Worker Housing

Accessory uses shall not be used on a commercial basis except home occupations, approved home businesses and other conditional uses, and agricultural services.

Permitted accessory structures may be erected and/or maintained in the rear yard at least 20 feet from the rear and side lines of the lot.

D. CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT REGULATIONS, ARTICLE VII)

1. Agricultural Processing or Distribution facility
2. Animal Hospital
3. Farm Market
4. Bed and Breakfast Inn
5. Home Business
6. Private airport
7. Campground
8. Kennel
9. Essential Services and Utilities

10. Junk Yards, subject to a license from the Town Board, and subject to the following dimensional requirements:

- Minimum Lot Size: 15 acres
- Minimum Lot Width: 600 feet
- Minimum Front Setback: 100 feet
- Minimum Side and Rear Setbacks: 100 feet

- 11. Public and Semi-Public Uses
- 12. Outdoor Commercial Recreation Facilities
- 13. Riding Stable
- 14. Ponds
- 15. Conference/ Resort complex
- 16. Manufactured home parks
- 17. Telecommunications Facility
- 18. Seasonal Dwelling
- 19. Motor Vehicle Repair Shop

E. SPECIFICATIONS

Minimum Setback Requirements:	
Front: (1)	75 Feet from Town roads 75 feet from County and State highways
Side:	30 Feet (principal buildings) 30 feet (accessory buildings)
Rear:	30 Feet (principal and accessory buildings)
Lot Width:	150 feet
Road Frontage:	150 feet
Minimum Lot Size:	30,000 sq. ft., or a lot size sufficient to meet Health Department Specifications for adequate sewage/ septic tank disposal
Building Height:	35 Feet (except Agricultural Storage Facilities and Airport Structures)
Maximum Building Coverage:	30%
Minimum "Green Space":	25%

(1) Front setbacks are to be measured from the right-of-way. If measured from the center of the roadway, add 50 feet for State highways, 40 feet for County highways, and 30 feet for Town roads.

SECTION 520 RURAL RESIDENTIAL DISTRICT (RR)

A. PURPOSE

The purpose of the R-R Rural Residential District is to provide a stable environment for rural residential development, free from incompatible uses. Uses in this district are either served by public water and/or sewer or are areas with densities high enough to support such facilities if growth is likely or encouraged.

B. PERMITTED USES

1. Agriculture, except that farm animals shall comply with the regulations in Section 697.
2. One and Two Family Dwellings, subject to the requirements of Section 619.
3. Public Park or Recreation Area

C. PERMITTED ACCESSORY USES

1. Home occupations
2. Family Home Day Care
3. Farm Produce stands, in connection with a principal farm use on the same lot
4. Signs, as regulated in Section 600.
5. Private garages; Off-street parking and loading areas
6. Private recreational facility (swimming pool, tennis court, etc.)
7. Other uses and structures customarily incidental to permitted principal uses.
8. The keeping, breeding, and raising of farm animals in association with a residential use, subject to the provisions of Section 697.

Permitted accessory structures may be erected and/or maintained in the rear yard at least ten (10') feet from the rear and side lines of the lot.

Accessory uses shall not be used on a commercial basis except home occupations, approved home businesses and other conditional uses.

D. CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL USE REGULATIONS, ARTICLE VII)

Home Business

1. Multiple Family Dwellings
2. Essential Services and Utilities
3. Bed and Breakfast
4. Public and Semi-Public Buildings and Grounds
5. Outdoor Commercial Recreation Facilities
6. Ponds

E. SPECIFICATIONS

Minimum Setback Requirements:	
Front: (1)	75 Feet from Town roads 75 feet from County and State highways
Side:	30 Feet (principal and accessory buildings)
Rear:	30 Feet (principal and accessory buildings)
Lot Width:	150 feet
Road Frontage:	150 feet
Minimum Lot Size:	30,000 sq. ft., or a lot size sufficient to comply with Health Department specifications for adequate sewage/ septic tank disposal
Building Height:	35 Feet (except Agricultural Storage Facilities and Airport Structures)
Maximum Building Coverage:	30%
Minimum "Green Space":	25%

- (1) Front setbacks are to be measured from the right-of-way. If measured from the center of the roadway, add 50 feet for State highways, 40 feet for County highways, and 30 feet for Town roads.

SECTION 530 GENERAL BUSINESS DISTRICT (GB)

A. PURPOSE

The purpose of the General Business District is to provide for business establishments serving the needs of area residents, especially retail and service businesses. Permitted uses are intended to create a business districts free from conflicting land uses.

B. PERMITTED USES

1. Single Family Dwellings, subject to the requirements of Section 619
2. Two-Family Dwellings
3. Agriculture, except that farm animals shall comply with the regulations in Section 697.
4. Retail, Service and General Business, including Farm Markets and Roadside Stands
5. Professional Offices
6. Restaurants and Taverns
7. Custom shops, including but not limited to printing, electrical, heating, plumbing, or woodworking.
8. Assembling, converting, altering, finishing, cleaning, or any other processing of products, provided that:
 - a. Goods so produced or processed are to be sold at retail on the premises;

- b. Space used for such purposes shall not occupy more than 20 percent of the area devoted to retail sales, shall be clearly incidental to such retail use and shall be fully concealed from any street;
 - c. Not more than two (2) persons shall be engaged in such production/ processing at any one time.
- 9. Hotels and Motels
 - 10. Newspaper Printing
 - 11. Commercial storage
 - 12. Indoor commercial recreation facilities
 - 13. Funeral homes
 - 14. Other business uses that, in the opinion of the Zoning Board of Appeals, are similar in nature and scale to those permitted above.

C. PERMITTED ACCESSORY USES

- 1. Private garage space for the storage of commercial vehicles used in conjunction with a permitted business use.
- 2. Off-street parking, loading and unloading facilities subject to the provisions of Sections 601 and 602 of this Local Law.
- 3. Signs, subject to the provisions of Section 600 of this Local Law.
- 4. Other uses and structures that are customarily incidental to and that are subordinate in size and extent to permitted uses and structures.
- 5. Other uses that, in the opinion of the Zoning Board of Appeals, are similar in nature and scale to those permitted above.

D. USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD
(SUBJECT TO SPECIAL PERMIT USE REGULATIONS, ARTICLE VII)

- 1. Motor Vehicle Repair
- 2. Motor Vehicle Sales/ Rental
- 3. Gasoline Station
- 4. Outdoor commercial recreation facilities
- 5. Riding Stable
- 6. Agricultural Distribution and Processing Facilities
- 7. Home Business
- 8. Bed & Breakfast Inn
- 9. Essential Services and Public Utilities

- 10. Multiple Family Dwelling
- 11. Public and Semi-Public Buildings and Grounds
- 12. Drive-In Business
- 13. Telecommunication Facility
- 14. Veterinarian/ Animal Hospital, with indoor facilities only

E. OTHER PROVISIONS AND REQUIREMENTS

- 1. Buffer Strip: Commercial uses shall provide a natural buffer strip to be perpetually maintained so as to provide visual screening and separation between commercial and residential uses.

A solid or woven fence min. 8' to max 10' may be used to shield the residential area. If a living barrier is used, a 6' strip is required per row of plantings.

- 2. Refuse Containers:

Commercial structures shall provide a commercial type refuse container on site. Such containers shall be placed on concrete or stone areas and visually screened, and shall provide rodent control.

- 3. Residential Lot Line: No commercial structure shall be permitted within fifty (50) feet of the nearest lot line of any residential district.

F. SPECIFICATIONS

Setback Requirements	
Front (1):	75 Feet from Town roads 75 feet from County and State highways
Side:	30 Feet (principal and accessory structures)
Rear:	50 Feet (principal and accessory structures)
Lot Width:	150 feet
Road Frontage:	150 feet
Minimum Lot Size:	30,000 sq. ft., or a lot size sufficient to comply with Health Department specifications for adequate sewage/ septic tank disposal
Building Height:	35 feet (except Agricultural Storage Facilities)
Maximum Building Coverage:	30%
Minimum "Green Space":	25%

- (1) Front setbacks are to be measured from the right-of-way. If measured from the center of the roadway, add 50 feet for State highways, 40 feet for County highways, and 30 feet for Town roads.

SECTION 540 LIGHT INDUSTRIAL DISTRICT (LI)

A. PURPOSE

The purpose of the Light Industrial District is to provide for manufacturing, assembly, storage facilities, and other compatible business uses, and to ensure that these uses will not be detrimental or hazardous to the surrounding community.

B. PERMITTED USES

Any light industrial or agri-industrial nature is permitted which involves only the processing, assembly, or packaging of previously prepared or refined materials, provided that at no time will such use result in or cause:

- Dust, smoke, smog, observable gas, fumes or odors, or other atmospheric pollution, objectionable noise, glare or vibration shall not be discernable beyond the property lines of the industry.
- Hazard of fire or explosion or other physical hazard to any adjacent building or to any plant growth on any land adjacent to the site of the uses.

The following uses are indicative of those that are intended to be permitted:

1. Agriculture
2. Scientific or research laboratories devoted to research, design and/or experimentation and processing and fabrication incidental thereto.
3. Administrative, educational and other related activities and facilities in conjunction with a permitted use.
4. Manufacture or assembly of electric, electronic or optical instruments or devices.
5. Light manufacturing, assembling, fabricating or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals, wood, metal, or stone.
6. Agricultural product processing, including manufacturing of food products, pharmaceuticals, cosmetics and the like.
7. Precision machining, tool and die work.
8. The warehousing or storage of goods and products such as building materials, farm supplies and the like, which may be sold from the premises to the general public. The bulk storage of fuel or petroleum products, nuclear or radioactive products, toxic waste chemicals is specifically excluded from the intent of the above.
9. Newspaper printing
10. Essential services and public utilities
11. Custom shops, including but not limited to printing, electrical, heating, plumbing, or woodworking.
12. Self-service storage facility

13. Motor Vehicle Repair Shop
14. Administrative and Corporate Offices which do not provide on-site retail sales or professional services to the general public.
15. Other uses that, in the opinion of the Zoning Board of Appeals, are similar in nature and scale to those permitted above.

C. PERMITTED ACCESSORY USES

1. Signs shall be permitted for advertising industrial activities on the premises. Such signs shall not exceed, in aggregate, 15% of the area of the front façade of the building. Such signs may be illuminated but shall not be of the flashing type. Signs shall be otherwise subject to the provisions of Article VI, Section 600, SIGNS of this Local Law.
2. Private garages and storage buildings which are necessary to store any vehicles, equipment or materials on the premises and which are used in conjunction with a permitted use.
3. Off-street parking space subject to the provisions of Article VI, Sections 601 of this Local Law.
4. Off-street loading and unloading facilities, subject to the provisions of Section 602 of this Local Law.
5. Other accessory uses that, in the opinion of the Zoning Board of Appeals, are incidental to and subordinate in scale and extent to a permitted use.

D. USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD
(SUBJECT TO SPECIAL PERMIT USE REGULATIONS, ARTICLE VII)

1. Telecommunications Facility

E. PROVISIONS AND REQUIREMENTS

1. Residential uses shall be prohibited except for a caretaker's residence on-site.
2. All manufacturing, assembly, research, engineering, administration, storage and all other non-agricultural related activities shall be conducted wholly within enclosed buildings.

Incidental storage out of doors may be permitted provided that such materials are shielded from view from public streets and adjacent off-street parking areas by fencing, landscaping or other appropriate measures.

3. The architectural treatment and general appearance of all buildings and grounds shall be in keeping with the purpose of this district and shall be of such quality and design as to be a visual asset to the area in which they are located as well as to adjacent development.
4. All uses permitted shall set aside not less than 10 percent of the lot area to be devoted to seeding, planting, retention of tree cover, or other landscaping. This area shall not be used for any other industrial, storage, or commercial purposes.

5. Each use shall provide truck loading and unloading areas in an amount sufficient to permit the transfer of goods and products in other than a public street, off-street parking area or front yard.
6. Parking or loading areas may be located in any of the required yard areas provided they are not less than 50 feet from a right-of-way line or 20 feet from a property line. Off-street loading facilities shall be subject to the additional provisions of Section 602 of this Local Law. Off-street parking space shall be subject to the provisions of Section 601 of this Local Law.
7. Industrial structures and outdoor storage areas shall be located a minimum of 75 feet from any non-industrial district. A natural buffer strip shall be placed and maintained so as to provide visual screening and separation between industrial and non-industrial uses.
8. Refuse containers shall be placed on concrete slabs and visually screened, while providing rodent control.

F. SPECIFICATIONS

Setback Requirements:	
Front (1):	75 Feet (measured from right-of-way line)
Side:	50 Feet
Rear:	50 Feet
Height:	35 Feet
Lot Width:	150 Feet
Minimum Lot Size:	One (1) acre.
Maximum Building Coverage:	30%
Minimum "green space"	25%

(1) Front setbacks are to be measured from the right-of-way. If measured from the center of the roadway, add 50 feet for State highways, 40 feet for County highways, and 30 feet for Town roads.

SECTION 541 INDUSTRIAL (I) DISTRICT

A. PURPOSE

To accommodate a variety of industrial uses that may not be permitted in the LI District.

B. PERMITTED USES

All uses that are permitted in the LI District

C. PERMITTED ACCESSORY USES

Accessory uses shall be permitted as described in Section 540.C (Accessory uses in the LI district).

D. USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD
(SUBJECT TO SPECIAL PERMIT USE REGULATIONS, ARTICLE VII)

1. Heavy industry, as defined herein, including manufacturing, assembly, storage and related activities such as stone quarrying, concrete mixing operations and sawmills that require outdoor storage or outdoor processing of materials.
2. Telecommunications Facility
3. Excavation or Mining

E. PROVISIONS AND REQUIREMENTS

1. Residential uses shall be prohibited except for a caretaker's residence on-site.
2. All uses permitted shall set aside not less than 10 percent of the lot area to be devoted to seeding, planting, retention of tree cover, or other landscaping. This area shall not be used for any other industrial, storage, or commercial purposes.
3. Each use shall provide truck loading and unloading areas in an amount sufficient to permit the transfer of goods and products in other than a public street, off-street parking area or front yard.
4. Parking or loading areas may be located in any of the required yard areas provided they are not less than 50 feet from a right-of-way line or 20 feet from a property line.
5. Off-street loading facilities shall be subject to the additional provisions of Section 602 of this Local Law.
6. Off-street parking space shall be subject to the provisions of Section 601 of this Local Law.
7. Industrial structures and outdoor storage areas shall be located a minimum of 75 feet from any non-industrial district. A natural buffer strip shall be placed and maintained so as to provide visual screening and separation between industrial and non-industrial uses.
8. Refuse containers shall be placed on concrete slabs and visually screened, while providing rodent control.

F. SPECIFICATIONS

Setback Requirements:	
Front (1):	75 Feet
Side:	50 Feet
Rear:	50 Feet
Height:	35 Feet
Lot Width:	150 Feet
Minimum Lot Size:	One (1) acre.
Maximum Building Coverage:	35%
Minimum "green space"	25%

(1) Front setbacks are to be measured from the right-of-way. If measured from the center of the roadway, add 50 feet for State highways, 40 feet for County highways, and 30 feet for Town roads.

SECTION 550 FLOOD HAZARD OVERLAY (F)

- A. The Flood Hazard District is established to conform with the "Flood Insurance Rate Map" and Flood Boundary-Floodway Map prepared by the Federal Emergency Management Agency (FEMA).
- B. Such areas shall be subject to the provisions of Town of Shelby Local Law # ___ in addition to the use regulations and other provisions of this Zoning Local Law.
- C. The provisions of such Local Law shall take precedence over any other zoning article, or to the extent that the provisions of this zone are inconsistent with such other provisions.

SECTION 560 HISTORIC DISTRICT OR LANDMARK (HD)

The purpose of the Historic District or Landmark is to preserve certain areas or sites of historical or cultural significance in the Town of Shelby. Development in these areas should be consistent with the architectural, cultural, or historic character of the area.

A. Applicability

Any lot or parcel designated as a Historic District or Landmark as herein after provided shall be subject to the provisions and requirements of this Section in addition to those of the zone in which the lot or parcel is located. If there shall be any conflict or inconsistency between such provisions and requirements, the provisions and requirements of this Section shall take precedence and prevail.

B. Designation Procedure

The Planning Board may designate any lot or parcel as a Historic District or Landmark only after a public hearing held on at least 10 days notice, published in the official newspaper of the Town and served by personal delivery or certified mail upon the owner of such lot or parcel as shown on the last completed assessment roll of the Town; and only after receiving evidence at such hearing and finding that such lot or parcel has historic significant; (1) because of the historic importance of the present or former owner, or (2) because of historic events or happenings that occurred upon the latter parcel, or (3) because of the unusual or classic nature of the architecture or construction of a building or another structure thereon. The Planning Board must make a written designation specifying the finding or findings or grounds upon which it relied in making its designation.

C. Other provisions and requirements

- 1. All building permits, including residential exterior alteration resulting in an essential change in the building, shall require Site Plan Approval.

2. All demolition or substantial exterior alteration resulting in an essential change in the building shall require Site Plan Approval.
3. The Town Planning Board Site Plan Review must demonstrate the following additional requirements in its findings.
 - a. The building or use is consistent with the architecture and historic significance of the area.
 - b. The building or use does not encroach, diminish or otherwise lessen the significance of other structures or uses within the area.
 - c. For demolition permits, evidence of overwhelming construction or structural problems must be shown to preclude any reasonable effort at rehabilitation, restoration, or preservation. Evidence must be in the form of a written contractor's estimate.
4. The Planning Board may consult historic experts to aid in demonstrating the requirements of Part C., above.

SECTION 570 WATERFRONT RESIDENTIAL (WR)

A. Purpose

The purpose of the WR Waterfront Residential District is to recognize the manmade/ natural lake shoreline and its tributaries, as a unique resource and to control future growth in a manner which respects the environmental limitations of the waterfront and affords maximum public enjoyment of the area.

B. PERMITTED USES.

1. One and Two Family Dwellings, subject to the requirements of Section 619.

C. PERMITTED ACCESSORY USES

Uses and structures customarily incidental to permitted uses and structures. Accessory uses are not to be used on a commercial basis except for home occupations.

D. CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT USE REGULATIONS, ARTICLE VII)

1. Multiple Family Dwellings
2. Essential Services and Utilities, including flood and erosion protection structures
3. Bed & Breakfast Inn
4. Ponds
5. Seasonal Dwelling

E. SPECIFICATIONS

Minimum Setback Requirements:	
Lake Shore Property	
Setback from mean high water mark	Principal Structures: 75 feet Accessory Structures: 20 feet
Setback from private lane (1):	20 feet (principal and accessory)
Non-Lakeshore Property (Lake View Property)	
Front (roadside) (1):	35 feet from private lane 35 feet from Town roads 75 feet from State or County Roads
Rear:	20 Feet (principal and accessory structures)
All Properties	
Side:	15 Feet (principal and accessory structures)
Lot Width:	100 feet
Road Frontage:	100 feet
Minimum Lot Size:	30,000 sq. ft., or a lot size sufficient to comply with Health Department specifications for adequate sewage/ septic tank disposal
Building Height:	35 Feet (except Agricultural Storage Facilities)
Maximum Building Coverage:	30%
Minimum "Green Space":	25%

- (1) Front or roadside setbacks are to be measured from the right-of-way. If measured from the center of the roadway, add 50 feet for State highways, 40 feet for County highways, and 30 feet for Town roads.

SECTION 513 WATERFRONT DEVELOPMENT OVERLAY DISTRICT (WDO)

A. PURPOSE

The intent of these regulations is enable property owners to take advantage of the Erie Canal and Glenwood Lake as a tourist generator by allow for the development of tourism and tourist-related businesses on property that abuts or is in close proximity to the Erie Canal or Glenwood Lake.

The intent of these regulations is enable property owners to take advantage of the Erie Canal as a tourist generator by allow for the development of tourism and tourist-related businesses on property that abuts or is in close proximity to the Erie Canal.

B. PERMITTED USES

1. All uses permitted by the underlying zoning district.

2. Public uses which depend on proximity, access and/or utilization of the water, including but not limited to the following:
 - a. Public recreation and swimming
 - b. Flood and erosion protection structures

C. PERMITTED ACCESSORY USES

All accessory uses permitted by the underlying zoning district, subject to the requirements of the underlying district.

D. CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT USE REGULATIONS ARTICLE VII)

1. Any use allowed with a Special Permit in the underlying zoning district
2. Hotels and Motels
3. Campgrounds
4. Conference/ resort complex
5. Restaurants other than drive-in restaurants
6. Boat marinas, boat rental businesses, and charter boat services
7. Public or semi-public tourist facilities, such as restrooms, information centers, museums, places of public assembly
8. Neighborhood businesses and professional offices that are enhanced by a waterfront location and proximity to water-dependent uses, including, but not limited to, the following:
 - a. Sales or rental of fishing and tackle equipment
 - b. Marine service, repair, rental and accessories
 - c. Self-service laundries
9. Mixed uses and facilities that are consistent with the above uses, and which are approved by the Planning Board as being consistent with the adopted Comprehensive Plan.
10. Other uses as determined by the Zoning Board of Appeals to be consistent with the intent and purpose of this Section.

E. PROHIBITED USES

The following uses are expressly prohibited:

1. Amusement parks and carnivals
2. Flea market sales
3. Motorized amusements, e.g., go-carts, motorcycles, snowmobiles, etc.

F. DIMENSIONAL SPECIFICATIONS

Dimensional specifications are stated in the requirements of the underlying zoning district, unless specific requirements are included in the criteria for individual special permit uses.

Minimum Setback Requirements:	
Lake Shore Property	
Setback from mean high water mark	Principal Structures: 75 feet Accessory Structures: 20 feet
Setback from road (1):	20 feet from private lane 50 feet from Town or County roads 75 feet from State Highways
Non-Lakeshore Property (Lake View Property)	
Front (roadside) (1):	35 feet from private lane 50 feet from Town or County roads 75 feet from State Highways
Rear:	20 feet (principal structures) 10 feet (accessory structures)
All Properties	
Side:	15 Feet (principal and accessory structures)
Lot Width:	100 feet
Road Frontage:	100 feet
Minimum Lot Size:	30,000 sq. ft., or a lot size sufficient to comply with Health Department specifications for adequate sewage/ septic tank disposal
Building Height:	35 Feet (except Agricultural Storage Facilities)
Maximum Building Coverage:	30%
Minimum "Green Space":	25%

- (1) Front or roadside setbacks are to be measured from the right-of-way. If measured from the center of the roadway, add 50 feet for State highways, 40 feet for County highways, and 30 feet for Town roads.

SECTION 580 MAPLE RIDGE ROAD OVERLAY DISTRICT

A. PURPOSE

The purpose of this district is to provide for superior design and aesthetics along Maple Ridge Road, a major highway bordering and serving the Town of Shelby and the Village of Medina. These regulations are intended to supplement the underlying zoning regulations to provide for harmony, continuity and aesthetically pleasing development along Maple Ridge Road.

B. ALL USES REQUIRE SITE PLAN APPROVAL

All principal, accessory, and special uses permitted in the underlying zoning district shall be permitted in the Maple Ridge Road Overlay District except that all uses in the Maple Ridge

Overlay District that are located on parcels with frontage along Maple Ridge Road at the time of adoption of this Local Law shall:

1. require site plan review and approval, and
2. comply with the additional requirements and provisions enumerated in this Section as well as complying with all the requirements and provisions of the underlying zoning district. If the requirements of this Section differ from those in the underlying zoning district, the more restrictive requirements shall apply.

C. GENERAL LANDSCAPING REQUIREMENTS

1. A minimum ground area of not less than ten percent (10%) of the total area to be developed shall be the landscaped area required.
2. The arrangements and location of a landscaped area shall be dispersed through the development site so as to prevent unsightliness and monotony of parked cars.
3. Landscape treatments shall be designed as an integral part of the entire development.
4. Vegetation shall be compatible with soil conditions on the development and the regional climate.
5. Existing natural features and vegetation shall be preserved and incorporated in the landscaped area. The primary emphasis shall be on preserving and integrating into the site design existing trees to the extent feasible. The preservation of existing trees shall be encouraged.
6. Trees shall be planted throughout the developed area at a ratio of one (1) tree per every ten (10) parking spaces, with a minimum of six (6) trees for any site. Trees may be spaced evenly or clustered. Acceptable trees shall be limited to those trees listed on the Maple Ridge Corridor District Tree List. This list is available from the office of the Clerk. Substitution of plant material may be approved by the Planning Board.
7. The use of plastic or other types of artificial plantings or vegetation is prohibited.
8. All required planting shall be maintained by the property owner in a healthy and productive condition and shall be routinely examined and replaced as necessary.
9. All utility services shall be underground
10. Permanent outside storage or sales areas shall be screened or buffered so as to be in harmony with the building design and the appearance of the development

D. LANDSCAPING REQUIREMENTS FOR PARKING LOTS

1. No less than five percent (5%) of the interior of a parking lot area designated for ten (10) cars or more shall be devoted to the required landscape area.

2. Each interior landscaped area shall be at least one hundred (100) square feet in area.
3. Each interior landscaped area shall contain at least one (1) approved tree.
4. Off-street loading areas, where visible from a public street, must be arranged so as to be screened from view from such public street by wooden, rock or masonry fences at least eight (8) feet high. All refuse storage areas shall be completely surrounded by wooden, brick or masonry fences at least eight (8) feet high.

E. PARKING SPACE AND PARKING LOT REQUIREMENTS

1. There shall be at least five (5) parking spaces for every one thousand (1,000) gross square feet of building area. The Planning Board may approve a reasonable reduction of the number of parking spaces required for a project if it can be demonstrated to the satisfaction of the Planning Board that such a reduction will not create overflow parking problems, will not adversely impact on the access roads and that the additional space not required for parking will be used for landscaping or open space within the site.
2. Right-angle parking is preferred. Each parking module consisting of the length of a parking space, the drive aisle and the second length of a parking space shall be a minimum of sixty-two (62) feet wide. Each parking space shall be a minimum of nine (9) feet wide. The planning Board may waive or modify the parking dimension requirements to allow angle parking.
3. All requirements providing for handicap parking shall be met.

F. SPECIFICATIONS

1. Minimum Setback Requirements

- a. All buildings shall be set back not less than seventy-five (75) feet from the street right of-way line. This seventy-five (75) foot setback area shall be landscaped with grass, trees and shrubs and shall be curbed. No parking or parking lots shall be permitted in this area. Pedestrian circulation, utility facilities and accessways shall be allowed in this area.
- b. All buildings shall be setback not less than twenty (20) feet from the side and rear lot lines and not less than fifty (50) feet from the lot line of any residential district.
- c. Parking areas shall be separated from adjoining properties by a yard with a width of no less than five (5) feet.

2. Minimum Lot Size

- a. No lot shall be less than one (1) acre in size.
- b. No lot shall have a width less than one hundred fifty (150) feet.

3. Maximum Building Height and Coverage

- a. No building or other structures shall exceed a height of thirty-five (35) feet, except for light standards.
- b. The buildings and other structures on any lot shall not cover an excess of fifty percent (50%) of the gross area of the lot.

SECTION 585 ADULT BUSINESS OVERLAY DISTRICT

The provisions of Local Law No. 3 of 1999 (Shelby) apply.

SECTION 590 PDD - PLANNED INDUSTRIAL/ COMMERCIAL DEVELOPMENT DISTRICT

A. Purpose

The PD - Planned Industrial/ Commercial Development District has been designed to encourage commercial and industrial development that conforms to a coordinated site development plan for a relatively large area. Such development should represent the most efficient and productive use of the land area so zoned. Individual uses permitted in this zone shall be designed and constructed so as not to preclude further industrial or commercial development within the PD zoning district.

B. Objectives

1. The proposed industrial and/ or commercial development shall be in harmony with the general purpose, goals and objectives of the Comprehensive Plan and this Local Law.
2. The proposed development shall comply with all applicable regulations of this Local Law except as modified by the authority of this Section.
3. The proposed development shall not have a substantial adverse effect upon adjacent properties, utility facilities, traffic conditions and other matters that would affect the public health, safety and general welfare.
4. The proposed development shall be constructed, arranged and operated so as to not interfere with the development and use of neighboring properties.
5. The proposed development shall be adequately served by essential public facilities and services, such as but not limited to sanitary sewers, public water supply, stormwater drainage facilities and highway capacity.
6. The proposed development shall make appropriate provisions for the preservation of trees, streams, wetlands, natural topography and geological features and the prevention of soil erosion.

C. General Requirements

1. All industrial and commercial uses permitted in the I - Industrial and B - General Business zoning districts are permitted in this district, except for residential uses.
2. Accessory uses permitted in the commercial and industrial district are permitted as accessory uses in the PD District.
3. The minimum area required for a Planned Development shall be forty (40) contiguous acres of land. However, if an applicant can demonstrate that the characteristics of the property proposed for such use can meet the objectives of this Section, projects with less acreage will be considered.
4. Where an applicant proposes the use of a portion of the site as common property, satisfactory arrangements shall be made for the improvement, operation and maintenance of such common property and facilities. For the purpose of this Section, the term "common property" shall be defined as a parcel of land, together with improvements thereon, the use and enjoyment of which is shared by the owners and occupants of the Planned Development.
5. Individual buildings within a Planned Development shall be related to each other in design, mass, materials, placement and connections to provide a visually and physically integrated development.
6. Utility lines providing electric, telephone, television or other services shall be installed underground.

D. Application Procedures

Approval of a Planned Development shall be made by the Town Board, following review and recommendation from the Planning Board.

1. Planning Board Review

The applicant shall meet with the Planning Board to describe the intent of the proposed development, to discuss design and development objectives and to submit a concept plan which depicts the manner in which the proposed project is to be developed. At this meeting, the applicant shall describe how the proposed development would be integrated with neighboring land uses, community features and public facilities and services. The concept plan shall be to scale and shall include the following information:

- a. The principal physical characteristics of the site, including an analysis of the soils and sub-soils and the location of major stands of trees, streams, floodplains and rock outcropping.
- b. The topography of the site with contour intervals of not more than five (5) feet of elevation; areas of the site where grades exceed three percent (3%); portions of the site

with a moderate to high susceptibility to erosion, flooding or ponding; and, a preliminary grading plan with five-foot contour intervals.

- c. An analysis of the relationship of the site to the surrounding community, including significant parcels of vacant land and the character of nearby built-up areas.
 - d. A conceptual site development plan which presents: a proposed lotting pattern, including the number and general sizing of individual lots; estimates of vehicular traffic volumes to be generated; a suggested internal street system, suggested sidewalks and circulation flows; a description of how the site will be tied to the existing street and pedestrian network; estimated demands for water and sewer services; a suggested layout of water, sanitary sewer and storm sewer facilities with proposed points of interconnection to existing systems; and, the proposed storm water drainage system and its relation to existing systems.
 - e. A generalized description of how the site is to be buffered from adjacent areas. This shall include the retention of existing trees as well as new plantings to accomplish this objective.
 - f. A description of the manner in which areas that are not proposed to become publicly owned are to be maintained, including but not limited to open space, streets and lighting.
 - g. If the development is expected to be phased, general descriptions of the phasing plan, including the anticipated timeframes for development.
 - h. A description of any covenants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings or structures, including proposed easements for public utilities.
 - i. A written statement by the applicant setting forth the reasons why, in his opinion, the proposed rezoning would be advantageous to and in the best interests of the Town of Shelby.
 - j. An Environmental Assessment Form (EAF) or a Generic Draft Environmental Impact Statement (DEIS) to comply with the State Environmental Quality Review Act (SEQR).
 - k. Any other information or documentation which the applicant deems necessary to support his application.
2. Planning Board Report

Within sixty (60) days of the receipt of a complete application, the Planning Board shall review the concept plan and supporting documents and provide a written report to the Town Board. The Planning Board shall hold a public hearing on the concept plan to assist it in the preparation of its report. If no report has been rendered within the sixty (60) day period, unless such time limit has been extended by formal action of the Planning Board, the applicant may proceed on the basis that the report is favorable. The Town Board shall be so informed on this matter.

- a. A favorable report from the Planning Board shall be based on the following findings which shall be included as part of the report:
 - i) The proposal implements the goals and policies of the Comprehensive Plan of the Town of Shelby.
 - ii) The concept plan meets all of the requirements of this Local Law.
 - iii) The proposal is conceptually sound in that it meets a community need and conforms to accepted design standards for the proposed roadway system, land use configuration, open space and drainage systems.
 - iv) adequate services and utilities are available or proposed to be made available in order to properly serve the proposed development.
- b. An unfavorable report shall state clearly the reasons therefore and, if appropriate, point out to the applicant the conditions under which a favorable report may be issued.

3. Town Board Consideration

Upon receipt of a report from the Planning Board, the Town Board shall consider the application for the Planned Development and may establish a date for and conduct a public hearing for the site plan as provided by Town Law.

4. Final Site Plan Approval

In the approval of the Site Plan, the Town Board may establish a maximum aggregate gross floor area for all buildings in the District and may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its resolution additional requirements for the applicant to meet. Such requirements may include, but shall not be limited to: visual and acoustical screening; the order of construction and/or occupancy; vehicular and pedestrian circulation systems; protection of natural resources; and, other physical or community needs.

SECTION 595 MINING/EXCAVATION OVERLAY

- A. No person shall conduct any mining or excavation activity of over 1,000 tons of minerals or 750 cubic yards in any 12 consecutive calendar month period except
 - (1) in a Mining/Excavation Overlay created under this Section and pursuant to the amendment procedure of section 112;
 - (2) with a special use permit granted pursuant to Section 722;
 - (3) within an Industrial zone
 - (4) in accordance with an approved site plan pursuant to Article X.

Section 597.3 Findings

A. The Town Board of the Town of Shelby finds and declares that:

1. Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods.
6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
7. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
8. Wind Energy Facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
9. Construction of Wind Energy Facilities can create traffic problems and damage local roads.
10. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

Section 597.4 Definitions

A. As used in this Section 597, the following terms shall have the meanings indicated:

1. **AGRICULTURAL OR FARM OPERATIONS** — means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a commercial horse boarding operation," as defined in New York Agriculture and Markets Law § 301 and "timber processing," as defined in

subdivision fourteen of New York Agriculture and Markets Law § 301. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

2. EAF — Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.
3. RESIDENCE — means any dwelling suitable for habitation existing in the Town of Shelby on the date a specific application is deemed completed, including seasonal homes, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools or other buildings used for educational purposes. A residence may be part of a multi-dwelling or multipurpose building, but shall not include correctional institutions.
4. SOUND PRESSURE LEVEL — means the level which is equaled or exceeded a stated percentage of time. An L₁₀-50 dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.
5. SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS") -- A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-Site consumption of utility power.
6. SITE — the parcel(s) of land where the Wind Energy Facility is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered into an agreement for said Facility or a setback agreement, shall be considered as part of the Site.
7. TOTAL HEIGHT — The height of the tower and the furthest vertical extension of the WECS.
8. WIND ENERGY CONVERSION SYSTEM ("WECS") — A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").
9. WIND ENERGY FACILITY — Any Wind Energy Conversion System, including Small Wind Energy Conversion Systems, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads, and accessory structures.
10. WIND MEASUREMENT TOWER — a tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.
11. WIND ENERGY OVERLAY DISTRICT — a district which encompasses part or parts of one or more underlying districts and that establishes requirements for Wind Energy Facilities.

Section 597.5 Permits and Rezoning Required, Exemptions, Transfer

- A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Shelby except in compliance with this Section.
- B. No WECS, except a Small WECS, shall be constructed, reconstructed, modified, or operated in the Town of Shelby, except in a Wind Energy Overlay District, pursuant to an application for rezoning and for special use permit approved pursuant to this Section.
- C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Shelby except pursuant to a Special Use Permit issued pursuant to this Section
- D. Notwithstanding any other provision of this Zoning Local Law, Special Use Permits for Wind Energy Facilities shall be issued by the Town Board.
- E. Exemptions. No permit or other approval shall be required under this Section for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or county agricultural district shall apply for a special use permit in accordance with this Section, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.
- F. This Section shall apply to all areas of the Town of Shelby.
- G. Transfer. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Section, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor of any other party under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there no outstanding obligations or violations.
- H. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will be no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

Section 597.6 Applicability

- A. The requirements of this Section shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Section.
- B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Section, shall not be required to meet the requirements of this Section; provided, however, that:

1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Section prior to recommencing production of energy.

2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Section.

3. Any Wind Measurement Tower existing on the effective date of this Section shall be removed no later than twenty-four (24) months after said effective date, unless a Special Use Permit for said Wind Measurement Tower is obtained.

C. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Section shall not be deemed expansions of a nonconforming use or structure.

Section 597.7 Wind Energy Overlay District Rules

A. Wind Energy Overlay District may be created in the Agricultural/Residential (AR) and Industrial (I) Districts only.

B. Initial requests for Wind Energy Overlay Districts shall be submitted with applications for WECS Special Use Permits. No Wind Energy Overlay District may be initially created without specific requests for special use permits for individual WECSs.

C. Once a Wind Energy Overlay District has been created, new WECSs or accessory structures or facilities may be added in that District by grant of a Special Use Permit pursuant to the requirements of this Section.

Section 597.8 Applications for Wind Energy Conversion Systems Special Use Permits and Wind Energy Overlay District

A. A joint application for creation of a Wind Energy Overlay District and Special Use Permit for individual WECS shall include the following:

1. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address, or other property identification, of each proposed tower location, including Tax Map section, block, and lot number.

4. A description of the project, including the number and maximum rated capacity of each WECS.
5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following.
 - (a) Property lines and physical dimensions of the Site.
 - (b) Location, approximate dimensions, and types of major existing structures, including all residences, and uses on Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed Wind Energy Overlay Zone.
 - (c) Location and elevation of each proposed WECS.
 - (d) Location of all above ground utility lines on the Site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
 - (e) Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical towers are not considered structures.
 - (f) The Land Use designation of the subject and adjacent properties as set forth on the official Town Land Use Map.
 - (g) Proposed boundaries of the Wind Energy Overlay Zone.
 - (h) To demonstrate compliance with the setback requirements of this section, circles drawn around each proposed tower location equal to:
 - (i) One and a half times the tower height radius.
 - (ii) Five-hundred foot radius.
 - (iii) One-thousand foot radius.
 - (i) Location of residential structures within one thousand feet of each proposed tower. The distance from the center of the tower to any off-site residence within one thousand feet shall be noted.
 - (j) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
6. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.
7. Landscaping Plan depicting vegetation describing the area to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.

8. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
9. List of property owners, with their mailing addresses, within 500 feet of the boundaries of the proposed Wind Energy Overlay Zone. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
10. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; 5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of three feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner. The Plan shall include the Decommissioning Bond required by this Section.
11. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and include a time limit for acting on a complaint.
12. An application shall include information relating to the construction/installation of of the wind energy conversion facility as follows:
 - (a) A construction schedule describing commencement and completion dates; and
 - (b) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
13. Completed Part 1 of the Full EAF.
14. Applications for Special Use Permits for Wind Measurement Towers subject to this Section may be jointly submitted with the WECS.
15. For each proposed WECS, include make, model, picture, and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants, and coolants.
16. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board shall issue a positive declaration of environmental significance.

17. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement ("DEIS") prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:
- (a) Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.
 - (b) Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence. The Visual Impact Study will specifically detail impacts on the Land Conservation District created by this Local Law.
 - (c) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Zone.
 - (d) Noise Analysis: a noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall provide pre-existing ambient noise levels and include low frequency noise.
 - (e) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties adjoining WECS Sites, including properties across public roads from the Site.
 - (f) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communication.
18. Tower design information sufficient to demonstrate compliance with wind- loading requirements.
19. Analysis of potential ice-throwing and damage from blade throw impacts.
20. A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.

Section 597.9 Application Review Process

- A. Applicants may request a pre-application meeting with the Town Board, or with any consultants retained by the Town Board for application review
- B. Twelve copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- C. Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Section is included in the application.
- D. If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board. The applicant shall post the completed application and any accepted environmental impact statements on the Internet. The application shall be referred to the Planning Board in accordance with this Local Law.
- F. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed Wind Energy Overlay District, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- G. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.
- H. Notice of the project shall also be given, when applicable, to (1) the Orleans County Planning Board, if required by General Municipal Law §§ 239-1 and 239-m, and (2) to adjoining Towns under Town Law § 264.
- I. SEQRA Review. Applications for WECS are deemed Type I projects under SEQRA. The Town shall conduct its SEQRA review in conjunction with other agencies, and the record of review by said agencies shall be part of the record of the Town's proceedings. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.
- J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), and the report of the recommendation of the Town Planning Board (where applicable), the

holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the applications.

Section 597.10 Standards for WECS

- A. The following standards shall apply to all WECS and related infrastructure, unless specifically waived by the Town Board as part of a permit.
1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
 2. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the telecommunications provisions of the Town Land Use Code. Applications may be jointly submitted for WECS and telecommunications facilities.
 3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
 4. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.
 5. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Energy Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Zone, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
 6. The use of guy wires is prohibited.
 7. No WECS shall be installed in any location where its proximity with it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Special Use Permit for the specific WECS or WECSs causing the interference.
 8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
 9. WECSs shall be designed to minimize the impacts land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.

10. WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.
11. WECS and related infrastructure shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
13. The maximum Total Height of any WECS shall be 420 feet.
14. Construction of the WECS shall be limited to the hours of 7 a.m. to 8 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.
15. Substations required to serve WECS are an Essential Public Service under this Land Use Code. Substations shall be screened from public view to the extent possible.
16. The Town of Shelby shall be named as an additional insured under the general liability policy of the applicant, the amount of which insurance shall be no less than an amount to be determined by the Town Board given the nature and scope of the project proposed by the applicant.
17. Any construction or ground disturbance involving agricultural land shall be done in according to the NYS Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.

Section 597.11 Required Safety Measures

- A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- B. If the property owner submits a written request that fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.
- C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hour, 7 day a week coverage. The Town Board may require additional signs based on safety needs.
- D. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.

- F. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- G. Accurate maps of the underground facilities shall be filed with the town and with "Dig Safely New York (1-800-962-7962)" or its successor.

Section 597.12 Traffic Routes

- A. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Permit conditions may require remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public, and all applicable state, county, and municipal highway authorities and superintendents whose roads are included in the WECS traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the dates and time periods of expected use of designated traffic routes.
- B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.
- C. If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.

Section 597.13 Setbacks for Wind Energy Conversion Systems

- A. The statistical sound pressure level generated by a WECS shall not exceed L₁₀ - 50 dBA measured at the closest exterior wall of any residence existing at the time of completing the SEQRA review of the application. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- B. In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
- C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level.

The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

- D. Any noise level falling between two whole decibels shall be the lower of the two.
- E. Each WECS shall be setback from Site boundaries, measured from the center of the WECS, a minimum distance of:
 - 1. 500 feet from the nearest Site boundary property line, except the setback shall be 500 feet where the boundary is with state, county, town, or village-owned property.
 - 2. 500 feet from the nearest public road.
 - 3. 1,000 feet from the nearest off-Site residence existing at the time of application, measured from the exterior of such residence.
 - 4. 100 feet from state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses, and other factors that influence the flight patterns of resident birds.
- F. Other Wind Energy Facility structures and improvements shall comply with the underlying Land Use district regulations.

Section 597.14 Noise and Setback Easements; Variances

- A. In the event the noise levels resulting from a WECS exceed the criteria established in this Section, or a setback requirement is not met, a waiver is hereby granted from such requirement where the adjoining owner's property is considered part of the Site.
 - 1. Written consent from the affected property owners shall be obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this Section, and that they wish to be part of the Site as defined herein, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) allow setbacks less than required; and
 - 2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Section, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.
 - 3. In any case where written consent is not obtained, and therefore a property is not part of the Site, a variance from the Board of Appeals shall be required.

Section 597.15 Creation of Wind Energy Overlay Districts and Issuance of Special Use Permits

- A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Section and the record of the SEQRA review, issue a written decision setting forth the reasons for approval, conditions of approval, or disapproval.

- B. If approved, the Town Board will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Energy Overlay Districts, and authorize Town staff to issue a Special Use Permit for each WECSs upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Section.

- C. The decision of the Town Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

- D. If any approved WECS is not substantially commenced within two years of issuance of the permit, the special use permit shall expire.

Section 597.16 Abatement

- A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

- B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEERDA, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.

- C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of non-functional towers and appurtenant facilities in an amount to be determined by the Town for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant.

Section 597.17 Limitations on Approvals; Easements on Town Property

- A. Nothing in this Section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Section shall be deemed a guarantee against any future

construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

- B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Section.

Section 597.18 Testing Fund; Permit Revocation

- A. Testing fund. A Special Use Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Section and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days. Notwithstanding any other abatement provision under this Section, and consistent with Section 597.16 and Section 597.18(B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Special Use Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

Wind Measurement Towers

Section 597.20 Wind Site Assessment

The Town Board acknowledges that prior to construction of a WECS, a wind Site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted as Special Use in the Agricultural/Residential (AR) District and the Industrial District.

Section 597.21 Applications for Wind Measurement Towers

- A. An application for a Wind Measurement Tower shall include
1. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 2. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
 3. Address of each proposed tower Site, including Tax Map section, block, and lot number.
 4. Site plan
 5. Decommissioning Plan, based on the criteria in this Section for WECS, including a security bond or cash for removal.

Section 597.22 Standards for Wind Measurement Towers

- A. The distance between a Wind Measurement Tower and the property line shall be at least the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- B. Special Use permits for Wind Measurement Towers may be issued by the Town Board for a period of up to two years. Permits may be renewed if the Facility is in compliance with the conditions of the Special Use Permit.

Small Wind Energy Conversion Systems

Section 597.30 Purpose and Intent

The purpose of this Section is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Section is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

Section 597.31 Permitted Areas

Small Wind energy systems may be permitted in any District upon issuance of a Special Use Permit.

Section 597.32 Applications

A. Applications for Small WECS special use permits shall include:

1. Name, address, and telephone number of the applicant. If the applicant will be represented by an agent, the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block, and lot number.
4. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
7. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
8. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

Section 597.33 Development Standards

All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Section that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.
2. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Section.
3. Small Wind energy systems may be used primarily to reduce the on-Site consumption of electricity.
4. Tower heights may be allowed as follows:
 - (a) 65 feet or less on parcels between one and five acres.
 - (b) 120 feet or less on parcels of five or more acres.
 - (c) The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
5. The maximum turbine power output is limited to 100 kW.
6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). The greatest extent feasible a small wind energy system:
 - (a) Shall not project above the top of ridgelines.
 - (b) If visible from public viewing areas, shall use natural landforms and existing vegetation for screening.
 - (c) Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.

9. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
11. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo, or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
 - (a) Tower-climbing apparatus located no closer than 12 ft from the ground.
 - (b) A locked anti-climb device installed on the tower.
 - (c) A locked, protective fence at least six feet in height that encloses the tower.

Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

13. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
14. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
15. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
16. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

Section 597.34 Standards

A Small Wind Energy System shall comply with the following standards:

1. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.
2. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

Section 597.35 Abandonment of Use

- A. Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town.
- B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

Miscellaneous

Section 597.40 Fees

- A. There shall be non-refundable Application fees as follows:
 1. Wind Energy Overlay Zone: \$1,000 per zone.
 2. VVECS Special Use Permit: \$200 per megawatt of rated maximum capacity.
 3. Wind Measurement Towers: \$20 per vertical foot per tower.
 4. Wind Measurement Tower Special Use Permit renewals: \$200 per Wind Measurement Tower.
 5. Small WECS: \$200.
 6. The cost of all legal notices and mailings shall be assessed to the applicant.
- B. Building Permits.
 1. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be increased by administrative costs which shall be \$100 per permit request, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans

and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans or certifications, or to conduct inspections as agreed by the parties.

2. The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.
- C. Nothing in this Section shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.
- D. The Town Board may amend these fees, by resolution after a properly noticed public hearing.

Section 597.41 Tax Exemption

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.

Section 597.42 Enforcement; Penalties and remedies for violations

- A. In addition to the Code Enforcement Officer, the Town Board may appoint such Town staff or outside consultants as it sees fit to enforce this Section.
- B. Any person owning, controlling, or managing any building, structure, or land who shall undertake a wind energy conversion facility or wind monitoring tower in violation of this Section or in noncompliance with the terms and conditions of any permit issued pursuant to this Section, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment for a first offense, for a Second offense (both within a period of five years), a fine not less than \$350 nor more than \$700, or imprisonment not to exceed six months, or both, and for a Third or more offense (all of which occurred within five years), a fine not less than \$700 nor more than \$1,000, or imprisonment not to exceed six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amounts set forth herein for each violation and each week said violation continues shall be deemed a separate violation.

- C. In case of any violation or threatened violation of any of the provisions of this Section, including the terms and conditions imposed by any permit issued pursuant to this Section, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving, and/or use, and to restrain, correct, or abate such violation, to prevent the illegal act.

Section 598 Wildlife Refuge Protection Overlay District

A. PURPOSE:

The Iroquois National Wildlife Refuge is a unique asset of the Town and Region. The Refuge is a world-class nesting, feeding, resting and staging area for migrating waterfowl. The habitat supports approximately 266 species of birds, 42 species of mammals, plus reptiles, fish, amphibians and insects. Home to the bald eagle nests and other species of special concern, including ospreys, black ducks, black terns and peregrine falcons. Not only is it a unique habitat, the Refuge is an essential element of the Town's economy, attracting visitors from across the region and around the world. Improper development of lands surrounding and supporting the Refuge and associated wildlife could threaten its existence. Increased industrial use south of the refuge has increased the need for preventing habitat fragmentation north of the Refuge, in the Town of Shelby. The purpose of the Wildlife Refuge Protection Overlay District ("WRPOD") is to ensure that uses allowed in and near the Refuge are consistent with its goals and protecting the habitat within and outside the Refuge that are essential to the Refuge's viability.

B. The following uses, even if allowed as an as-of-right, conditional, or accessory use elsewhere in the Code, are prohibited in the WRPOD:

1. WECS, as defined in Section 598.4(A)(8), except for WECS permitted by the exception in Section 597.5(E).
2. Any activity requiring blasting, where such blasting or the blaster is regulated or licensed by the New York State Department of Labor, except for blasting that is deemed a legitimate agricultural practice by the New York State Department of Agriculture and Markets, and conducted in a State Agricultural District.
3. Airports and airstrips
4. Flight schools
5. Junk Yards
6. Motor Vehicle Repair Shop, except for Motor Vehicle Repair Shops operated as home business pursuant to Zoning Law Section 743(P).
7. Motels or hotels over 25 units, excepting Bed and Breakfasts. This exclusion does not include any homes that are not let for rent, or are used for other purposes where no rent is paid.

8. Commercial Campgrounds and Recreational Vehicle Parks, except for such facilities not exceeding more than ten acres.
9. Retail outlets, other Farm Produce Stand or Seasonal Roadside Stand
10. Manufactured Home Park
11. Outdoor Commercial Recreation Facilities are allowed except open air theaters or drive-in theaters. Nothing in this provision shall be deemed to limit hunting on private property.
12. Telecommunications Facilities
13. Any use requiring a mining/excavation overlay district or mining special use permit.
14. Public and semi-public uses are allowed except for (a) Proprietary or not-for-profit hospitals for the care of human beings, nursing homes, convalescent homes for adults, or homes for the aged as the same are defined under the Public Health Law or the Social Services Law of the State of New York, and (b) Administrative office buildings and related facilities operated by public agencies.

ARTICLE VI: REGULATIONS APPLICABLE TO ALL ZONING DISTRICTS

SECTION 600 SIGNS

A. PURPOSE

The purpose of these sign regulations is to promote and protect the public health, welfare and safety by regulating existing and proposed advertising signs and signs of all types. It is intended to protect the property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community. It is further intended hereby to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more visual open space and curb the deterioration of the community's appearance and attractiveness.

These sign regulations are also intended to promote attractive signs which clearly present the visual message in a manner that is compatible with its surroundings. The appearance, character and quality of a community are affected by the location, size, construction and graphic design of its signs. Therefore, such signs should convey their messages clearly and simply to enhance their surroundings.

B. GENERAL REGULATIONS

1. General advertising signs related to the permitted use of the premises are allowed, as well as secondary advertisement of products or services.
2. Off premises signs unrelated to the use are allowed as long as permission of the property owner is obtained.
3. The total number of permitted signs on a single lot shall not exceed two (2), of which only one (1) may be freestanding.
4. The total cumulative area of all signs permitted on a lot shall not exceed: the greater of thirty-two (32) square feet or an amount calculated at the rate of one (1) square foot of sign area per lineal foot of building frontage, plus one (1) square foot of sign area for every four (4) lineal feet setback of the principal building on the property, but in no such case shall the total sign area allowed exceed sixty-four (64) square feet.

C. PERMIT PROCEDURES

Except as otherwise provided, no person shall erect, alter, or relocate any sign without first obtaining a sign permit from the Town of Shelby.

1. Application Procedure

Applications shall be made in writing to the Zoning Enforcement Officer or the Town Clerk on forms prescribed and provided by the Town of Shelby, and shall contain the following information:

- a. Name, address and telephone number of:
 - (i) Applicant
 - (ii) Owner of the property
- b. Location of the building, structure or land upon which the sign now exists or is to be erected.
- c. If a new sign is to be erected, elevation and plan drawings to scale should be included. In addition, a full description of the placement and appearance of the proposed sign should be included and should cover the following:
 - (i) Type of sign
 - (ii) Location on the premises, specifically its position in relation to adjacent buildings, structure and property line.
 - (iii) The method of illumination, if any, and the position of lighting or other extraneous devices.
 - (iv) Graphic design, including symbols, letters, materials and colors.
 - (v) The visual message, text, copy or content of the sign.
 - (vi) Written consent, or a copy of the contract made with the owner of the property upon which the sign is to be erected, if the applicant is not the owner.

2. Site Plan Review

Upon the filing of a completed application for a sign permit and the payment of the required fee, the Planning Board shall examine the plans, specifications and other data submitted and the premises on which the sign is to be erected or now exists. If the sign is in compliance with all the guidelines and requirements of this Local Law the Planning Board shall, within 45 days, direct the Zoning Enforcement Officer to issue a permit for the erection of the proposed sign or for an existing sign. The issuance of a permit shall not excuse the applicant from conforming to the other laws and ordinances of the Town or with the Codes of New York State. If the erection of the sign authorized under any such permit has not commenced within six (6) months from the date of issuance, the permit shall become null and void.

D. EXEMPT SIGNS THAT REQUIRE NO PERMIT

The following types of signs may be erected and maintained without permits or fees, provided that such signs comply with the general requirements of this Section:

1. Historical markers, tablets and statues, memorial signs and plaques; name of buildings and dates of erection when cut into masonry surface or when constructed of bronze, stainless steel or similar material; and emblems installed by government agencies, religious or non-profit organizations. Such signs shall not exceed six (6) square feet.
2. Flags and insignia of any government, except when displayed in connection with commercial promotion.

3. On-premises directional signs not exceeding four (4) square feet per face and six (6) feet in height. Business and personal names shall be allowed, excluding advertising messages.
4. Non-illuminated warning, private drive, posted or no trespassing signs not exceeding two (2) square feet per face.
5. Temporary non-illuminated "for sale," "for rent," real estate signs and signs of similar name, concerning the premises on which the sign is located, not exceeding sixteen (16) square feet per side. All such signs shall be removed within seven (7) days after the sale, lease or rental of the property.
6. Private-owner merchandise sale signs for garage sales and auctions, not exceeding four (4) square feet in area per side.
7. One (1) temporary sign for a roadside stand selling produce grown on the premises in season, provided that such sign not exceed twenty-four (24) square feet and not be set on the public right-of-way.
8. Temporary non-illuminated window signs and posters not exceeding twenty-five percent (25%) of the window surface.
9. One (1) sign, not exceeding sixteen (16) square feet, listing the architect, engineer, contractor and/or owner on premises where construction, renovation or repair is in progress. All such signs shall be removed within 30 days following completion of the construction or repair.
10. "Non-commercial speech" signs, also known as "free speech" signs, which express an opinion or a statement unrelated to a business venture, are allowed without a permit subject to the following conditions:
 - a. The maximum number of non-commercial speech signs per lot shall be two (2)
 - b. Such signs shall not exceed a total of twenty (20) square feet in area for all signs on a single lot.
 - c. Freestanding non-commercial speech signs shall not exceed six (6) feet in height above grade level.
 - d. Non-commercial speech signs shall not be illuminated, except indirectly.
 - e. Political candidacy signs shall be removed within seven days following the election.
11. Temporary illuminated or non-illuminated signs, posters, banners or other similar devices erected by not-for-profit community organizations to advertise suppers, banquets, benefits, fund raising events and similar functions, and directional signs for meetings, conventions and other assemblies may be erected without a permit for a period not to exceed 40 days.
12. Holiday decorations, including lighting, are exempt for the provisions of this Local Law and may be displayed in any district without a permit.
13. Integral graphics or attached price signs on fuel pumps at gas stations.

E. PROHIBITED SIGNS

1. No sign shall be illuminated by or contain flashing intermittent, rotating or moving lights except to show time and temperature.
2. No sign shall create a traffic hazard or impair or cause confusion or unduly distract motorists or pedestrian traffic in its design, color or placement. No sign shall impair visibility for the motorist at a street corner or intersection by placement and location within twenty-five (25) feet of the intersection of the street or highway lines.
3. No sign shall be attached to a public utility pole or traffic control structures nor reduce the effectiveness of traffic control devices and signs needed to direct the public.
4. No sign or sign supports shall be placed on the roof of any building.
5. No sign shall consist of banner, pennants, ribbons, streamers, spinners or similar fluttering or revolving devices.

F. EXISTING SIGNS

All existing signs that are legal at the time of the enactment of this Local Law shall be allowed to remain as long as they are properly maintained and their use remains current. Replacement of any existing sign for any cause shall be in accordance with the more restrictive requirements of this Local Law.

G. ABANDONED SIGNS

Except as otherwise provided in this Local Law, any sign which is located on property which becomes vacant and unoccupied for a period of six (6) months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change of ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of twelve (12) months or more. An abandoned sign is prohibited and shall be removed by the owner of the sign or owner of the premises. Failure to remove an abandoned sign shall be a violation of this Local Law. The reuse of an abandoned, non-conforming sign, shall be prohibited unless said sign is modified in such a way to bring it into compliance with this Local Law.

H. MAINTENANCE OF SIGNS

Every sign shall, at all times, be in a safe and structurally sound condition and maintained by replacement of defective or worn parts, painting, repainting and cleaning. The Zoning Enforcement Officer shall require compliance with all standards of this Local Law. If a sign does not comply with adequate safety standards, it shall be removed.

I. DANGEROUS OR HAZARDOUS SIGNS

No person shall maintain or permit to be maintained on any premises owned, occupied or controlled by him any sign which is either not structurally sound or creates an electrical hazard. Any such sign shall be removed or repaired by the owner or user of the sign or the owner of the premises.

J. CONSTRUCTION STANDARDS

1. All internally illuminated signs shall be constructed in conformance with the Standards for Electric Signs (UL48) of Underwriters' Laboratories, Inc., or an equivalent standard, and bear the seal of Underwriters' Laboratories, Inc., or another acceptable service.
2. If such sign does not bear the Underwriters' Laboratories, Inc. label, the sign shall be inspected and certified by the New York Board of Fire Underwriters. All transformers, wires and similar items shall be concealed. All wiring to freestanding signs shall be underground.
3. All freestanding signs shall be designed and constructed to withstand a wind pressure of not less than thirty (30) pounds per square foot of surface area.
4. All signs, including wall-mounted and projecting signs, shall be securely anchored, free from all hazards and employ acceptable safety materials.

K. SPECIFIC REGULATIONS OF SIGN TYPES

The following are descriptions of signs varying in construction and type which shall comply with the additional conditions set forth herein:

1. Wall Signs
 - a. Wall signs shall not extend beyond the ends or over the top of the walls to which attached and shall not extend above the level of the second floor of the building.
 - b. Wall signs shall not extend more than nine (9) inches from the face of the buildings to which attached except that copy-change signs may extend fifteen (15) inches therefrom.
2. Projecting Signs
 - a. Projecting signs shall not have more than two (2) faces.
 - b. The exterior edge of a projecting sign shall extend not more than five (5) feet from the building face or one-third (1/3) the width of the sidewalk, whichever is less.
 - c. No part of a projecting sign shall extend into vehicular traffic areas, and any part extending over pedestrian areas shall have a minimum clearance of eight (8) feet.
 - d. Projecting signs shall not extend above the level of the second floor of the buildings to which attached or in any case be higher than twelve (12) feet.
 - e. No projecting sign shall be closer than fifteen (15) feet to the corner of a building located at a street intersection.
3. Freestanding Signs
 - a. No freestanding sign shall be located less than (10) feet from a side or rear lot line nor closer than 25 feet from the edge of the pavement or main traveled portion of the road or street bordering the lot. No sign shall obstruct the view or constitute a safety hazard.

- b. If, for any reason, the property line is changed at some future date, any freestanding sign made nonconforming thereby must be relocated within ninety (90) days to conform to the minimum setback requirements.
 - c. Except as otherwise provided herein, no freestanding sign shall be more than thirty-two (32) square feet per side for a double-faced sign.
 - d. No freestanding sign shall be more than thirty (30) feet in height above finished grade. Such height shall be measured vertically from the established average grade directly below the sign or entry level of the building or structure, whichever is lower, to the highest point of the sign, including supporting structures.
 - e. No freestanding sign shall extend over or into the public right- of-way nor shall it overhang the property lines.
 - f. Freestanding signs under which a pedestrian walkway or driveway passes shall have a ten-foot vertical clearance.
 - g. Masonry wall-type signs shall not exceed four (4) feet in height and shall not be placed so as to impair visibility for motorists.
4. Awning signs
- a. No sign shall project from an awning.
 - b. Awning graphics may be painted or affixed flat to the surface of the front or sides and shall indicate only the name and/or address of the enterprise or premises.
5. LED (Light Emitting Diode) Signs
- a. One such sign shall be permitted per property.
 - b. The LED sign shall be erected as either a wall/façade sign or monument/ground sign. LED signs cannot be installed as a pole/pylon sign or freestanding sign.
 - c. LED signs will be subject to the same height, projection, clearance and set back provisions as wall/façade signs or monument/ground signs, depending on the LED sign's configuration.
 - d. There shall be no scrolling, animation or flashing of any message or portion thereof.
 - e. The static display time of each changeable message or image shall be a minimum of 20 seconds.
 - f. The maximum length of time between changes of messages or images shall be 10 seconds.
 - g. The change of message or image shall occur simultaneously for the entire sign face.
 - h. During daylight hours, the maximum illumination shall be 5,000 nits (or candelas per square meter), with maximum illumination between dusk and dawn, as measured from the sign's face at maximum brightness.

3. A parking space shall be not less than ten by twenty (10 x 20) feet, exclusive of accessways and driveways. Single family residences need not exclude driveway area.
4. Off-street parking areas for non-residential uses shall provide access lanes to parking spaces. Parking areas for 50 or more vehicles shall delineate fire lanes and include no parking markers.
5. Any off-street parking area with at least 20 off-street parking spaces shall designate a minimum of five percent (5%) of those spaces, up to a maximum of 10 spaces, as only for the handicapped and clearly mark them for such use. Parking spaces designated to serve handicapped individuals shall be at least 14 feet in width and 20 feet in depth or otherwise comply with the standards of the Americans with Disabilities Act (ADA.)

B. Minimum parking standards

For all developments, the parking standards in Table 1 shall be used as a guideline. Alternatives to the minimum number of parking spaces shall be accepted by the Planning Board during Site Plan Review if the applicant demonstrates that such standards better reflect the anticipated needs of the facility.

TABLE 1 OFF-STREET PARKING

Use	Minimum Required Off-Street Parking Spaces
One or two family dwelling	2 per dwelling unit
Multi family dwellings	2 for each dwelling unit
Churches, synagogues, and houses of worship	1 per 5 seats
Community buildings, used in connection with the operation of clubs, social halls, lodges, fraternal organizations, and similar uses	1 per 200 sq. ft. GFA
Home business	2 for each dwelling unit plus the number of spaces required for the proposed business
Hotel, motel, inn or rooming house	1 per rentable unit, plus 1 per 100 sq. ft. non-room GFA
Funeral home or mortuary	1 per 100 sq. ft. GFA
Garage or automobile repair shop	4 per bay or work area
Restaurant or other eating place	1 per 3 seats
Fast food restaurant	1 per 30 sq. ft. GFA
Retail or service business	1 per 300 sq. ft. GFA
Warehouse, distribution or other storage or wholesale building	1 per 5000 sq. ft. GFA
Bowling alley	4 per alley
Nursing home or hospital	1 per 2 beds
Medical offices or clinic	1 per 800 sq. ft. GFA
Manufacturing, assembly, research and other industrial uses	1 per 800 sq. ft. GFA
Offices	1 per 250 sq. ft. GFA
Bank or other financial institution	1 per 300 sq. ft. GFA
Theater	1 per 4 seats
Animal clinic/hospital/ kennels	1 per 200 sq. ft. GFA

GFA: Gross Floor Area

SECTION 602 OFF-STREET LOADING

- A. At least one off-street loading area shall be provided for each commercial or industrial establishment hereafter erected or altered to have a gross floor area in excess of 5,000 square feet.
- B. Space for off-street loading shall be in addition to space for off-street parking.

SECTION 603 ACCESS CONTROL

In order to encourage the sound development of street frontage, the following special regulations shall apply to all non-residential buildings and uses:

- A. Each separate use, grouping of attached buildings or groupings of permitted uses shall not have more than two (2) points of access.
- B. The use of common access points by two or more permitted uses shall be encouraged by the Town Board in order to reduce the number and closeness of access points along the streets and to encourage the fronting of significant traffic generating uses upon a parallel access street and not directly upon a primary road.
- C. Access points for industrial uses shall not be less than 24 feet nor more than 40 feet in width. All other access points for non-residential uses shall not be less than 20 feet nor more than 30 feet in width.
- D. All accessways shall meet the applicable standards and requirements of the New York State Department of Transportation, Orleans County Highway Department, and Town of Shelby Highway Superintendent.
- E. No driveway providing access to an off-street parking area shall be located within 20 feet of any side lot line, or within 50 feet of a street intersection measured along the curb line of the same street on which the driveway is located. In addition, a minimum distance of 50 feet shall be maintained between two driveways located on any one frontage.

SECTION 610 FENCES

Fences erected in the Town shall adhere to the following unless otherwise specified in this Local Law

- A. Building permit is required, showing the location of the fencing, screening or buffering on a tape map or other map drawn to scale, and describing the dimensions and material of which the fencing, screening or buffering is to be constructed. The site plan should also show boundary lines and relationship of fencing to these boundaries and other structures.
- B. The following materials are authorized to be used for fencing, screening and buffering:
 - 1. Woods
 - 2. Chain links
 - 3. Other metals, wrought iron, aluminum
 - 4. Bricks and stone
 - 5. Plastic or vinyl clad

- C. Fences may be erected, altered or reconstructed to a maximum height of four (4) feet in the front yard (in front of the front building line) and six (6) foot maximum in the side and rear yards, for residential uses in the Hamlet, Rural Residential and Waterfront Residential districts and ten (10) foot maximum for all non-residential uses and for residential uses in all other districts.
- D. The height shall be measured from the ground to the top of the fence.
- E. No fence shall cause obstruction of vision at street intersections.
- F. Fences may be substituted for lot line landscaping during Site Plan Review, at the discretion of the Planning Board.
- G. Farm fencing shall be exempt from these provisions.
- H. Any fence erected along a lot line shall be erected wholly on the property of the owner and neither the fence itself nor any supporting accessory components thereof shall encroach upon the adjoining properties.
- I. A finished side of any fencing shall front the neighboring properties.
- J. All fences shall be adequately maintained.

SECTION 612 RESTRICTIONS ON USE OF TRAILERS

No trailer, manufactured home or recreational vehicle may be used for any purpose, including storage, unless such trailer, manufactured home or recreational vehicle is either registered and inspected for use on a public highway or approved for use as a dwelling.

SECTION 615 CLEAR VIEW OF INTERSECTING STREETS

No obstruction to view, except buildings and structures existing at the time of the existence of this Local Law, shall be maintained on the premises within a triangle formed by the intersecting highways so as to interfere with a view of traffic approaching such intersection within a distance of 65 feet measured along the lot lines of the lot and the intersecting highways.

SECTION 619 REQUIREMENTS FOR DWELLINGS

- A. All single family dwellings shall have a gross habitable floor area of not less than 900 square feet. Manufactured homes in approved manufactured home parks are exempt from this requirement. The provisions of this section shall not apply to structures used for Farm Worker Housing on an active farm located in a State Certified Agricultural District which are accessory to the agricultural use and are occupied by employees of the farm or members of the farm household and their guests.
- B. All dwellings must have a concrete or masonry foundation that extends at least 42” inches below ground level.
- C. Any dwelling that does not have an attic or basement for storage must have a storage shed or garage on the lot. Such storage shed will provide necessary storage space to compensate for lack of attic and basement, and shall have a minimum of 120 square feet and be anchored to a cement foundation.
- D. No cellar sited independently of a structure shall be used exclusively as a dwelling.

SECTION 640 NON-CONFORMING USES, LOTS AND STRUCTURES

Lots, structures, uses of land, and characteristics of uses which lawfully existed at the time of the enactment of this Local Law and which would be prohibited or restricted under the terms of these regulations may be continued subject to the following provisions:

- A. Intent - It is the intent of this Local Law to permit non-conforming uses to continue until they are removed, but not to encourage their survival.
- B. Enlargement – No non-conforming uses shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of the adoption of this Local Law.
- C. Unsafe Structures – Any structure or portions thereto declared unsafe by a proper authority may be restored to a safe condition, subject to applicable state and local laws and regulations.
- D. Alterations – A non-conforming structure may not be reconstructed or structurally altered to an extent exceeding in aggregate cost 50% of the assessed value of the structure, as adjusted to full value, based upon the State Board of Equalization and Assessment rates of said structure, unless the structure shall be changed to a conforming use.
- E. Restoration – No non-conforming structure damaged by fire or other causes to the extent of more than 50% of its assessed value of the structure, as adjusted to full value based upon the State Board of Equalization and Assessment rates, shall be repaired or rebuilt, except in conformity with the requirements of these regulations.
- F. Discontinuance – Whenever a non-conforming use has been discontinued for a period of one year, use shall not thereafter be re-established and any future use shall be in conformity with the provisions of this Local Law.
- G. Changes – Once changed to a conforming use, no structure or land so changed shall be permitted to revert to a non-conforming use.
- H. Moving – Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the district in which it is located after it is moved.
- I. Existing Undersized Lots of Record - Undeveloped
 - 1. Any record lot held in single and separate ownership prior to the adoption of this Local Law and whose area /or width and/or depth are less than minimum requirements specified herein for the district may be considered as complying with this Local Law and no variance therefore shall be required, provided that:
 - a. Such lots do not adjoining any other lot or lots held by the same owner, the aggregate area of which lots is equal to or greater than the minimum lot area required for the district.
 - b. Provided that the minimum dimensions of such non-conforming lot is at least 100 feet wide and 150 feet deep.
 - c. In any district where residences are permitted, such undersized non-conforming lots may be used for not more than one single family dwelling.

- d. A lot of non-conforming size may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said owner's property
2. Any developed lot with a dwelling in the (WR) district held in a single and separate ownership prior to the adoption of this Local Law and whose area or width and or depth are less than minimum requirements specified herein for the district may be considered as complying with this Local Law and no variance therefore shall be required, provided that:
- a. The minimum lot width is 40 feet and has a total area of at least 4000 square feet.
 - b. The side setbacks for the dwelling are 10 feet and in the (WR) district the set back from the mean high water mark shall not be decreased on any new construction ,replacement of or remodeling of any existing dwelling if this distance is less than 75 feet..
 - c. The setback for all structures from a private lane is 20 feet.
 - d. The side setback for accessory structure or detached deck of less than 2 feet high is 5 feet.

SECTION 641 CORNER AND THROUGH LOTS

On corner lots and through lots the sides facing both streets shall be considered front yards. The other (2) sides shall be considered side yards.

SECTION 650 PINBALL AND VIDEO GAME ARCADES

- A. Arcades shall be closed between the hours of 12:00 midnight and 8:00 a.m.
- B. No one under the age of sixteen (16) shall be permitted in an arcade while school is in session.
- C. An owner or responsible person over the age of eighteen (18) shall be on the premises during all hours of operations.
- D. All video display screens shall be visible to the public from the entryway to the room or building and/or from large windows situated for easy viewing from the outside of the building.
- E. No cubicles, booths or partitions shall be constructed or erected so as to reduce the visibility or accessibility to display screens of pinball and video games.

SECTION 652 TEMPORARY SPECIAL EVENTS

- A. Purpose and Intent: The purpose and intent of this Section is to provide for the temporary use of land for special events in a manner consistent with its normal use and beneficial to the general welfare of the public. Furthermore, it is the intent of this Section to protect nearby property owners, residents and businesses from special events which may be disruptive, obnoxious, unsafe or inappropriate given site conditions, traffic patterns, land use characteristics, and the nature of the proposed use. Finally, it is the intent of this Section to preserve the public health, safety and convenience.

- B. Special Event Defined: The term "special event" shall mean a temporary, short-term use of land or structures, not otherwise included as a permitted or accessory use by these Regulations, for one or more of the following types of activities:
1. Type 1. Fund-raising or non-commercial events for nonprofit religious, educational, or community service organizations; including any on-site signs and structures in conjunction with the event.
 2. Type 2. Temporary banners attached to the wall of a building or placed across street rights-of-way.
 3. Type 3. Promotional activities or devices intended to attract attention to a specific place, business, organization, event or district, such as signs, searchlights or balloons.
 4. Type 4. Commercial activities intended to sell, lease, rent or promote specific merchandise, services or product lines, such as a tent sale, trade show, farmers market, Christmas tree sales, or product demonstration.
 5. Type 5. Public events intended primarily for entertainment or amusement, such as concerts, festivals, carnivals, circuses or parades; or large private events such as film production. In addition, the temporary placement of a portable asphalt plant during construction work on any public road when such placement is not adjacent to said construction but will be placed within 1 and 1/4 miles of said construction.

The term "special event" shall not include amusement enterprises, garage sales at an individual residence, transient merchants, or off-site promotional signs.

- C. Special Events Not Requiring a Permit: Special events meeting the Type 1 definition are allowed without a Special Event Permit, provided all of the following performance standards are met:
1. The special event is conducted entirely on private property owned or leased by the sponsoring organization as a permanent facility.
 2. Any structure use in conjunction with the special event shall meet all applicable yard setbacks, shall be the subject of a valid zoning certificate, and shall be promptly removed upon cessation of the event.
 3. The special event shall be restricted to hours of operation between 6:00 a.m. and 10:00 p.m., to a maximum duration of four (4) days, and to a maximum frequency for similar events of two (2) times per calendar year.
- D. Special Events Subject to an Administrative Permit: Special events meeting the following standards may be issued a Special Event Permit administratively by the Zoning Enforcement Officer. In administering the provisions of this section, the Zoning Enforcement Officer shall be guided by applicable County policies as adopted by the Town Board. Any applicant denied a Special Event Permit shall be notified in writing of the reasons for the denial and of the opportunity to appeal the denial to the Town Board.
1. Special events meeting the Type 2 definition may be permitted administratively by the Zoning Enforcement Officer, provided that all of the following performance standards are met:
 - a. An application is made and a fee paid in accordance with Section 652.F.
 - b. No more than one banner will be displayed when attached to the wall of a building.

- c. The size and design of the banners will be appropriate given the size of the building to which they are attached and the character of the surrounding neighborhood.
 - d. The banner will be displayed for a maximum duration of fifteen (15) days per permit.
2. Special events meeting the Type 3 or Type 4 definition, and Type 1 events not meeting the standards of Section 652.C., may be permitted administratively by the Zoning Enforcement Officer subject to the prior review and approval of special arrangements for traffic and crowd control by the Sheriff, Fire Chief of the appropriate Fire District, and Town Highway Superintendent. No such administrative permit shall be issued unless all of the following performance standards are met:
- a. An application is made and a fee paid in accordance with Section 652. F.
 - b. The special event will not cause undue traffic congestion or accident potential given anticipated attendance and the design of adjacent streets, intersections and traffic controls.
 - c. The activity shall not cause the overcrowding of parking facilities given anticipated attendance and the possible reduction in the number of available spaces caused by the event itself.
 - d. The special event shall not endanger the public health, safety, or welfare given the nature of the activity, its location on the site, and its relationship to parking and access points.
 - e. The special event shall not impair the usefulness, enjoyment or value of adjacent property due to the generation of excessive noise, smoke, odor, glare, litter or visual pollution.
 - f. Any structure used in conjunction with the special event shall meet all sight distance requirements, shall be the subject of a valid building permit, and shall be promptly removed upon the cessation of the event.
 - g. The special event shall be conducted on private property where the property owner has granted the appropriate permission.
 - h. The duration and hours of operation of the special event shall be consistent with the intent of the event and the surrounding land uses, but in no case shall the duration exceed ten (10) days.
- E. Special Events Subject to Town Board Approval: Any special event not meeting the criteria of Sections 652.C. or D. may be granted a Special Event Permit by the Town Board. Such permit may be subject to such conditions and safe guards as the Town Board may deem necessary to protect the public health, safety and welfare. These conditions may include, but shall not be limited to:
- 1. Restrictions on the hours of operation, duration of the event, size of the activity, or other operational characteristic.
 - 2. The posting of a performance bond to help ensure that the operation of the event and the subsequent restoration of the site are conducted according to Town Board expectations.
 - 3. The provision of traffic control or security personnel to increase the public safety and convenience.
 - 4. Obtaining liability and personal injury insurance in such form and amount as the Town Board may find necessary to protect the safety and general welfare of the community.

F. Application and Fee:

1. No Special Event Permit shall be issued until an application has been submitted to the Zoning Enforcement Officer and the appropriate fee paid. The application shall be made on forms provided by the Zoning Enforcement Officer, and shall be accompanied by the following items as applicable:
 - a. A letter from the applicant describing the proposed event, the hours of operation, the duration of the event, anticipated attendance, and any structures, signs or attention-attracting devices used in conjunction with the event.
 - b. A sketch plan showing the location of the proposed activities, structures and signs in relation to existing buildings, parking areas, streets and property lines.
 - c. A letter from the property owner or manager, if different from the applicant, agreeing to the special event.
2. Each application for a Special Event Permit shall be accompanied by an application fee, except that such fee shall be waived for any applicant registered with the State of New York as a nonprofit organization. The fees shall be as established by the Town Board by separate resolution.
3. The Special Event Permit shall be posted on the site for the duration of the event.

SECTION 660 ALTERNATIVE ENERGY SYSTEMS

This section is intended to reduce impacts on neighboring property owners and health and safety problems which may accompany alternate energy systems.

- A. All wind energy towers shall be located so as to allow an open zone around the tower on the owner's property with a radius at least equal to the height of the tower.
- B. All energy collection/storage facilities and appurtenant electrical equipment shall cause no undue interference or noise, or glare.
- C. Windmill blades shall clear the ground at their lowest point by at least twenty (20) feet.
- D. Height Exemption: The height limitations of this Local Law shall not apply to wind energy towers or solar collectors provided that such structures are erected only to such height as is necessary to accomplish the purpose for which they are intended, and that such structures do not obstruct solar access to neighboring properties.

SECTION 670 HABITATION

All residential habitation shall be in residential dwellings as defined in this Local Law.

SECTION 675 REFUSE CONTAINERS

Commercial refuse containers shall be used for commercial waste disposal.

SECTION 680 SWIMMING POOLS

Swimming pools may be installed only as accessory structures to a dwelling for the private use of the owners or occupants of such dwelling and their families and guests. No swimming pool shall be installed or maintained unless:

- A. Such pools are installed in the rear or side yard of the premises, unless hardship is shown. No swimming pool shall be closer to the street or front lot line than the front of the building or structure to which the pool is an accessory use.
- B. The setbacks from the side and rear lot lines shall be at least 15 feet.
- C. Anything in this Local Law to the contrary notwithstanding, for inground pools, there shall be erected and maintained a good quality fence to be a minimum of four feet in height, enclosing the entire portion of the premises upon which such pool shall be installed and entirely surrounding the area in which such pool is located.
- D. Fences and gates shall be required, pursuant to the requirements of the Codes of New York State. Every gate or other opening in the fence enclosing any pool, except an opening through the dwelling or other main building of the premises, shall be kept securely closed and locked at all times when the owner or occupant of the premises is not present at such pool.
- E. No permit shall be issued for such pool unless the applicant can show that the proposed drainage of such pool is adequate and will not interfere with the property of others, with public highways or area drainage facilities.
- F. No permit shall be issued for such pool unless the applicant can demonstrate that there is sufficient water supply to accommodate such pool without detriment to normal water consumption requirements and that all proposed water connections are proper and adequate.
- G. Zoning permits shall be required for all swimming pools having an area greater than 100 square feet or a depth greater than 18 inches regardless of whether the pool is above or below ground.
- H. This section does not apply to farm ponds or other natural or artificial made bodies of water located in on residential areas.

SECTION 682 UTILITY SHEDS

Utility sheds having exterior dimensions of 10 feet by 12 feet or less do not have to meet the set-back requirements provided in this Local Law and may be erected no less than five (5) feet of the property line upon inspection and approval of the Zoning Enforcement Officer. Such sheds do not require a cement or wood base, but must be anchored to the satisfaction of the Zoning Enforcement Officer to mitigate against wind damage. Utility sheds having dimensions larger than 10 feet by 12 feet require the issuance of a standard building permit and must comply with all of the provisions of this Local Law and all other local laws and statutory provisions.

SECTION 695 HOME OCCUPATIONS

- A. No person other than a member of the immediate family occupying such dwelling shall be employed full time as part of the home occupation.

- B. The home occupation shall not require client or customer visits to the residence.
- C. A Home occupation must be conducted within a dwelling which is the bona fide residence of the principal practitioner or in an accessory building thereto which is normally associated with a residential use.
- D. No more than 25 percent of the gross floor area of such residence shall be used for the conduct of a home occupation.

The entire floor area of an accessory structure may be used for a home occupation (except garages.)
- E. In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character whether by the use of colors, materials, construction, lighting or the emission of sounds, noises, or vibrations.
- F. No mechanical or electrical equipment shall be employed other than machinery or equipment customarily found in the home associated with a hobby or avocation not conducted for gain or profit or machinery or equipment which is essential in the conduct of the home occupation.
- G. There shall be no outdoor storage or display of materials, goods, supplies or equipment related to the operation of the home occupation.
- H. There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes.
- I. One nameplate shall be allowed. It may display the name of the occupant and/or the name of the home occupation. It shall not exceed one (1) square foot in area and shall be attached to the structure.
- J. Only one (1) commercial vehicle, as defined herein, may be used in connection with home occupation.
- K. No use shall create noise dust, vibration, smell, smoke glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
- L. Any home occupation that exceeds the thresholds established in this Section shall require a special permit for a home business (See Section 740).

SECTION 696 STRIPPING OF TOPSOIL

- A. No person, firm or corporation shall strip, excavate or otherwise remove top soil for sale or other use other than on the premises from which taken, except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto. Any area of land consisting of more than one (1) acre from which top soil has been removed or covered over by fill shall be seeded to provide an effective cover crop within the first growing season following the start of said operation.
- B. Any removal of topsoil shall comply with all applicable regulations regarding erosion control and storm water management.

SECTION 697 FARM ANIMALS

- A. The keeping of farm animals within the General Business (GB) or Rural Residential (RR) Districts must comply with the following conditions:
1. Fences – Farm animals shall be fenced so as not to be able to come within 50 feet of adjacent residential structures nor within 10 feet of any boundary line.
 2. No structure housing such animals shall be located closer than fifty (50) feet to any street or property line.
 3. Pre-existing Animals – Farm animals maintained on a property at the time of enactment of this Local Law, in excess of the number allowed in this Section, may continue to be allowed, provided that the occupant of the property registers the total number and type of animal with the Zoning Enforcement Officer within 30 days of the enactment of this Local Law.
 4. No stable, similar animal housing or confining areas shall be allowed on lots of less than five (5) acres.
 5. Not more than one (1) adult or fully grown horse, cow, beef cattle, sheep, goat or other four-legged domestic-type farm animal, or combinations thereof, may be kept per acre of land in the residential parcel.
 6. Not more than a total of any combination of twelve (12) adult or fully grown chickens, ducks, geese or other fowl or birds of any type may be kept per acre of land in the residential parcel.
 7. No unenclosed storage area for manure or other materials creating dust or odor shall be permitted within 100 feet of any street or residential property line, nor within 100 feet of a stream or other water body or well providing a source of potable water. In no case shall a pasture be considered an unenclosed storage area for manure, nor shall a pasture be required to be set back 100 feet from any residential property line, street or water body. Any building occupied or structure used for the storage of manure or other materials creating dust or odor shall be located a minimum of 60 feet from all lot lines. Manure storage facilities shall be constructed a minimum of 120 feet from any residential building.
 8. Site plan review by the Planning Board shall be required for manure storage facilities or for any structure that is not completely enclosed that is used primarily for the storage of liquid agricultural or food processing wastes.
- B. The keeping of farm animals as an accessory use to a residence within the Agricultural/ Residential (AR) or Waterfront Development (WD) Districts must comply with the following conditions:
- a. No stable, similar animal housing or confining areas shall be allowed on lots of less than two (2) acres.
 - b. No structure housing such animals shall be located closer than fifty (50) feet to any street or property line.
 - c. Not more than one (1) adult or fully grown horse, cow, beef cattle, sheep, goat or other four-legged domestic-type farm animal, or combinations thereof, may be kept per acre of land in the residential parcel.
 - d. Not more than a total of any combination of twelve (12) adult or fully grown chickens, ducks, geese or other fowl or birds of any type may be kept per acre of land in the residential parcel.

C. Activities Requiring Permit from Town Supervisor

1. Operation of a Mobile Food Vehicle or conducting business as a Mobile Food Vendor shall be permitted only upon the issuance of a permit by the Town Supervisor.

D. Mobile Food Vendor

1. No mobile food vendor shall vend on the public street unless a permit has been first issued by the Town Supervisor. The permit shall be produced by the mobile food vendor upon the request of any individual solicited.
2. (a.) No mobile food vendor shall vend on the public street without a valid permit issued pursuant to Section 4.

(b.) In order to obtain such permit, the mobile food vendor shall:
 - (i) present the mobile food vehicle for inspection by the Code Enforcement Officer, or provide proof of an equivalent inspection from another Municipality performed within the previous 6 months.
 - (ii) provide proof current and valid insurance;
 - (iii) provide proof of current and valid vehicle registration; and
 - (iv) provide proof of current and valid County Health Department Inspection
3. Mobile food vending shall not be conducted before 9:00 am or after 11:00 pm on a residential property.
4. Mobile food vending shall not be conducted before 7:00 am or after 11:00 pm on a non-residential property or in a right-of-way adjacent to a non-residential property.
5. At all times, mobile food vendors must abide by the New York State Transportation Law and all applicable Parking, Vehicle, and Traffic Laws, Ordinances, Rules, and Regulations.
6. All signage associated with a mobile vendor must be permanently affixed to the mobile food vehicle. Only one accessory sign shall be placed outside or around the mobile food vehicle.
7. All mobile food vendors must provide trash receptacles of sufficient capacity to contain all trash and waste generated in association with the business of the mobile food vendor. All waste and trash shall be placed in the trash receptacles. All trash, waste, litter and debris shall be removed from the site of the vending operation at the end of each daily operation.
8. It shall be unlawful to discharge liquid waste, fats, oils or grease on the land. Such discharges shall be held in appropriate containers and then disposed in a legally permissible manner.
9. Mobile food vendors shall not conduct operation from a site that contains a gasoline service.
10. Each mobile food vehicle shall be inspected annually by the Building Department for fire-safety code compliance, unless proof of an equivalent inspection performed by another municipality within the previous 6 months is provided.
11. All required permits shall be posted conspicuously on the mobile food vehicle.

12. When parked on a public or private right-of-way, products shall not be dispensed from the street side of the mobile food vehicle.
13. A mobile food vehicle shall not be operated in reverse in order to or attempt or a sale.
14. When parked on a public or private right-of-way, a mobile food vehicle shall not be parked within sixty (60) feet of an intersection with another public or private right-of-way boundary.
15. The following fees shall be paid to the Town Clerk with an application for a mobile food vendor permit:
 - (a) Supervisor's Permit fee as determined from time to time by the Town Board.
 - (b) Inspection fees, if applicable, in amounts as determined from time to time by the Town Board.
16. A permit granted hereunder shall not be transferable and shall expire on the first day of January of each year.

ARTICLE VII: SPECIAL PERMIT CRITERIA

SECTION 700 GENERAL PROVISIONS

The uses specified in this Article are hereby declared to possess unique characteristics requiring that each proposal for any such use shall be considered by the Town Planning Board as an individual case. Upon application, special use permits may be approved by the Town Planning Board and issued by the Zoning Enforcement Officer in accordance with the administrative procedures set forth in this Local Law and only after it has found that each and all of the following standards have been met:

- A. The proposed special use is consistent with the general intent of the Town's Comprehensive Plan and with each of the specific purposes set forth in this Local Law.
- B. The location, size and use of the structures involved, nature and intensity of the operations involved and size and layout of the site in relation to the proposed special use are such that it will be compatible with the orderly development of the zoning district.
- C. Operation of the proposed special use is no more objectionable to the uses of nearby properties, by reason of dust or smoke emission, noise, odors, fumes, pollution of air or water, including subsurface waters, unsightliness or similar conditions, than would be the operation of any permitted use.
- D. The proposed special use satisfies each and all standards and conditions specified for such special use by the relevant provisions of this Article.
- E. The Planning Board may impose additional conditions or restrictions as it may deem necessary prior to approving any special use permit application in order to protect public health and safety, the quality of the Town's natural resource base and the value of property.
- F. The Planning Board may waive certain requirements for special uses, provided that such waiver does not endanger public health, safety or welfare or compromise the character of the neighborhood.
- G. The Zoning Enforcement Officer shall make an on-site visit to each property authorized as a special use not less than one (1) time each year. The purpose of said site visit is to insure that the use is being operated in accord with the conditions specified by the Planning Board. If the Zoning Enforcement Officer shall determine that a violation of this Local Law or the conditions imposed by the Planning Board exists, the owner and, if applicable, operator of such special use shall be notified in writing of the violation. If such violation continues to exist fifteen (15) days following such notification, or if three violations occur within a consecutive twelve (12) month period, the Certificate of Occupancy and/or Certificate of Compliance shall be null and void. A new special use permit application shall be required to be submitted and approved prior to the re-establishment of said use.

1. Name and address of the proponent.
2. Classification of the proposed airport (commercial, non-commercial or restricted.)
3. Types of aviation activities proposed (aircraft sales and service, flight instruction, crop dusting, air taxi, etc.)
4. Number and type of aircraft expected to be based at the airport initially and within five years.
5. Whether an instrument approach procedure will be offered.
6. Statement as to the anticipated number of daily operations.
7. Copy of the airspace clearance granted by the Federal Aviation Administration for this airport, including USGS topographic map.
8. A copy of the New York State Commissioner of Transportation's determination that the airport is in compliance with the provisions of Section 249 of the New York State Business law.
9. A site plan of the airport which includes the following in addition to the requirements listed in Article X:
 - a) Scale no smaller than one inch equals one hundred feet (1" = 100').
 - b) Location of all existing and proposed structures.
 - c) Alignment of existing and/or proposed runways shown in their exact location.
 - d) Location of aircraft parking and tie-down areas.
 - e) Provision for vehicular access and off-street parking.
 - f) Provisions for sanitary waste disposal and water supply, if applicable.
 - g) Location and method of all fuel storage facilities.
10. An area map at a scale of no less than one inch equals five hundred feet (1" = 500') showing:
 - a) Distances to power lines, or other possible obstructions, within two thousand (2,000) feet of the ends of runways.
 - b) Properties and property owners within five hundred (500) feet

- B. The Planning Board may, at its discretion, exclude from the requirements of paragraph A.8. above, any private airport established, constructed or maintained by an individual on his property for his personal or hobby use; provided, however, that the following conditions are met:
1. The average number of hours that the airport is in use each week does not exceed twelve hours.
 2. The individual owns no more than three planes, none of which is designed to accommodate more than six persons, including the pilot.
 3. The airport is not utilized for any industrial or commercial purposes.
 4. The Planning Board may, at its discretion, require the applicant to submit proof that the requirements of Section 249 of the General Business Law are otherwise complied with, depending on the proximity of the proposed airport to highways and other airports.
- C. The Planning Board, in considering a request for a special use permit or the extension of a permit to operate an airstrip, may waive certain requirements or impose any additional conditions it deems necessary to protect the health, safety and public welfare of the Town.

SECTION 703 ANIMAL HOSPITAL AND VETERINARY CLINICS

The Planning Board may approve a special permit for an animal hospital in the AR Agricultural/ Residential District, or for an animal hospital with outdoor runs in the GB General Business District, provided that the following standards and provisions are maintained:

- A. All buildings, structures or other accessory uses shall be at least 25 feet from any side or rear property line and shall be set back so as to comply with the front yard requirements of the zone in which the facility is to be located.
- B. All animals shall be kept within a totally enclosed building between 8:00 p.m. and 6:00 a.m.
- C. Lot coverage shall not exceed 25 percent.
- D. Entrance and exit points shall be from major or secondary roads only.
- E. Adequate parking shall be provided in accordance with the size of the facility.
- F. Adjacent properties shall be protected from noise, odors and unsightly appearance.
- G. Applicant must indicate on application for permit the method of waste disposal and dead animal disposal. Recommended: septic system with 1,000 gallon tank for waste disposal. The proposed method of disposal of waste and/ or dead animal carcasses shall be subject to review and approval by the Planning Board before any such method may be employed by any applicant.

SECTION 708 CAMPGROUNDS

The Planning Board may approve a special use permit for camping grounds in the Agricultural/ Residential (AR) or Waterfront Development (WD) District provided that the following standards and provisions are maintained:

- A. Campgrounds shall be occupied only by travel trailers, pick-up coaches, motor homes, camping trailers, recreational vehicles, and tents suitable for temporary habitation and used for travel, vacation and recreation purposes.
- B. No permanent external appurtenances such as carports, cabanas or patios may be attached to any travel trailer or other vehicular accommodation parked in a camp ground.
- C. The removal of wheels and placement of a unit on a foundation in a camping ground is prohibited.
- D. Minimum site area: Ten (10) acres
- E. Not more than ten (10) travel trailers, campers, tents, recreational vehicles or motor homes shall be permitted per acre of gross site area.
- F. A campground shall be so located that no entrance or exits from a site shall discharge traffic into any residential area nor require movement of traffic from the camping ground through a residential area. A campground shall have a minimum of 150 feet of frontage on a public street.
- G. Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of occupants. Natural vegetation shall be retained wherever possible. The site shall not be exposed to objectionable smoke, noise, odors, or to other adverse influences, and no portion of the campground subject to flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.
- H. Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundries, and other uses and structures customarily incidental to the operation of campground are permitted as accessory uses to the camping grounds. In addition, retail stores and other convenience establishments shall be permitted as accessory uses in campgrounds in such districts where such uses are not allowed as principal uses, subject to the following restrictions.
 - 1. Such establishments and the parking areas primarily related to their operations shall not occupy more than five (5) percent of the gross area of the campground. Such establishments shall be restricted in their use to occupants of the campground.
 - 2. Such establishments shall present no visible evidence from any street outside the camping ground of their commercial character which would attract customers other than occupants of the campground.

3. The structures housing such facilities shall not be located closer than one hundred (100) feet to any public street and shall not be directly accessible from any public street, and shall only be accessible from a street within the campground.
- I. Plans for sewage disposal and water supply shall be designed in accordance with standards promulgated by the New York State Department of Health and/or Environmental Conservation, and shall receive approval from said agencies.
- J. Streets in campgrounds shall be private, but shall be constructed with a stabilized travelway and shall meet the following minimum stabilized travelway width requirements:
- | | |
|--|----------|
| One -way with no parking on either side: | 12 feet |
| One -way with parking on one side | 18 feet |
| Two-way with no parking on either side: | 18 feet |
| Two-way with parking on one side: | 27 feet |
| Two-way with parking on both sides: | 34 feet. |
- All roadways and public parking areas shall either be paved or dust treated.
- K. Each travel-trailer site shall be at least 2000 square feet in area and have a minimum width of 35 feet.
- L. A minimum of eight percent (8%) of the gross site area for the campground shall be set aside and developed as common use areas for open or enclosed recreation facilities. No travel trailer site, required buffer strip, street right-of-way, storage area or utility site shall be counted as meeting recreational purposes.
- M. Entrances and exits to campgrounds shall be designed for safe and convenient movement of traffic into and out of the camping ground and to minimize friction with movement of traffic on adjacent streets. All traffic into or out of the camping ground shall be through such entrances and exits.
- N. Pedestrian walkways shall be provided to lead to all parking areas, restrooms or other service buildings. All walkways shall have adequate lighting.
- O. An adequate lighting system shall be provided for the campground.
- P. All utilities shall be underground.
- Q. Not less than one covered 20- gallon garbage receptacle shall be provided for each camp site. No camp site shall be situated further than 100 feet from a garbage receptacle. Garbage and rubbish shall be collected and disposed of as often as may be necessary to insure sanitary conditions.
- R. All applicable sanitation standards promulgated by the State of New York, County of Orleans, or Town of Shelby shall be met.
- S. Setbacks. Each building or structure within a campground shall comply with the setback regulations applicable to the zoning district in which such camping ground is located, except

- C. Landscaped buffers shall be provided, which are sufficient to screen views of the facility from neighboring property and to minimize the impacts of noise, traffic and other operations of the facility on neighboring property, roads and other public facilities.

SECTION 715 DRIVE-IN BUSINESS

The Planning Board may approve a special use permit for a drive-in business in the General Business (GB) District provided that the following standards and provisions are maintained:

- A. The following information shall be submitted as part of the application for site plan approval and for a special use permit for a drive-in business addition to that information required in other sections of this Local Law.
 - 1. The location and dimensions of all structures including buildings, screened trash areas, fencing and lighting (show direction and level of illumination).
 - 2. The locations and dimensions of all off-street parking areas and ingress and egress locations.
 - 3. Proposed landscaping of site.
- B. All drive-in businesses shall be a minimum of 200 feet from other such businesses, which distances shall be computed as follows:
 - 1. For such businesses on the same side of the street, 200 feet measured between the two closest property lines.
 - 2. For such businesses on opposite sides of the street, 200 feet measured diagonally between the two closest property corners.
 - 3. For four-corner intersections, one such business may be located on a diagonally opposite corner exclusive of the 200 foot distance requirement.
- C. Banks with drive-in facilities shall be permitted provided that at least five car length spaces are provided in the approach drive within the property line of the lot for each drive-in teller's window. Such spaces shall be exclusive of required off-street parking spaces.
- D. All drive-in businesses shall provide suitable storage of trash in areas which are so designated and constructed as to allow no view of the trash storage from the street, to prevent waste paper from blowing around the site or adjacent properties or public right-of-ways, and to permit safe, easy removal of trash by truck or hand.
- E. Driveways and site access shall be planned as follows:
 - 1. The minimum distance from any driveway to a side lot line shall be 20 feet.

6. In the Rural Residential (RR), Waterfront Residential (WR) or Hamlet (HA) Districts, all points of necessary access, or transformers, shall be placed in secure structures at ground level.
7. All major electrical transformer facilities or substations, if above ground, shall be secured by an outer and inner fence, each ten feet from each other at any point; also no transformer or associated switches shall be closer than 100 feet from any lot line.
8. Adequate off-street parking shall be provided.
9. Adequate and attractive fences and other safety devices will be provided.

SECTION 722 EXCAVATION OR MINING - MAJOR

A special use permit is required for the excavation of more than 1,000 tons of minerals [roughly equivalent to at least 750 cubic yards or 40 to 50 truck loads] for commercial purposes within 12 consecutive calendar months and for the reclamation of the land affected by the excavation, including any operation accessory to the excavation or reclamation.

- A. The Planning Board may issue or renew a special use permit for such a use, provided that the proposed excavation and reclamation has been duly approved by the New York State Department of Environmental Conservation in accordance with the New York State Mined Land Reclamation Law, Title 27 of the New York State Environmental Law.
- B. All excavations and reclamation shall be made only in accordance with a mined land-use plan, including a mining and reclamation plan, which has been duly approved by the New York State Department of Environmental Conservation. This plan shall meet all applicable environmental protection codes established by federal, state and county agencies having jurisdiction. All permit application information, including mined land use plans, submitted to the Department of Environmental Conservation, along with all correspondence from the Department regarding the permit application, shall be submitted to the town.
- C. Excavation and mining governed by this Section may only occur in a Mining/Excavation Overlay District.

The town shall notify the Department of Environmental Conservation of local concerns with regard to activities subject to this subsection.

SECTION 723 EXCAVATION OR MINING (MINOR)

The extraction of more than 100 tons but less than 1,000 tons of stone, sand or gravel or other materials for commercial purposes shall be permitted with a special use permit in the Industrial (I) District provided the following standards and conditions are maintained.

- A. Minimum lot area ten (10) acres

- B. In addition to site plan review requirements contained in Article X, the following information shall be supplied in conjunction with the Special permits procedures contained in Article IX.
1. A duly acknowledged consent in writing by the owner or lessee of the premises and mortgagee, if any, including addresses.
 2. A statement as to the period of time required to complete the total operation, including restoration.
 3. The following information on the site plan:
 - a. Average thickness of overburden, that which is above the material to be excavated.
 - b. Surface drainage pattern including off site drainage where appropriate.
 - c. Location of all underground utilities and facilities.
 - d. The scale, an engineer's stamp, the north arrow, the names of surrounding land owners and such other information as the Planning Board or its agents or departments may require.
 4. An operation map and plan shall be supplied showing the following features including the area devoted to each:
 - a. Existing and proposed excavation areas
 - b. Existing and proposed appurtenant activities identified.
 - c. Existing and proposed access roads, identified by width and type of material used for construction including origin of material brought onto site.
 - d. Existing and proposed parking facilities, identified by type of surface material including origin of material brought onto site.
 - e. Existing and proposed fencing and buffers, identified by height and type of material.
 - f. Area where soil will be temporarily stored for use in restoration.
 - g. Existing and proposed structures to be used in said operations.
 - h. General method of operation including a plan to reduce noise, dust and other nuisances.
 - i. Route to be used to and from excavation side including Town, County or State roads.

- j. Elevations showing:
 - (1) existing ground level
 - (2) completed grade.
 - (3) benchmark
- 5. A restoration plan consisting of all appropriate descriptive materials and including the following:
 - a. Boundaries of the area proposed for restoration.
 - b. Final topography of the area proposed for restoration at maximum contour intervals of five (5) feet.
 - c. Final surface drainage of pattern and location and characteristics of artificial drainage facilities in the area proposed for restoration and in contiguous areas.
 - d. Depth and composition of topsoil proposed to be used in restoration.
 - e. The type and density of trees and shrubs, grasses and other vegetation proposed to be used in restoration.
- C. In addition to the site plan approval criteria contained in Section 1105, the Planning Board's review of the site plan shall include the following:
 - 1. Whether the excavations and proposed restoration plan are in accord with the intent of the comprehensive land development plan for the Town.
 - 2. Whether they will result in the creation of pits or holes, which may be hazardous or dangerous and eventually permanent in nature.
 - 3. Whether they will cause soil erosion or the depletion of vegetation.
 - 4. Whether they will render the land unproductive or unsuitable for agricultural or developmental purposes.
 - 5. Whether they will impair the aesthetic or natural environment of the excavation area or surrounding area.
 - 6. Whether they will affect the character of surrounding land use.
 - 7. Whether they will create excessive traffic or impair the quality of the existing and proposed thoroughfare facilities, community facilities and drainage.
 - 8. Whether they will affect the control of nuisances.
 - 9. Whether the areas excavated can be effectively restored and re-vegetated.
 - 10. Whether the resultant drainage will be adversely affected.

11. Whether the best interests of the Town are being served.
- D. Special permits for excavation and mining operations are of a one-year term initially and three-year terms for succeeding permits. A renewal of a permit may be issued without a public hearing when the area covered by the renewal or transfer does not extend beyond the area of operations originally authorized; however, the Planning Board may, in its discretion, direct a public hearing if it determines said hearing is necessary. Renewal of a special permit upon its termination shall follow the same procedures as those required for the original permit, except that if an application for renewal was properly filled prior to the expiration of an existing permit, the term of the existing permit shall be deemed to be extended to the time that the Planning Board files its decision in regard to the application for renewal.
- E. After the approval of the application and before the issuance of a special permit, the Planning Board shall require evidence that the applicant has posted such performance Bond as may be required by the Town.
- F. Standards for Excavations
1. Setback
 - a. All buildings and excavation operations shall be located or shall occur not less than one hundred (100) feet from any street or property line.
 - b. This setback area may be used to contain one (1) sign identifying the operation, fencing and buffers subject to regulations as specified in the Town Zoning Local Law.
 2. Access Roads and Parking
 - a. Access roads shall be sufficiently free of dust and mud to prevent such material from being spread or blown from the premises.
 - b. Sufficient off-street parking shall be provided inside the setback area for company, employee and visiting vehicles.
 3. Conservation Measures
 - a. All topsoil stripped from the active excavation area shall be stockpiled for use in accordance with the restoration plan, but no closer than the immediate ten (10) feet to any property line. Such stockpiles shall be seeded, covered or otherwise treated to minimize the effects of erosion by wind or water.
 - b. Excavations shall be buffered by appropriate landscaping sufficient to shield the operation from public view. These buffer areas shall be seeded and maintained by the operator.
 - c. An adequate drainage system shall be provided to convey storm-water runoff originating on or crossing the premises such that the runoff follows, as much as feasible, the natural pattern of runoff prior to excavation and such that it does not

adversely affect neighboring property owners. Soil erosion, sedimentation and ground-water seepage shall be controlled so as to prevent any negative effect on bodies of water, public roads and neighboring properties.

4. Other Safeguards

- d. All operations shall be conducted between the hours of 7:00 am to 6:00 pm. with no Sunday or Holiday operations, except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.
- e. All equipment used for excavations and processing shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practical, noises and vibrations, and dust conditions which are injurious or a nuisance to persons living in the vicinity.
- f. Trucks shall be loaded to prevent spillage or wind-blown matter during transport on public roads.

G. Standards for Restoration

- 1. No slope shall be left with a grade, steeper than one (1) foot of vertical rise to three (3) feet of horizontal distance, and the normal angle or repose shall not be exceeded in any case.
- 2. All stumps, boulders and other debris resulting from the excavations, appurtenant activities or related operations shall be disposed of by approved methods. If disposed of on the site, such debris shall be covered with a minimum of two (2) feet of soil or if to be considered a part of the structure of a lake, it is to be covered by at least six (6) feet of water.
- 3. Topsoil shall be spread over the excavated area to a minimum depth of six (6) inches other than lake/pond areas.
- 4. The restoration area shall be planted with trees, shrubs, grass or other vegetation so as to provide for screening, natural beauty and soil stability. The planting shall follow acceptable conservation practices.
- 5. Restoration shall be undertaken in such a way that natural and storm drainage, where it enters and leaves the premises, shall be altered only to the minimal degree necessary to carry out excavations and appurtenant activities. Any alterations of natural and storm drainage shall not adversely affect public roads or neighboring property owners.
- 6. Restoration shall be a continuous operation, subject to review and approval at each inspection and at the termination of the permit period. Topsoil grading and planting of the area designated for restoration during the permit period shall have been completed before a permit renewal is granted.

- H. The Planning Board shall consider the following criteria in their review of the special use permit request.

1. The current use of the property proposed to be excavated as well as the proposed use of the area subsequent to completion of the excavation and restoration thereof.
 2. The potential short-term and long-term effects of the proposal on the aesthetics and environment of the area or of surrounding areas.
 3. The effect on the property of the proposal that may change the productivity or suitability of the land for agricultural purposes and/or the desirability or feasibility for future development purposes.
 4. The amount of time, as estimated by the applicant that will be required for the completion of the proposed excavation and the restoration of the property.
 5. Noise and/or vibrations that may be created by the proposed operation.
 6. Additional traffic that may be created by the proposed operation. Deleterious effects, if any, on the property in the general area of the proposed operation.
- I. A performance bond or some other financial guarantee shall be required to assure that the conditions stipulated in the approval of the special use permit are carried out._

SECTION 731 FARM MARKET

The Planning Board may approve a special use permit for farm markets in the AR Agricultural/ Residential Districts provided that the following standards and provisions are maintained:

- A. Such structures shall not exceed 2,000 square feet of floor area.
- B. Not more than 1/3 of the total floor area shall be for the display and sale of products grown off the premises.
- C. Such structures shall conform to the minimum setback requirements for accessory buildings in this district as specified in the Zoning Schedule.
- D. Sufficient land area shall be provided to accommodate off-street parking for not less than three (3) vehicles on site.

SECTION 735 GASOLINE STATION

The Planning Board may authorize a special permit for gasoline stations in the Hamlet (HA) and General Business (GB) Districts.

- A. Specifications:

Minimum lot size:	30,000 square feet
Minimum lot frontage:	150 feet

- G. The applicant shall submit a route plan to indicate that traffic generated by the facility will have a minimal impact on residential streets. Said plan shall state the number and frequency of trips to and from the facility.
- H. All outdoor storage areas shall be suitably screened and indicated on the site plan.
- I. On-street parking of vehicles, containers or any other equipment or materials in any way connected with the facility shall be prohibited.
- J. The maximum height of the facility shall not exceed 40 feet.
- K. All buildings shall be set back 200 feet from all natural water bodies. A 100-foot buffer shall be required when adjoining residential and commercial zones.
- L. The Planning Board may incorporate as a condition of issuance of any such permit any safeguards it deems necessary to protect the public health, safety and welfare.

SECTION 740 HOME BUSINESS

The Planning Board may approve a special use permit for Home Businesses in any District where residences are permitted, provided that the following standards and provisions are maintained:

A. Intent

The purpose of this section is to provide opportunities for the economic advancement among residents of the Town and to protect the character of residential and agricultural areas of the Town. All business established pursuant to this section are expected to blend in with the existing character of the area in which it is located.

B. Type of Business

A variety of commercial and manufacturing uses may be permitted provided that the requirements of this section are met.

C. Neighborhood Character

1. The appearance of the structure shall not be altered, and the business shall not be conducted in a manner that would cause the premises to differ from its existing residential/agricultural character, either by colors, material, construction, lighting, signs, or emissions of sounds, noises or vibrations.
2. The use shall not generate noise, dust, vibration, smell, smoke, glare, odors, smoke or electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the applicable zoning district.

D. Operation and Employees

1. The operator of the Home Business shall reside in the single family dwelling located on the same lot as the Home Business.
2. No more than two (2) persons, other than members of the immediate family occupying such dwelling shall be employed in such home business at any time. All family members employed in the family business must be residents of the dwelling.

E. Floor Space

1. No more than 40% of the gross floor area of a dwelling shall be used for the conduct of a home business up to a maximum of 1,000 square feet, provided that the portion of the dwelling used for residential purposes shall comply with all applicable laws and codes.
2. No more than 1,000 square feet of gross floor area of no more than one (1) detached accessory structure may also be permitted for use of a home business in addition to space within the dwelling.

F. Outdoor Storage and materials

1. No outside storage of material used in the Home Business shall be permitted except in the AR District. In the AR District, any outside storage shall be adequately screened from view from public streets and neighboring property, such screening may consist of vegetation, fencing or a combination.
2. A maximum of two (2) pieces of equipment, other than commercial vehicles, may be parked outdoors on the lot. Such equipment shall be operable and necessary for the conduct of the Home Business.
3. Outdoor storage of equipment used for home business shall only be permitted in the rear yard. Such equipment shall be completely screened from view of neighboring properties and public roads.

G. Outdoor Display of Goods

No outdoor display of goods for sale shall be permitted.

H. Signage

1. One sign shall be permitted to identify a Home Based Business. No sign shall have more than two (2) printed sides.
2. In the Rural Residential (RR) and Waterfront Residential (WR) R Districts, no sign shall exceed two (2) square feet.
3. In the AR District such sign shall not exceed four (4) square feet in area per side.

4. All signs shall require Site Plan approval by the Planning Board.

I. Commercial Vehicles

In the RR and WR Districts, no more than one (1) licensed Commercial Vehicles may be used in connection with a Home Business. Such vehicles may be parked outside but at the rear of the structure.

J. Number of Clients

With the exception of the Family Day Care, the home business shall be conducted in such a manner that at one time, the maximum Number of vehicles of clients, customers, and others (except for Employees) at the site of the Home Business is not greater than off Road Parking spaces provided for under Section 601 and 602 of this Local Law.

K. Hours of Operation

The Home Business shall be conducted in such a manner that all Clients, customers and others coming to do business) shall arrive and depart between the hours of 7:00 A.M. and 9:00 P.M.

L. Number of Home Based Business Permitted

More than one (1) home based business may be permitted for each residential property, provided that the combined impact of such home Business does not exceed any of the thresholds established by this section.

M. Parking and Access

1. Off -Street parking shall be permitted as long as adequate space is provided with a turn-around area so that the vehicles do not have to back out into a public roadway. The off-street parking for the Home Business shall be in addition to the parking required for the employees and residents. Off-street parking shall be provided in accordance with Section 601.
2. No home business shall be permitted where access is provided only by a shared private road.

N. Setbacks

Any accessory building used in connection with the Home Business, shall be setback in compliance with the existing regulations of the Zoning Districts it is located in-- This also applies to off-street parking, loading areas, and outdoor storage areas.

O. Deliveries

No Business shall be permitted that requires tractor-trailer deliveries on a regular basis (i.e. more than once a week) unless the Planning Board determines that the site can provide an adequate access and turning around space.

- P. Motor vehicle repair shops operating as a home business shall meet all of the requirements of this section as well as the criteria for motor vehicle repair shops, with the following additional requirements:
- 1) Special permit requirements for Motor Vehicle Repair shops shall apply. If requirements of these sections differ, the stricter requirements shall apply.
 - 2) No more than two (2) vehicles being repaired or awaiting repair shall be permitted on the premises at any one time.
 - 3) Motor vehicle sales are prohibited.
 - 4) All automotive fluids shall be stored, handled and disposed of in a safe and legal manner.

SECTION 743 HOTELS AND MOTELS

The Planning Board may authorize a Special Use Permit for a Hotel or Motel in the Waterfront Development Overlay (WDO) District provided the following standards and conditions are maintained.

A. Minimum Lot Dimensions:

Minimum lot size:	Two (2) acres
Minimum lot width:	Two hundred (200) feet
Minimum lot setback:	One hundred (100) feet
Minimum side and rear setbacks:	Forty (40) feet

- B. All signs should be carefully integrated with the site, building design and surrounding context to create a harmonious appearance for the Hamlet or waterfront area.
- C. No exterior lighting shall be erected, operated or maintained in such a manner as to create an annoyance to surrounding properties or so as to create a hazard to traffic circulation.
- D. No open-air outdoor storage of construction materials shall be permitted. Refuse and trash may be stored outdoors at all times only if placed in closed containers located in an area screened from view at all points on any public or private property or street when viewed from ground level.
- E. The proposed project will be in harmony with the appropriate and orderly development of the waterfront area. The architectural treatment and general appearance of all buildings and grounds shall be in keeping with the purpose of this district and shall be of such quality and design as to be a visual asset to the area in which they are located as well as to adjacent development.
- E. The proposed project will not hinder or discourage the appropriate development and use of adjacent lands.

- F. Restaurants, cafeterias, swimming pools, newsstands, pharmacies, barbershops, hairdressers, gift shops, and other personal service shops for the convenience of guests may be permitted as accessory uses. With the exception of an identifying sign for the restaurant, no external evidence of their internal commercial activities is permitted.

SECTION 745 JUNK YARDS, AUTO WRECKING AND DISMANTLING YARDS

A license from the Town Board is required to establish or maintain a junkyard. See provisions of **Local Law No. 2 of 1981.**

SECTION 747 KENNELS AND ANIMAL HOSPITALS

The Planning Board may approve a special use permit for kennels in the Agricultural/ Residential (AR) District, provided that the following standards and provisions are maintained.

- A. When applying for a purebred boarding license the applicant shall indicate the number of dogs that will be boarded on the premises. Ownership of more than 4 dogs requires a kennel permit. This will include owned, boarded or parked dogs.
- B. Minimum lot size and frontage

Number of Dogs	Lot Size	Lot Frontage
4-5 dogs	2 acres	250 feet
6-10 dogs	5 acres	300 feet
11-20 dogs	10 acres	400 feet
21+ dogs	15 acres	400 feet

- C. Adequate landscaping or fencing shall be provided to create a visual, sound and smell buffer between such facilities and adjacent properties. Kennels must have a security fence around perimeter, unless enclosed in a building. Security fence must be 8 feet high made of solid material.
- D. All buildings, structures or other accessory uses shall be at least 75 feet from any property line, except that animal runs and structures that house animals shall be at least 100 feet from any property line.
- E. No outdoor area enclosed by fences for the use of animals shall be permitted within a front yard. Fenced areas shall be setback not less than one hundred (100) feet from any side or rear property line.
- F. Lot coverage shall not exceed 25 percent
- G. Entrance and exit points shall be from major or secondary roads only.
- H. Adequate parking shall be provided in accordance with the size of the facility.

- I. Adjacent properties shall be protected from noise, odors, and unsightly appearance.
- J. Adequate provisions shall be made for disposing of animal waste. Applicants must indicate on application for permit the method of waste disposal and dead animal disposal. Recommended: septic system with 1,000 gallon tank for waste disposal. The proposed method of disposal of waste and/or dead animal carcasses shall be subject to review and approval by the Planning Board before any such method may be employed by any applicant.
- K. Kennels not in compliance when this zoning goes into effect will have 3 years to come into compliance to meet this code or no additional permits/ license will be issued.

SECTION 750 MANUFACTURED HOME PARK

The Planning Board may approve a special use permit for manufactured home parks in the A/R or RR District provided the following standards and provisions are maintained:

A. DEFINITIONS

Unless the context otherwise requires, the following definitions shall be used in the interpretation and administration of this Section:

MANUFACTURED HOME LOT: A lot within a manufactured home park for the placement of a single manufactured home and for the exclusive use of its occupants.

MANUFACTURED HOME STAND: That part of a manufactured home lot which has been reserved for the placement of the manufactured home and appurtenant structures and/or additions.

WATER CONNECTION: All pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the manufactured home.

WATER RISER PIPE: That portion of the water service pipe which extends vertically to the ground elevation and terminates at a designated point of each manufactured home lot.

WATER SERVICE PIPE: Consists of all pipes, fittings, valves and appurtenances from the water main of the manufactured home park distribution system to the water outlet of the distribution system within the manufactured home park.

SERVICE BUILDING: A structure housing sanitary, operational, office recreational, maintenance and other facilities within a manufactured home park.

SEWER CONNECTION: Pipes, fittings and appurtenances from the drain outlet of the manufactured home to the inlet of the corresponding sewer riser pipe of the sewer system that services the manufactured home park.

SEWER RISER PIPE: That portion of the sewer lateral which extends vertically to the ground elevation and terminates at a designated point at each manufactured home lot.

B. GENERAL SITE CONDITIONS

1. Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property of the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences, and no portion subject to unpredictable and or sudden flooding, subsidence or erosion shall be used for any purpose which would expose persons or property or hazards.
2. Exposed ground surfaces in all parts of every manufactured home park shall be paved or covered with stone screenings or other solid material or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.
3. The ground surface in all parts of every manufactured home park shall be graded and equipped to drain all surface water in a safe, efficient manner.
4. No part of any manufactured home park shall be used for nonresidential purposes, except as permitted by this Section or this Local Law.
5. Nothing contained in this Section shall be deemed as prohibiting the sale of a manufactured home located on a manufactured home stand and connected to the pertinent utilities.

C. DIMENSIONAL REQUIREMENTS FOR MANUFACTURED HOME PARKS:

1. The minimum parcel size for a manufactured home park shall be ten (10) acres.
2. All manufactured homes shall be located at least forty (40) feet from any manufacture home park boundary line that abuts upon a public street or highway and at least twenty (20) feet from other manufactured home boundary lines.
3. There shall be a minimum distance of fifteen (15) feet between an individual manufactured home and adjoining pavement of a manufactured home park walkway, sidewalk, street or common parking area or other common areas.
4. All manufactured home parks shall be provided with screening such as attractive and well-maintained fences or natural growth along the property boundary line separating the manufactured home park from adjacent uses.

D. LOT AND AREA REQUIREMENTS:

1. No lot in any manufactured home park shall be less than sixty (60) feet wide and have less than seven thousand two hundred (7,200) square feet of total area, exclusive of easements and rights-of-way. No structure or manufactured home or any part thereof shall be located on any lot closer to any front lot line than twenty-five feet, or any side lot line than fifteen (15) feet nor to any rear lot line than twenty (20) feet.
2. Tapered lots occurring along curvilinear roads and cul-de-sac shall have an average lot width of sixty (60) feet. The "average lot width" is defined as the sum of the lengths of the front and back lot lines divided in half. In no case, however, shall the front lot width on such

tapered lot be less than thirty-five (35) feet. The minimum requirements for the total area and yard dimensions as hereinabove stated shall apply to such tapered lots.

3. Any accessory structure which covers an area exceeding twenty-five (25) square feet and is attached to a manufactured home or is located within ten (10) feet of a window in such manufactured home and has an opaque top or roof that is higher than the nearest window shall be considered a part of the manufactured home for the purpose of determining its distance from lot lines.

E. RECREATION AREAS

1. In all manufactured home parks that accommodate or are designed to accommodate five (5) or more manufactured homes, there shall be one (1) or more recreation areas which shall be easily accessible to all park residents.
2. The combined size of such recreation areas shall be based upon a minimum of three hundred fifty (350) square feet per manufactured home lot. No outdoor recreation area shall be smaller than five thousand (5,000) square feet of area.
3. Recreation areas shall be so located as to be free of traffic hazards and should, where the topography permits, be centrally located.
4. Playground equipment shall be installed in each required recreation area.

F. STREET SYSTEM

1. All manufactured home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each manufactured home lot. Alignment and gradient shall be properly adopted to topography.
2. Access to manufactured home parks shall be designed to minimize congestion and hazards at the entrances and exits, and allow free movement of traffic on adjacent streets. The entrance road connecting the streets in the manufactured home park with a public street or road shall have a minimum road pavement width of thirty-four (34) feet where parking is permitted on both sides or a minimum road pavement width of twenty-seven (27) feet where parking is limited to one (1) side. Where the primary entrance road is more than one hundred (100) feet long and does not provide access to abutting manufactured home lots within such distance, the minimum road pavement width may be twenty-four (24) feet, provided parking is prohibited on both sides.
3. Internal surfaced roadways shall be of adequate width to accommodate anticipated traffic and in any case shall meet the following minimum requirements:
 - a. All streets, except minor streets, shall have a width of twenty-four (24) feet.
 - b. Minor streets with no parking shall have a width of eighteen (18) feet. This is acceptable only if the street is less than five hundred (500) feet long and serves fewer than twenty-five (25) manufactured homes or of any length if the street is one-way and provides access to abutting manufactured home lots on one side only.

- c. Dead-end streets shall be limited in length to one thousand (1,000) feet and shall be provided at the closed end with a turnaround having an outside roadway diameter of at least sixty (60) feet.

G. STREET ILLUMINATION

All manufactured home parks shall be furnished with lighting units so spaced and equipped with luminaries placed at such mounting heights as will provide the following average of maintained levels of illumination for the safe movement of pedestrians and vehicles at night:

1. All parts of the street systems: six-tenths (0.6) foot-candle with a minimum of one-tenth (0.1) foot-candle.
2. Potentially hazardous locations, such as major street intersections and steps or stepped ramps: individually illuminated with a minimum of three-tenths (0.3) foot-candle.

H. STREET CONSTRUCTION DESIGN STANDARDS

1. All streets shall be provided with a smooth, hard and dense surface which shall be durable and well drained under normal use and weather conditions. Pavement edges shall be protected to prevent raveling of the wearing surfaces and shifting of the pavement base. Street surfaces shall be maintained free of cracks, holes, and other hazards.
2. Grades of all streets shall be sufficient to ensure adequate surface drainage but be not more than percent (8%). Short runs with a maximum grade of ten percent (10%) may be permitted, provided that traffic safety is assured by appropriate paving, adequate leveling areas and avoidance of lateral curves.
3. Streets shall be at approximately right angles within one hundred (100) feet of an intersection. A distance of at least one hundred fifty (150) feet shall be maintained between center lines of offset intersecting streets. Intersections of more than two (2) streets at one (1) point shall be avoided.

I. OFF-STREET PARKING

1. Off-street parking areas shall be provided in all manufactured home parks for the use of park occupants and guests. Such areas shall be furnished at the rate of at least one and one-quarter (1-1/4) parking spaces for each manufactured home lot.
2. Required parking spaces shall be so located as to provide convenient access to the manufactured home, but shall not exceed a distance of two hundred (200) feet from the manufactured home that it is intended to serve.
3. Each manufactured home lot shall have not less than two (2) off-street parking spaces. Such parking spaces shall be connected to the entrance of the manufactured home by a paved sidewalk having a minimum width of 36 inches.

J. WALKWAYS

1. All manufactured home parks shall be provided with safe, convenient, all-season, dust-free pedestrian access to adequate width for intended use, durable and convenient to maintain between individual manufactured park homes, the streets and all community facilities provided for the residents of the manufactured home park. Sudden changes in alignment and gradient shall be avoided.
2. A common walk system separated for the road system by a minimum of two (2) feet shall be provided and maintained between locations where pedestrian traffic is concentrated. Such common walks shall have a minimum width of three and one-half (3-1/2) feet.
3. All manufactured home lots shall be connected to common walks, to paved streets or to paved driveways or parking spaces connecting to a paved street. Such individual walks shall have a minimum width of two (2) feet.

K. LANDSCAPING

Trees and shrubs shall be provided along all walks and streets, around recreation areas and along the outer property line of the manufactured home park. Trees shall be planted at an interval of not less than fifty (50) feet where feasible.

L. MANUFACTURED HOME STANDS

The area of the manufactured home stand shall be improved to provide adequate foundation for the placement and tie-down of the manufactured home, thereby securing the superstructure against uplift, sliding, rotation or overturning.

1. The manufactured home stand shall not heave, shift or settle unevenly under the weight of the manufactured home or due to frost action, inadequate drainage, vibration, or other forces acting on the superstructure. The manufactured home stand shall be either drilled piers, trench footers or concrete slabs in accordance with the specifications hereinafter set forth:
 - (a) Such drilled piers shall be constructed of cast-in-place concrete having a minimum load-carrying capacity of three thousand (3,000) pounds per square inch; be a diameter of not less than twelve (12) inches; be a depth of not less than forty-two (42) inches; and be spaced at intervals of not more than eight (8) feet and centered on the manufactured home rails.
 - (b) Such trench footers shall be constructed of cast-in-place concrete having a load-carrying capacity of not less than three thousand (3,000) pounds per square inch; be a width of not less than sixteen (16) inches; be a depth of not less than forty-two (42) inches and be spaced at intervals of not more than eight (8) feet and be of sufficient length to accommodate the width of the manufactured home rails.
 - (c) Such concrete slabs shall be constructed of cast-in-place concrete having a thickness of not less than six (6) inches and shall be placed on top of cast-in-place concrete footer constructed along the entire perimeter of the concrete slab and shall have a width of

3. Storage Facilities

All water storage reservoirs shall be covered watertight and constructed of impervious material. Overflows and vents of such reservoirs shall be effectively screened. Manholes shall be constructed with overlapping covers so as to prevent the entrance of contaminated material. Reservoir overflow pipes shall discharge through an acceptable air gap.

4. Distribution System

- (a) The water supply system of the manufactured home park shall be connected by pipes to all manufactured homes, buildings and other facilities requiring water.
- (b) All water piping, fixtures and other equipment shall be constructed and maintained in accordance with State and local regulations and requirements and shall be of a type and in locations approved by the health authority.
- (c) The water piping system shall not be connected with non potable or questionable water supplies and shall be protected against the hazards of backflow or back siphonage.
- (d) The system shall be designed and maintained as to provide a pressure of not less than twenty (20) pounds per square inch under normal operating conditions at service buildings and other locations requiring potable water.

5. Water Risers

- (a) Individual water riser pipes shall be located within the confined area of the manufactured home stand at a point where the water connection will approximate a vertical position.
- (b) Water riser pipes shall extend at least four (4) inches above the ground elevation. The inside pipe diameter shall be at least three-fourths (3/4) of an inch.
- (c) Adequate provisions shall be made to prevent freezing of service lines, valves and riser pipes and to protect risers from heaving and thawing actions of the ground during freezing weather. Surface drainage shall be diverted from the location of the riser pipe.
- (d) A shutoff valve below the frost line shall be provided near the water pipe riser on each manufactured home lot.
- (e) Underground stop and waste valves shall not be installed on any water service.

N. SEWAGE DISPOSAL

- 1. An adequate and safe sewage system shall be provided in all manufactured home parks for conveying and disposing of all sewage. Such system shall be designed, constructed and maintained in accordance with State and local laws.

2. All sewer lines shall be located in trenches of sufficient depth to be free of breakage from traffic or other movements and shall be separated from the park water supply system at a safe distance. Sewers shall be at a grad which will ensure a velocity of two (2) feet per second when flowing. All sewer lines shall be constructed of materials approved by the New York State Health Department, shall be adequately vented and shall have watertight joints.
3. Sewer Connections
 - (a) Each manufactured home stand shall be provided with at least a four-inch diameter sewer riser pipe. The sewer riser pipe shall be so located on each stand that the sewer connection to the manufactured home drain outlet will approximate a vertical position.
 - (b) The sewer connection shall have a normal inside diameter of at least three inches, and the slope of any portion thereof shall be at least one-fourth (1/4) inch per foot. The sewer connection shall consist of one (1) pipeline only without any branch fittings. All joints shall be watertight.
 - (c) All materials used for sewer connections shall be semi-rigid, corrosive-resistant, nonabsorbent and durable. The inner surface shall be smooth.
 - (d) Provision shall be made for plugging the sewer riser pipe when a manufactured home does not occupy the lot. Surface drainage shall be diverted away from the riser. The rim of the riser pipe shall extend at least four (4) inches above the ground elevation.

4. Treatment and Discharge

Where the sewer lines of the manufactured home park are not connected to a public sewer, all proposed sewage disposal facilities shall be approved by the New York State Health Department prior to construction. Effluents from sewage treatment facilities shall not be discharged into any waters of New York State, except with prior approval of the New York State Department of Health.

O. ELECTRICAL DISTRIBUTION

1. General. Every park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with codes and regulations governing such systems.
2. Power Distribution Lines
 - (a) Main power lines not located underground shall be suspended at least eighteen (18) feet above the ground. There shall be a minimum horizontal clearance of three (3) feet between overhead wiring and any manufactured home, service building or other structure.
 - (b) All direct-burial conductors or cable shall be buried at least eighteen (18) inches below the ground surface and shall be insulated and specially designed for the purpose. Such conductors shall be located not less than one (1) foot of radial distance from water, sewer, gas or communication lines.

3. Electrical Connections

- (a) Each manufactured home lot shall be provided with an approved disconnecting device and overcurrent protective equipment. The minimum service per outlet shall be one hundred twenty/two hundred forty (120/240) volts AC, fifty (50) amperes.
- (b) Outlet receptacles at each manufactured home stand shall be located not more than twenty-five (25) feet from the overcurrent protective devices in the manufactured home, and a three-hole, four-wire grounding type shall be used. Receptacles shall be of weatherproof construction, and configurations shall be in accordance with American Standard Outlet Receptacle C- 73.1.
- (c) The manufactured home shall be connected to the outlet receptacle by an approved type of flexible cable with connectors and a male attachment plug.
- (d) Where the calculated load of the manufactured home is more than fifty (50) amperes, either a second outlet receptacle shall be installed.

4. Grounding

All exposed non-current-carrying metal parts of manufactured homes and all other equipment shall be grounded by means of an approved grounding conductor with branch circuit conductors or other approved method of grounded metallic wiring. The neutral conductor shall not be used as an equipment ground for manufactured homes or other equipment.

P. COMMUNITY SERVICE FACILITIES

- 1. The requirements of this Article shall apply to service buildings, recreation buildings and other community service facilities such as:
 - (a) Management offices, repair shops and storage areas
 - (b) Sanitary facilities
 - (c) Laundry facilities
 - (d) Indoor recreation areas
- 2. Every manufactured home park shall be provided with the following emergency sanitary facilities: For each one hundred (100) manufactured home lots, there shall be one (1) flush toilet, one (1) lavatory and one (1) shower for each sex. The building containing such emergency sanitary facilities shall be accessible to all manufactured homes. Such facilities and the structure housing the same shall be constructed and operational not later than thirty (30) days following the occupancy of each one hundred (100) lots in any such park.

3. Structural Requirements

- (a) All portions of the structure shall be properly protected from damage by ordinary uses and by decay, corrosion, termites and other destructive elements. Exterior portions shall be of such materials and be so constructed and protected as to prevent entrance or penetration of moisture and weather.
 - (b) All rooms containing sanitary or laundry facilities shall:
 - (i) Have sound-resistant walls extending to the ceiling between male and female sanitary facilities. Walls and partitions around showers, bathtubs, lavatories and other plumbing fixtures shall be constructed of dense, nonabsorbent, waterproof material or covered with moisture-resistant material.
 - (ii) Have at least one (1) window or skylight facing directly to the outdoors. The minimum aggregate gross area of windows for each required room shall be not less than ten percent (10%) of the floor area served by them.
 - (iii) Have at least one (1) window which can be easily opened or a mechanical device which will adequately ventilate the room.
 - (iv) Toilets shall be located in separate compartments equipped with self-closing doors. Shower stalls shall be of the individual type. The rooms shall be screened to prevent direct view of the interior when the exterior doors are open.
 - (c) Illumination levels shall be maintained as follows:
 - (i) General seeing tasks: five (5) footcandles.
 - (ii) Laundry room work area: forty (40) footcandles.
 - (iii) Toilet room, in front of mirrors: forty (40) footcandles.
 - (d) Hot and cold water shall be furnished to every lavatory, sink, bathtub, shower and laundry fixture and cold water shall be furnished to every water closet and urinal.
4. Cooking shelters, barbecue pits, fireplaces and wood- burning stoves shall be so located constructed, maintained and used as to avoid fire hazards and smoke nuisance both on the property on which used and on neighboring property. No open fire shall be left unattended. No fuel shall be used and no material burned which emits dense smoke or objectionable odors. No refuse shall be burned at any time.

Q. GARBAGE, RUBBISH AND REFUSE

- 1. The storage, collection and disposal of refuse in the manufactured home park shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident or fire hazards or air pollution.

2. All refuse shall be stored in fly tight, watertight, rodent proof containers, which shall be located not more than one hundred fifty (150) feet from any manufactured home lot. Containers shall be provided in sufficient number and capacity to properly store all refuse.
3. Refuse collection stands shall be provided for all refuse containers. Such container stands shall be so designed as to prevent containers from being tipped, to minimize spillage and container deterioration and to facilitate cleaning around them.
4. All refuse containing garbage shall be collected at least twice weekly. Where suitable collection service is not available from municipal or private agencies, the manufactured home park operator shall provide this service. All refuse shall be collected and transported in covered vehicles or covered containers.
5. Where municipal or private disposal service is not available, the manufactured home park operator shall dispose of the refuse by transporting it to the Town disposal site.
6. Refuse incinerators shall be operated only when attended by some person specifically authorized by the owner or operator of the manufactured home park.

R. INSECT AND RODENT CONTROL

1. Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall conform to the requirements of the New York State Department of Health and the Orleans County Department of Health.
2. Parks shall be maintained free of accumulations of debris, which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.
3. Storage areas shall be so maintained as to prevent rodent harborage. Lumber, pipe and other building materials shall be stored at least one (1) foot above the ground.
4. Where the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.
5. The growth of brush, weeds and grass shall be controlled to prevent harborage of ticks, chiggers and other noxious insects. Parks shall be so maintained as to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health. Open areas shall be maintained free of heavy undergrowth of any description.

S. FUEL SUPPLY AND STORAGE

1. Natural Gas System.
 - (a) Natural gas piping systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.

- (b) Each manufactured home lot provided with piped gas shall have an approved manual shutoff valve installed upstream of the gas outlet. The outlet shall be equipped with an approved cap to prevent accidental discharge of gas when the outlet is not in use.
2. Liquefied Petroleum Gas Systems.
- (a) Liquefied petroleum gas systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.
 - (b) Systems shall be provided with safety devices to relieve excessive pressures and shall be arranged so that the discharge terminates at a safe location.
 - (c) Systems shall have at least one (1) accessible means for shutting off gas. Such means shall be located outside the manufactured home and shall be maintained in effective operating condition.
 - (d) All liquefied petroleum gas piping outside of the manufactured home shall be well supported and protected against mechanical injury. Undiluted liquefied petroleum gas in liquid form shall not be conveyed through piping equipment and systems in manufactured homes.
 - (e) Liquefied petroleum gas containers installed on a manufactured home lot shall be securely but not permanently fastened to prevent accidental overturning. Such containers shall not be less than twelve (12) nor more than sixty (60) United States gallons' gross capacity.
 - (f) No liquefied petroleum gas vessel shall be stored or located inside or beneath any storage cabinet, carport, manufactured home or any other structure, unless such installation is approved by the health authority.
3. Fuel Oil Supply Systems
- (a) All fuel oil supply systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.
 - (b) All piping from outside fuel storage tanks or cylinders to manufactured homes shall be permanently installed and securely fastened in place.
 - (c) All fuel oil storage tanks or cylinders shall be securely fastened in place and shall not be located inside or beneath any manufactured home or less than five (5) feet from any manufactured home exit.
 - (d) Storage tanks located in areas subject to traffic shall be protected against physical damage.

T. FIRE PREVENTION

1. The manufactured home area shall be subject to fire-prevention ordinances which may be adopted by the Town.
2. Manufactured home parks shall be kept free of litter, rubbish and other flammable materials.
3. Portable fire extinguishers of a type approved by the fire prevention authority shall be kept in service buildings and at all other locations designated by such fire prevention authority and shall be maintained in good operating conditions.
4. Fires shall be made only in stoves, incinerators and other equipment intended for such purposes.
5. Fire Hydrants
 - (a) Fire hydrants shall be installed if the park water supply system is capable of serving them in accordance with the following requirements:
 - (i) The water supply system shall permit the operation of a minimum of two (2) one-and-one-half-inch hose streams.
 - (ii) Each of two (2) nozzles, held four (4) feet above the ground, shall deliver at least seventy-five (75) gallons of water per minute at a flowing pressure of at least thirty (30) pounds per square inch at the highest elevation point of the park.
 - (b) Fire hydrants, if provided, shall be located within five hundred (500) feet, measured along or through roads or other open public areas, of any manufactured home, service building or other structure of the park.

U. RESPONSIBILITIES OF PARK MANAGEMENT

1. The person to whom a license for a manufactured home park is issued shall operate the park in compliance with this Section and regulations issued hereunder and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.
2. The park management shall notify park occupants of all applicable provisions of this Section and inform them of their duties and responsibilities under this Section and regulations issued hereunder.
3. The park management shall supervise the placement of each manufactured home on its manufactured home stand, which includes securing its stability and installing all utility connections.

4. The park management shall maintain a register containing the names of all park occupants. Such register shall be available to any authorized person inspecting the park.
5. The park management shall notify the State Health Department immediately of any suspected communicable or contagious disease within the park.

V. RESPONSIBILITIES OF PARK OCCUPANTS

1. The park occupants shall comply with all applicable requirements of this Section and regulations issued hereunder and shall maintain their manufactured home lots, facilities and equipment in good repair and in a clean and sanitary condition.
2. The park occupant shall be responsible for proper placement of his manufactured home on its manufactured home stand and proper installation of all utility connections in accordance with the instruction of the park management.
3. No owner or person in charge of a dog, cat, or other pet animal shall permit it to run at large or to commit any nuisance within the limits of any manufactured home lot.

W. CONDITIONS REQUIRED PRIOR TO OCCUPANCY

A manufactured home shall not be occupied for dwelling purposes unless it is properly placed on a manufactured home stand and connected to water, sewerage and electrical utilities.

X. LICENSE REQUIRED

It shall be unlawful for any person to construct, alter or extend any manufactured home park within the Town of Shelby or to locate a manufactured home therein without a valid license issued by the Zoning Enforcement Officer. Licenses are issued and valid for a twelve-month period, but may be renewed as provided for in this Section.

Y. PRE-EXISTING MANUFACTURED HOME PARKS

Manufactured home parks operating under a valid license issued prior to the effective date of this Local Law may continue to operate under the terms of such license until the expiration of such license. Before renew of the license, such manufactured home park shall be brought into compliance with the provisions of this Section.

Z. LICENSE APPLICATION REQUIREMENTS

1. All applications for licenses or for renewal of licenses shall be submitted to the Zoning Enforcement Officer and shall contain the following:
 - (a) The name and address of the applicant; if the applicant is a partnership, the names and addresses of the partners; and if the applicant is a corporation, the names and addresses of the officers and directors.

- (b) The name and address of the owner of the property.
 - (c) A copy of a current lease agreement between the applicant and the owner of the property if the applicant is not the property owner.
 - (d) The location and legal description of the manufactured home park.
 - (e) Plans and specifications for the water supply and refuse and sewage disposal facilities to be constructed, altered or extended within the manufactured home park.
 - (f) Plans and specifications for all buildings to be constructed, altered or extended within the manufactured home park.
 - (f) All applications for licenses or renewals or licenses shall be accompanied by application fee which shall be set from time to time by a resolution of the Town Board
2. Upon review of the application and evidence that the manufactured home park meets the minimum requirements of the New York State Department of Health and subject to the Planning Board approving a Special Use Permit. The Zoning Enforcement Officer shall issue or renew a license when a review of the application and inspection of the site demonstrates that the proposed or existing manufactured home park satisfies the requirements of this Local Law and any provisions imposed by the Town Planning Board as conditions to the approval of the Special Use Permit.

AA. INSPECTIONS

1. The Zoning Enforcement Officer is hereby authorized and directed to make such inspections as are necessary to determine satisfactory compliance with this Local Law.
2. The Zoning Enforcement Officer shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this Local Law.
3. The Zoning Enforcement Officer shall have the power to inspect the register containing a record of all residents of the manufactured home park.

BB. REVOCATION OF LICENSES

Any license for a manufactured home park may be revoked when it is found to be in violation of the provisions of this Section.

1. Should the Zoning Enforcement Officer find a violation of any provision of this Local Law or the Special Use Permit, the Zoning Enforcement Officers shall give notice, in writing, to the licensee, that unless such violations are corrected within ten (10) days, the permit shall be revoked.

2. If, at the end of the ten (10) days, a further inspection reveals that the violation(s) have not been corrected, the Zoning Enforcement Officer shall revoke the permit and give notice of such revocation, in writing, to the licensee. Upon notice of revocation, the licensee shall cease operation of the manufactured home park.

CC. APPEALS

1. Petition - Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Section or of any regulation adopted pursuant thereto may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file in the office of the Town Clerk a written petition to request such hearing and setting forth a brief statement of the grounds therefore within ten (10) days after the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and suspension, except in the case of an order issued in accord with Subdivision F of this Section. Upon receipt of such petition, the Town Board shall set a time and place for such hearing and shall give the petitioner written notice thereof.
2. Hearing - At such hearing, the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be held not later than ten (10) days following the day on which the petition was filed, provided that, upon application of the petitioner, the governing body may postpone the date of the hearing for a reasonable time beyond such ten-day period when, in the judgment of the governing body, the petition has submitted good and sufficient reasons for such postponement.
3. Order of the Town Board - After such hearing, the Town Board shall make findings as to compliance with the provisions of this Section and regulations issued hereunder and shall issue an order to sustain, modify or withdraw the notice of violation, which shall be served in writing on the petitioner. Upon failure to comply with any order sustaining or modifying the notice of violation within ten (10) days following the service of said order, the license of the manufactured home park affected by the order shall be revoked.

DD. EMERGENCY CONDITIONS

Whenever the Zoning Enforcement Officer finds that an emergency exists which requires immediate action to protect the public health, Zoning Enforcement Officer may, without notice or hearing, issue an order reciting the existence of such emergency and require that such action be taken as the Zoning Enforcement Officer may deem necessary to address or remedy the emergency, including the suspension of the license. Notwithstanding any other provisions of this Section, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the Town Board, shall be afforded a hearing as soon as it is practicable for the Town Board to schedule such hearing. The provisions of Subdivision E of this Section shall be applicable to such hearing and the order issued thereafter.

EE. HIGHER STANDARDS TO PREVAIL

In any case where a provision of this Section is found to be in conflict with a provision of any other ordinance or code of the Town of Shelby existing on the effective date of this Section, the provision which establishes the higher standard shall prevail.

SECTION 753 MARINA OR BOAT LAUNCH

The Planning Board may authorize a Special Use Permit for a Marina in the Waterfront Development Overlay (WDO) District provided the following standards and conditions are maintained

- A. Rest rooms shall be provided for the use of its customers or clientele.
- B. Trash disposal receptacles shall be sufficient to accommodate all trash generated by the marina's customers or clientele and maintained in a clean and usable condition.
- C. Adequate parking spaces shall be provided for customer's vehicles, as determined by the Planning Board. A minimum of 1/2 space per boat slip shall be required, plus one (1) space for each employee and additional spaces as required for boat launches and other accessory uses.
- D. An identification number corresponding to the permit number shall be assigned to the owner of the wharf or wharves under permit. This number is to be displayed in such a manner that it is readily visible from the water.
- E. The marina's maintenance program shall be sufficient to keep all wharves, adjacent shoreline, water and the lake bottom clean of debris.
- F. The marina shall be designed and managed to minimize the project's visual impact and avoid any navigational hazards.
- G. The marina shall prepare and follow a plan designed to avoid damage to the environment due to leakage or spills of fuels, lubricants, waste products or other pollutants.
- H. Accessory use may include the provision of fuel and supplies, minor and emergency repairs for recreational boats, boat rental, boat storage and sale and restaurant and related retail sales.

SECTION 755 MOTOR VEHICLE, BOAT OR MANUFACTURED HOME SALES

The Planning Board may approve a special use permit for the sales of motor vehicles, boats or manufactured homes in the General Business (GB) District provided that the following standards and provisions are maintained:

- A. Such sales may be conducted either in a fully enclosed building located on the same lot, or in an unenclosed area. If such sales are conducted in a fully enclosed building located on the same lot, such building shall have a building area of not less than 5,000 square feet devoted to the sale and service of automobiles or boats.
- B. Minimum Specifications:

Front Setback for building:	75 feet
Side Setback	30 feet
Rear Setback	30 feet
Lot frontage	200 feet
Lot size	One (1) acre
- C. No vehicle shall be displayed for sale or rent within 25 feet of any property line, including edge of any highway or roadway. No manufactured homes shall be displayed within any required building setback. The maximum coverage for buildings shall apply to manufactured homes for sale, in addition to buildings used in the conduct of such sales.
- D. Entrance and exit driveways shall have a minimum width of 25 foot and shall be not less than 20 foot from any side property line.
- E. No more than 25 automobiles shall be offered for sale or rent on any lot at any time, and all automobiles shall be displayed in a neat and orderly manner.
- F. All automobiles displayed on a lot shall be in proper working order at all times and shall have a valid Motor Vehicle Registration or Title.
- G. The entire surface of the site to be traveled by motor vehicles shall be hard surfaced.
- H. No retail sales of fuel shall occur on the site at any time.
- I. All signs must comply with Section 600 of the Town of Shelby Zoning Local Law.
- J. No exterior light source shall be erected in excess of 50 foot above ground surface and all lighting shall be placed to eliminate the casting of direct light or glare upon the adjacent property and highway.
- K. Repair of Motor Vehicles on site is prohibited unless the provisions found in Section 756 (Special Use Permit criteria for Motor Vehicle Repair Shops) are complied with in full. In such case where two different specifications are listed, the greater dimension will apply.
- L. No such establishment shall be located within a distance of 200 foot of a residence, cemetery, school, church, hospital, nursing home or senior citizen housing. Said distance shall be measured in a straight line between the nearest points of each of the lots or premises.
- M. Permits must be renewed annually by the Planning Board, after inspection by the Zoning Enforcement Officer.

SECTION 756 MOTOR VEHICLE REPAIR SHOPS

The Planning Board may approve a special use permit for motor vehicle repair shops in the Hamlet (HA), Agricultural/ Residential or General Business (GB) District provided that the following standards and conditions are maintained.

No building permit or Certificate of Occupancy shall be issued for a Motor Vehicle Repair or Sales Facility and no person shall operate a Motor Vehicle Repair or Sales Facility until a Special Permit shall have been issued by the Town Planning Board in accordance with the requirements and procedures set forth below.

A. Specifications:

Minimum lot size:	30,000 square feet
Minimum road frontage:	150 feet along County highways and Town roads 250 feet along State highways

- B. Entrance and exit driveways shall have an unrestricted width of not less than 25 feet and not more than 30 feet, and shall be located not nearer than 10 feet from any property line, and shall be designed as to avoid the necessity of any vehicle backing out into any public right-of-way.
- C. No more than six (6) licensed motor vehicles being serviced or repaired shall be stored or parked outdoors for more than 48 hours, and these shall be in areas effectively screened from all property lines. All such vehicles shall be stored in a neat, orderly manner.
- D. Hours of operation of a Motor Vehicle Repair or Sales Facility shall commence not earlier than 7:00 a.m. and shall cease not later than 11:00 p.m. on Monday through Saturdays and shall commence not earlier than 12:00 noon and shall cease not later than 11:00 p.m. on Sunday, provided however, that nothing herein contained shall prevent the operator of such a facility from providing, at any hour, emergency service in the event of accident or other emergency.

The owner of a Motor Vehicle Repair or Sales Facility may perform work on vehicles actually owned by him at any hour, provided, such work does not violate any other Town, State or Federal laws, rules or codes.

- E. No such establishment shall be located within a distance of 200 feet of a residence, cemetery, school, church, hospital, nursing home, senior citizen housing or other place of public assembly designed for occupancy by more than 50 persons. Said distance shall be measured in a straight line between the nearest points of each of the lots or premises.
- F. A buffer strip shall be established, as determined by site plan review, along a side or rear property line facing any of the uses listed in E. above.
- G. The entire area of the site traveled by motor vehicles or used for display shall be hard surfaced, as defined herein.
- H. All repair of motor vehicles shall be performed in a fully enclosed building.

B. Minimum Specifications:

Front Setback for building:	75 feet
Side Setback	30 feet
Rear Setback	30 feet
Lot frontage	200 feet
Lot size	One (1) acre

- C. No vehicle shall be displayed for sale or rent within 25 feet of any property line, including edge of any highway or roadway. No manufactured homes shall be displayed within any required building setback. The maximum coverage for buildings shall apply to manufactured homes for sale, in addition to buildings used in the conduct of such sales.
- D. Entrance and exit driveways shall have a minimum width of 25 foot and shall be not less than 20 foot from any side property line.
- E. No more than 25 automobiles shall be offered for sale or rent on any lot at any time, and all automobiles shall be displayed in a neat and orderly manner.
- F. All automobiles displayed on a lot shall be in proper working order at all times and shall have a valid Motor Vehicle Registration or Title.
- G. The entire surface of the site to be traveled by motor vehicles shall be hard surfaced. There shall be a minimum of 200 square feet of hard surfaced display area for each motor vehicle to be offered for sale, rent or lease and the permit shall specify the gross number of vehicles that may be offered for sale, rent or lease on the premises at any one time.
- H. No retail sales of fuel shall occur on the site at any time.
- I. All signs must comply with Section 600 of this Local Law.
- J. No exterior light source shall be erected in excess of 50 foot above ground surface and all lighting shall be placed to eliminate the casting of direct light or glare upon the adjacent property and highway.
- K. Repair of Motor Vehicles on site is prohibited unless the provisions found in Section 756 of this Zoning Local Law are complied with in full, in such case where two different specifications are listed, the greater dimension will apply.
- L. No such establishment shall be located within a distance of 200 foot of a residence, cemetery, school, church, hospital, nursing home or senior citizen housing. Said distance shall be measured in a straight line between the nearest points of each of the lots or premises.
- M. Permits must be renewed annually by the Town Planning Board, after inspection by the Zoning Enforcement Officer.

SECTION 760 MULTIPLE FAMILY DWELLINGS

The Planning Board may approve a special use permit for multiple family developments in the Hamlet (HA), General Business (GB), and -Waterfront Residential (WR) Districts provided that the following standards and provisions are maintained:

- A. The maximum gross density shall not exceed eight (8) units per acre.

- B. Minimum Gross Floor Area Requirements:
 - 1. Townhouse units with two bedrooms or less: 850 square feet
 - 2. Townhouse units with three bedrooms or more: 1,000 square feet
 - 3. Efficiency Apartment unit: 550 square feet
 - 4. Apartment unit, one bedroom: 675 square feet
 - 5. Apartment unit, two bedrooms: 800 square feet
 - 6. Apartment unit, three bedrooms: 950 square feet

- C. Unit Distribution
 - 1. No more than 20 percent of the total units within a multiple family dwelling development shall be three (3) or more bedroom units.
 - 2. No more than 30 percent of the total units within a multiple family dwelling development shall be efficiency units.

- D. Setback Requirements:
 - 1. The minimum front setback from the right-of-way of any public street shall be 70 feet.
 - 2. The minimum side setback shall be 30 feet.
 - 3. The minimum rear setback shall be 60 feet.
 - 4. Minimum distance between buildings in a multiple family dwelling development shall be 80 feet.
 - 5. Every building shall have a minimum setback of 25 feet from all interior roads, driveways and parking areas.
 - 6. A strip of land at least six (6) feet in width surrounding each building shall be kept completely open except for foundation plantings of less than six (6) feet in height.

- E. All stairways to the second floor or higher shall be located inside the building.

- F. Access to public road:
 - 1. All multiple-family dwelling developments shall have direct access to public roads preferably by way of private driveway designed to avoid the necessity of any vehicle backing into a public right-of-way.

2. If there are more than twelve (12) dwelling units in a multiple-family development, direct access shall be provided to a public road by a private driveway or a road dedicated to the Town by the developer.
3. If there are more than 50 dwelling units in a multiple-family development, or if in the opinion of the Planning Board the location or topography of the site indicates the need for additional access, the Planning Board may require such additional access as a condition of site plan approval.

G. Requirements for off-street parking

1. The requirements as provided in Section 601 of this Local Law shall be met, except that the location of off-street parking lots may be modified to conform with the approved site plan, provided that such lots shall not be located within the front yard or the required side yard setback. Paved pedestrian walkways, with appropriate lighting, shall be provided from off-street parking areas to all living units each parking area is intended to serve.
2. Off-street parking shall be provided in the amount of two (2) spaces for each unit , plus one (1) additional parking space for each grouping of six (6) units.

H. The aggregate of building coverage of multiple-family dwelling development shall not exceed 30 percent of the total lot area.

I. Recreation, open space, maintenance:

1. Multiple family dwelling complexes shall be designed to create usable private open space. A minimum of ten (10) percent of the total tract area, exclusive of the required setback areas, buffer strip and parking areas shall be designated for common recreational purposes.
2. No recreational area shall be less than 10,000 square feet in area nor less than 100 feet in width. Areas designated for recreation purposes shall be approved by the Planning Board.
3. Multiple family dwelling complexes shall be attractively landscaped and properly maintained. Open space adjacent to, around, or between driveways, parking areas, structures or other required improvements shall be graded and seeded to provide a thick stand of grass or other plant material.

J. Utilities:

1. All public utility, electric, gas, cable television and telephone lines shall be installed underground.
2. Multiple family developments shall be connected to and served by public water supply and sanitary sewer systems. Such systems shall be approved by the Orleans County Health Department and other applicable agencies.

A. Conditions for all facilities

1. No building, structure, parking lot or unenclosed recreational facility shall be located within 50 feet of any side or rear property line, unless the Planning Board determines that a smaller buffer is acceptable.
2. Unenclosed facilities shall be effectively screened from public streets and neighboring residential uses.
3. No public address system is permitted, except where such system will not be audible at any property line.
4. Outdoor lighting shall not project light onto, nor shall light sources be visible from, neighboring properties or public or private roads, streets, or vehicular right-of-ways.
5. Access to the facility shall be from a state or county highway or a through town roadway other than a residential subdivision street. Location and design of entrance drives shall be such as to minimize traffic hazard and nuisance factors.
6. All required parking spaces shall be provided on the site in appropriate areas sufficient in size to meet demand during special events and other peak loading periods.
7. In any district where permitted, retail sales which are clearly secondary to the principal use are permissible.
8. The facility shall be designed and intended for use by less than 500 persons at any given time.
9. Access drives shall be adequate to accommodate vehicles queued for admission without traffic backup into the road right-of-way.
10. Sanitary facilities, sewage disposal and water supply shall be adequate and in compliance with applicable state and local regulations.
11. The hours of operation for such outdoor recreation facilities shall be subject to review and approval of the Planning Board during site plan review. In determining the permitted hours of operation, the Planning Board shall consider protection of the character of the existing neighborhood, the proximity of adjacent residences, and impact on adjacent property values.
12. Specific types of activities, capacity for participants and spectators and hours of operation shall be considered in determining the compatibility of the facility with the surrounding neighborhood.

B. Additional requirements for golf courses

1. A golf course shall have at least 9 holes conforming to the standards of the United States Golf Association and shall not be constructed on a site having less than 50 acres, with another 50 acres for each additional 9 holes or fraction thereof.
2. A practice driving range shall be permitted as an accessory use to a golf course, provided that there shall be no more than one (1) driving tee for each acre in the total tract and no artificial lighting shall be allowed. Driving ranges shall also constitute a principal and be subject to special use permit approval as a golf course provided that there shall be no more than one (1) driving tee for each acre in the total tract, and shall not be subject to the requirements of paragraph 1 above.

3. There shall be no more than one (1) accessory clubhouse or other building designed to provide for lockers, enclosed eating facilities without takeout privileges and shop for the sale of golf equipment.
4. Additional accessory buildings may be permitted, including buildings for the storage and maintenance of equipment and machinery used in connection with a golf course.
5. Drought-tolerant grasses shall be required on all golf courses in order to minimize irrigation and fertilizer needs.
6. All buildings, parking areas, greens, tees, swimming pools and similar sources of noise shall be designed to assure the quiet enjoyment of adjacent properties and shall be set back not less than 100 feet from an adjacent property line.
7. Not more than five percent (5%) of the site shall be covered by buildings.
8. The golf course and any accessory driving range shall be designed to minimize stray golf shots from crossing onto private properties or public rights-of-way. A vegetated buffer area of not less than 20 feet in depth shall be provided along the boundaries of the golf course property.
9. Any seasonal use of the golf course for such activities as cross-country skiing or snow mobile trails shall be subject to Planning Board approval. The operator shall submit a proposed site plan to the Planning Board delineating the locations proposed for such activities.
10. Fertilizers and chemicals shall be applied in such a manner that they would not affect the quality of groundwater or streams.

SECTION 765 PONDS

The Planning Board may issue a special permit for a farm pond in the Agricultural-Residential (AR), Industrial (I), Rural Residential (RR) District, provided that the following standards and conditions are maintained.

A. Procedures

1. Any pond with more than 1.0 acres in surface area must meet all requirements of the Orleans County Soil and Water Conservation District as well as applicable Department of Environmental Conservation (DEC) requirements before the Planning Board may act. The applicant shall present a plan for pond construction of the pond that bears the approval of the Orleans County Soil and Water Conservation District Office.
2. The applicant shall furnish evidence of a valid permit from New York State Department of Environmental Conservation if pond is in excess of nine and one half (9.5) acres.
3. A special permit for a pond under 1.0 acres may be authorized by the Planning Board without the need for approval by the Orleans Soil and Water approval or DEC.

B. Requirements

1. All ponds must have a 100 foot setback from all adjoining roads and property lines.

2. An adequate drainage system shall be provided to convey storm water run off, originating on or crossing the premises, such that the run-off follows as much as feasible, the natural pattern of the run-off prior to the excavation and such that it does not adversely affect neighboring property owners.
- C. If spoil or topsoil removed for construction of a pond is to be sold to outside parties, the owner must also comply with Special Permit criteria for Excavation and Mining operations (See Section 722 and 723).

SECTION 770 PUBLIC AND SEMI-PUBLIC USES

The Planning Board may approve a special use permit for public and semi-public uses of an institutional, health, educational, recreational, religious or cultural nature in any zoning district provided that the following standards and provisions are maintained:

- A. Specifications for all uses
1. Minimum lot size: 30,000 square feet
 2. Minimum lot frontage: 150 feet
 3. If used for recreation purposes, as defined in this Local Law, Minimum Lot Size: One (1) acre minimum lot frontage: 200 feet.
 4. Landscaped areas at least 10 feet in width or other suitable screening shall be provided for the entire length of any lot line adjacent to any residence or adjacent street.
 5. No structure or use shall be located within 15 feet of any adjacent property line
 6. Entrance and exit points shall be from major or secondary roads.
 7. Parking areas shall be provided to accommodate all expected users and shall not be within 10 feet of any property line.
 8. One parking space per employee. One per 400 square foot.
- B. General Requirements for Other Public & Semi-Public Uses
1. The application shall include a statement setting forth the details of the operation of the use.
 2. The applicant shall provide evidence of approval, certificate of need, license or other similar document required to initiate or expand such a use from any and all appropriate regulating agencies.
 3. The proposal shall meet the minimum area and yard requirements for such uses as specified in the Zoning Schedule.

4. The proposed use shall meet the minimum off-street parking and loading and unloading requirements of this Local Law as well as provisions for landscaping, buffering, signs and accessways.
5. The Planning Board, in considering the request for a special use permit, may impose conditions it deems necessary to protect the health, safety and public welfare of the Town.

C. Day Care Centers

1. Must have an active outdoor play area of 100 square feet per child.
2. Outdoor play areas shall be appropriately fenced in or otherwise protected from roads and nearby properties.
3. No outdoor play equipment may be placed within ten feet of any property line, fence, or structure.
4. Minimum parking shall be one (1) space per staff member, plus one (1) space per each eight (8) children.
5. The operator shall have a valid license from New York State.

D. Clubs

1. Minimum lot size: 30,000 square feet
Minimum lot frontage: 150 feet
2. Landscaping areas or screening adequate to protect adjacent properties and land uses shall be provided on all side and rear lot lines.
3. Minimum parking shall be one (1) per employee and one (1) per each three members.
4. Entrances and exit points shall be from major or secondary roads.

E. Cemeteries and Burial Grounds

1. Minimum lot sizes: 30,000 square feet
Minimum lot frontage: 150 feet
2. A landscape plan shall be prepared and approved by the Planning Board for regulating the introduction and care of lawns, plants, trees and shrubs within such cemeteries and burial grounds. Suitable screening or landscaping shall be provided for the entire length of any lot line adjacent to any residence or adjacent street.

3. No structure shall be located within 25 feet of any adjacent property line.
4. Entrance and exit points shall be from major or secondary roads.
5. Parking areas shall not be within 15 feet of any property line.

SECTION 775 SEASONAL DWELLING

The Planning Board may authorize a special use permit for a seasonal dwelling in the Agricultural/ Residential (AR) or Waterfront Residential (WR) Districts provided that all of the following standards are met.

- A. The lot shall comply to the minimum width, area and setbacks of the district in which it is located, except that in the Waterfront Residential (WR) District, a seasonal dwelling may be constructed on a lot of record held in single and separate ownership prior to the adoption of this Local Law, the size of which lot is not less than 4,000 square feet with a minimum width of 40 feet, without obtaining a variance to minimum lot size requirements, provided that it can meet the Health Department requirements for sewer and water..
- B. A Seasonal Dwelling may be located along any street or private road.
- C. Seasonal dwellings shall have a gross floor area of not less than 600 square feet measured at the floor and at a point where the vertical height is 5 or more feet and a minimum width of 20 feet. Dwellings with 900 square feet or more of habitable floor area shall meet the requirements for year-round dwellings.
- D. An occupancy permit shall not be issued for more than nine (9) consecutive months in any calendar year.
- E. An application for a seasonal dwelling permit must be accompanied by an approval from the Orleans County Health Department.
- F. To change the use from a seasonal dwelling to a regular residence status, all requirements of the district in which it is located must be complied with.

SECTION 780 RIDING STABLES

The Planning Board may approve a special use permit for the use of land and buildings for stables for the commercial boarding of horses or riding academies in the Agricultural/ Residential (AR) or General Business (GB) District provided that the following standards and provisions are maintained:

- A. No site preparation or construction shall commence nor shall existing structures be occupied until final site plan approval has been granted by the Planning Board and permits have been issued by all governmental agencies involved.

- B. The permitted use may include any of the following:
1. Storage of horse vans for conveying or vanning of horses as may be accessory to the principal use.
 2. Sale or rental of horses for use by public by the hour, day, month or year.
 3. Rides on horses by the public.
 4. Rental of horse vans.
 5. Riding lessons to the public.
 6. Sale of horse supplies and/or equipment.
- C. The land devoted to this use shall not be less than ten (10) contiguous acres.
- D. One principal single family dwelling may be located on the land devoted to this use provided that it complies with the requirements for this Local Law. The land area on which the principal single family dwelling is located (minimum lot size of AR District) shall not be considered as part of the land "devoted to this use" as set forth in paragraph C above.
- E. The number of horses that may be boarded and/or trained at such property shall not exceed 25 horses for the first 10 acres of land devoted to this use, plus one horse for each additional half acre of land available for such purpose.
- F. The stable shall be located not less than 100 feet from any boundary line. The storage of manure shall be located on land not less than 200 feet from any boundary line. The Planning Board may require manure storage areas to be screened and/or buffered from adjacent areas.
- G. Any riding ring shall be at least 50 feet from any boundary line.
- H. Accessory buildings such as barns (not housing horses), sheds and the like, may be located on the land devoted to this use provided that they are set back a minimum of fifty (50) feet from the street line and from each boundary, and provided further that they are not used for the storage of manure.
- I. Structures on the land devoted to this use (not including the principal dwelling) shall not be in the aggregate cover more than five percent of the area of the land devoted to this use.
- J. No structure shall exceed 35 feet in height.
- K. Suitable and adequate off-street parking shall be provided in accordance with the requirements established by this Local Law and the Planning Board.
- L. Exterior lighting shall be permitted only to the extent necessary to prevent injury to the public and shall be so installed and arranged as to reflect light away from the adjoining streets and prevent any nuisance to adjoining property.

- M. The installation and use of exterior loudspeakers shall be conducted in such a manner as to minimize potential nuisances to adjacent properties.

SECTION 785 TELECOMMUNICATION FACILITY

The Planning Board may approve a special use permit for the use of land and buildings for a telecommunication facility in the Agricultural/ Residential (AR) District or the Light Industrial (LI) District, the Industrial (I) District provided that the following standards and provisions are maintained:

A. Purpose

The purpose of these supplemental regulations is to promote health, safety, and the general welfare of the residents of the Town of Shelby; to provide standards for safe provision of telecommunications consistent with applicable federal and state regulations; to minimize the total number of telecommunications towers in the community by encouraging shared use of existing and future towers, and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from telecommunications towers by requiring careful siting, visual impact assessment, and appropriate landscaping.

B. General Criteria

No Special Use Permit or renewal thereof or modification of a current Special Use Permit relating to a Telecommunications Facility shall be authorized by the Planning Board unless it finds that such Telecommunications Facility:

1. Is necessary to meet current or expected demands for service;
2. Conforms with all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies;
3. Is designed and constructed in a manner which minimizes visual impact to the extent practical;
4. Complies with all other requirements of this Local Law, unless expressly superseded herein;
5. Is the most appropriate site among those available within the technically feasible area for the location of a Telecommunications Facility;
6. When including the construction of a tower, such tower is designed to accommodate future shared use by at least one (1) other telecommunication service provider. Any subsequent location of telecommunication equipment by other service providers on existing towers specifically designed for shared use shall not require a new or modified special permit if there would be no increase in the height of the tower. However, the additional equipment will require site plan review.

C. Co-Location

The shared use of existing Telecommunications Facilities or other structures shall be preferred to the construction of new Facilities. Any Special Permit applications, renewal or modification thereof shall include proof that reasonable efforts have been made to co-locate within (share) an existing Telecommunication Facility or upon an existing structure. The application shall include an adequate inventory report specifying existing Telecommunication Facility sites and structures exceeding seventy-five percent (75%) of the height of the proposed tower within the search range of the cell grid. The inventory report shall contain an evaluation of opportunities for shared use an alternative to the proposed location.

The applicant must demonstrate that the proposed Telecommunication Facility cannot be accommodated on existing Telecommunications Facility sites in the inventory due to one (1) or more of the following reasons:

1. The planned equipment would exceed the structural capacity of existing and approved Telecommunication Facilities or other structures, considering existing and planned use for those facilities;
2. The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented;
3. Existing or approved Telecommunications Facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;
4. Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures;
5. The property owner or owner of the existing Telecommunication Facility or other structure refuses to allow such co-location.

D. Dimensional Standards

1. A fall zone around any tower constructed as part of a Telecommunications Facility must have a radius at least equal to the height of the tower and any antennae(s) attached upon its zenith. The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, and may not contain any structure other than those associated with the Telecommunications Facility. If the Facility is attached to an existing structure, relief may be granted by specific permission of the Zoning Board of Appeals on a case-by-case basis.
2. All Telecommunications Facilities shall be located on a single parcel.
3. All Telecommunications Facilities shall comply with the setback standards of the underlying zoning district. The size of the leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone. A lot leased or owned for the purpose of construction of a tower as part of Telecommunications Facility shall not result in the creation of a non-conforming lot.

4. The frontage requirement of the underlying zoning district shall not apply, provided the Telecommunications Facility is not proposed on a parcel to be partitioned specifically for the Facility and/or is designed for occupancy by staff. In the absence of required frontage, an accessway for service vehicles - either through easement, lease or ownership - shall be in accord with paragraph G herein.

E. Lighting and Marking

1. Towers shall not be artificially lighted and marked beyond requirements of the Federal Aviation Administration (FAA).
2. Notwithstanding the preceding paragraph 1, an applicant may be compelled to add FAA-style lighting and marking, if in the judgment of the Planning Board, such a requirement would be of direct benefit to public safety.

F. Appearance and Buffering

1. The use of any portion of a Telecommunications Facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited.
2. The facility shall have the least practical visual effect on the environment, as determined by the Planning Board. Any tower that is not subject to FAA marking, pursuant to paragraphs E.1. and E.2. herein, shall otherwise:
 - a. have a galvanized finish, or shall be painted gray above the surrounding tree line and gray or green below the tree line, as deemed appropriate by the Planning Board; or
 - b. be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the Facility to perform its designed function.
3. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.
4. The Planning Board may require a State Environmental Quality Review (SEQR) Full EAF (Environmental Assessment Form) for proposed Facilities at key viewpoints in the community. A Visual Environmental Assessment Form (Visual EAF), may be required as an addendum to either the Full or Short EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF.
5. The Planning Board shall require that the Facility have appropriate vegetative buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, or public roads. Such screening shall include the maximum feasible retention of existing vegetation. The Planning Board may similarly require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public.

6. Equipment or vehicles not used in direct support, renovations, additions or repair of any Telecommunications Facility shall not be stored or parked on the Facility site.

G. Access and Parking

1. Accessways shall make maximum use of existing public or private roads to the extent practicable. New access ways constructed solely for Telecommunications Facilities must be at least twenty (20), but no more than thirty (30) ft. wide, and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
2. The road surface (driveways) shall be centered within accessways and shall not comprise more than 60% of the width of the accessway.
3. Parking areas shall be sufficient to accommodate the greatest number of service vehicles expected on the premises at any one time.
4. Driveways or parking areas shall provide adequate interior turn-around, such that service vehicles will not have to back out onto a public thoroughfare.

H. Security

1. Towers, anchor points of guyed towers, and accessory structures shall each be surrounded by fencing at least eight (8) ft. in height, the top foot of which may, at the discretion of the Planning Board in deference to the character of the neighborhood, be comprised of three-strands of barbed wire to discourage unauthorized access to the site.
2. Motion activated or staff activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site. Such lighting should only occur when the area within the fenced perimeters has been entered.
3. There shall be no permanent climbing pegs within fifteen (15) feet off the ground of any tower.
4. A locked gate at the junction of the accessway and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.

I. Engineering and Maintenance

1. Site plans for all Telecommunications Facilities must bear the seal of a professional engineer licensed to practice in the State of New York. Every facility shall be built, operated and maintained to acceptable industry standards including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).
2. Every Facility shall be inspected at least every second year for structural integrity by a New York State licensed engineer. A copy of the inspection report shall be submitted to the municipal Zoning Enforcement Officer.

3. A safety analysis by a qualified professional must accompany any special permit or site plan application, renewal thereof or modification, for the purpose of certifying that general public electromagnetic radiation exposure does not exceed standards set by Federal Regulations.
4. The municipality, at the expense of the applicant, may employ its own consulting assistance to review the findings and conclusions of safety analysis, visual analysis, or structural inspection, provided by the applicant.

J. Removal

1. At the time of submittal of the application of a special use permit for a Telecommunications Facility, the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower(s) dedicated solely for use within a Telecommunications Facility if such Facility becomes technologically obsolete or ceases to perform its originally intended function for more than twelve (12) consecutive months. Upon removal of said Facility, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.
2. At the time of obtaining a building permit, the applicant must provide a financial security bond for removal of the Telecommunications Facility and property restoration, with the municipality as the assignee, in an amount approved by the Planning Board, but not less than one hundred thousand (\$100,000) dollars.
3. At time of renewal or modification of the Special Use Permit, the Planning Board may adjust the required amount of the financial security bond to adequately cover increases in the cost of removal of the Telecommunications Facility and property restoration.

**SECTION 786 ESTABLISHING DESIGN AND AESTHETICS
STANDARDS REQUIREMENTS IN
CERTAIN ZONING DISTRICTS**

A. Intent

The purpose of this section is to provide for superior design and aesthetics standards, criteria and requirements in certain zoning districts hereafter named. These standards, criteria and requirements are intended to supplement the underlying and existing zoning provisions to provide for harmony, continuity and aesthetically pleasing development.

B. Districts

All conditional uses in the Hamlet (HA) District and Agricultural/Residential (AR) Districts, all permitted, accessory and special uses in the General Business (GB) Districts, all permitted, accessory and special uses in the Light Industrial (LI) Districts and Industrial (I) Districts, of a commercial and/or industrial nonresidential nature shall comply with the additional requirements and provisions enumerated in this Section as well as complying with all the requirements and provisions of the underlying zoning district. If the requirements of this Section differ from those in the underlying zoning district, the more restrictive requirements shall apply.

C. The following are established as building design standards and requirements:

1. Overall Approach

It is intended that a basic harmony of architecture shall prevail among the buildings while allowing for individual expression of taste. For this reason, buildings shall be contemporary in style and appropriate to their function.

2. Exterior Appearance and Building Materials

The face of each building that fronts a street shall be constructed entirely of masonry material such as brick or precast concrete or shall have this material a minimum of 1/3 the height of the building in a continuous band from the ground up to maintain a high quality of construction and appearance and to provide interesting and tasteful exteriors.

R-Wall and other like materials are allowed only with the approval of the Planning Board. The remaining exterior walls of the buildings are to be construed of masonry, concrete, metal panel, or other suitable material, as approved by the Planning Board. Brick should generally be of a uniform size and texture on building facades. Concrete masonry units should be broken faced brick with marble or granite aggregate.

3. Color

Colors to be used on the exterior buildings should be intrinsic to the material, or factory applied. Non-reflective earth tone colors such as tans, browns, reds, and grays that recede into the landscape are preferred. The contrast between brick and mortar should be moderate to low.

4. Vertical Roof Projections

Vertical Roof Projections such as towers, vents, stacks or roof-mounted equipment shall be avoided. Any penetrations that must be made through the roof (e.g. mechanical equipment, skylights) must be effectively screened from public view, in an architecturally compatible manner. The manner of screening must be approved in writing by the Planning Board before construction.

D. The following are established as general landscaping requirements:

1. A minimum ground area of not less than ten percent (10%) of the total area to be developed shall be the landscaped area required.
2. The arrangements and location of a landscaped area shall be dispersed through the development site so as to prevent unsightliness and monotony of parked cars.
3. Landscape treatments shall be designed as an integral part of the entire development.
4. Vegetation shall be compatible with soil conditions on the development and the regional climate.

5. Existing natural features and vegetation shall be preserved and incorporated in the landscaped area. The primary emphasis shall be on preserving and integrating into the site design existing trees to the extent feasible. The preservation of existing trees shall be encouraged.
 6. Trees shall be planted throughout the developed area at a ratio of one (1) tree per every ten (10) parking spaces, with a minimum of six (6) trees for any site. Trees may be spaced evenly or clustered. Acceptable trees shall be limited to the same as those trees listed on the Maple Ridge Corridor District Tree List. Substitution of plant material may be approved by the Planning Board.
 7. The use of plastic or other types of artificial plantings or vegetation is prohibited.
 8. All required planting shall be maintained by the property owner in a healthy and productive condition and shall be routinely examined and replaced as necessary.
 9. All utility services shall be underground.
 10. Permanent outside storage or sales areas shall be screened or buffered so as to be in harmony with the building design and the appearance of the development.
- E. The following are established as landscaping requirements for parking lots:
1. No less than (5%) of the interior of a parking lot area designated for (10) cars or more shall be devoted to the required landscape area.
 2. Each interior landscaped area shall be at least one hundred (100) square feet in area.
 3. Each interior landscaped area shall contain at least one (1) approved tree.
 4. Off-street loading areas, where visible from a public street, must be arranged so as to be screened from view from such public street by wooden, rock or masonry fences at least eight (8) feet high. All refuse storage areas shall be completely surrounded by wooden, brick or masonry fences at least eight (8) feet high.
- F. The following are established as parking space and parking lot requirements:
1. There shall be at least five (5) parking spaces for every one thousand (1,000) gross square feet of building area. The Planning Board may approved a reasonable reduction of the number of parking spaces required for a project if it can be demonstrated to the satisfaction of the Planning Board that such a reduction will not create overflow parking problems, will not adversely impact the access roads and that the additional space not required for parking will be used for landscaping or open space within the site.

2. Right angle parking is preferred. Each parking module consisting of the length of a parking space, the drive aisle and the second length of a parking space shall be a minimum of sixty-two (62) feet wide. Each parking space shall be a minimum of nine (9) feet wide. The Planning Board may waive or modify the requirements to allow angle parking.
3. All requirements providing for handicap parking shall be met.
4. All parking lots and driveways are to be surfaced with bituminous material, concrete or unit pavers.
5. Service areas must be located at the side or rear of a building and effectively screened by planting berming, fencing or a combination approved by the Planning Board prior to construction. No incinerators, storage tanks, refuse containers or like equipment shall be kept in the open or exposed to public view.

G. The following are established as landscaping maintenance standards:

1. Each parcel owner shall be responsible for maintenance of all landscape & buildings within the parcel boundaries. This includes the open space to the rear of the parcel, as well as for the street trees along the spine road.
2. All planting including lawns shall be watered regularly during the initial period of establishment and thereafter as necessary to maintain them in healthy condition.
3. Lawns shall be well maintained at a height of 2"-3". Fertilizer shall be applied at least annually to maintain vigorous growth and appearance.
4. Planting beds shall be kept free of weeds.
5. Trees and scrubs shall be pruned as necessary to remove dead branches and keep the plants in near and vigorous condition.
6. Leaves shall be removed from walks, parking lots, plant beds and lawn areas during the fall season.
7. In no case shall dead plant material be allowed to remain more than one growing season.

SECTION 787 REGULATING SOLAR ENERGY SYSTEMS

A. Findings

1. The Town Board finds that solar energy, as properly regulated, is clean, readily available and a renewable energy source beneficial to the Town of Shelby, its residents and general public
2. The Town Board, nevertheless, finds a growing need to properly site and regulate solar energy systems within the boundaries of the Town of Shelby to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Shelby, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Shelby.
3. Solar energy systems deplete land available for other uses, introduce industrial usage into other non-industrial areas, and can pose environmental challenges and compete with other activities.
4. Solar energy systems need to be regulated for removal when no longer utilized, to prevent environmental problems and the creation of abandoned industrial sites.
5. In light of these considerations, the provisions contained in this Section 787 are intended to regulate solar energy systems to protect the environment, public health and safety, and to promote the general welfare of the Town and its citizens, as well as to further Town planning and zoning goals.

B. Definitions

APPLICANT - The person or entity filing an application and seeking an approval under this Section; the owner of a solar energy system or a proposed solar energy system project; the operator of a solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed energy system. Whatever the term "applicant" or "owner" or "operator" are used in this Section, said term shall include any person acting as an applicant, owner or operator.

SMALL BUILDING MOUNTED SOLAR ENERGY SYSTEMS - A solar energy system that is affixed to the side(s) of a building either directly or by means of support structures or other mounting devices; but not including those mounted to the roof or top surface of a building and designed and intended to generate electricity solely for use primarily on said building or other buildings on the same premises, through a distribution system that is not available to the general public.

SMALL GROUND MOUNTED SOLAR ENERGY SYSTEM - A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure, designed and intended to generate electricity primarily for use on said lot, through a distribution system that is not available to the general public.

SMALL ROOFTOP MOUNTED SOLAR ENERGY SYSTEM - Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface, designed and intended to generate electricity primarily for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

SOLAR ENERGY SYSTEM - Any system or group of components designed to produce power from the sun and affixed to real property, except self-contained, single purpose components, such as signage lighting panels.

UTILITY-SCALE SOLAR ENERGY SYSTEM - Any solar energy system that is designed and intended to supply energy primarily into a utility grid for sale to the general public, whether or not it also supplies energy for use on the parcel of land on which it is located.

C. Use districts where allowed.

No solar energy systems shall be permitted in the Town of Shelby except in the Zoning Districts specified in this Section.

1. Rooftop mounted and building mounted solar energy systems are permitted in all zoning districts in the Town, subject to setback and height restrictions.
2. Ground mounted solar energy systems are permitted as accessory structures in all zoning districts of the Town subject to all setback, height and area coverage restrictions.
3. Utility-scale solar energy systems permitted only in an Agricultural/Residential District, General Business, Hamlet, Industrial, Light Industrial and Rural Residential District.

D. General Regulations

The placement, construction and major modifications of all solar energy systems within the boundaries of the Town of Shelby shall be permitted only as follows:

1. Utility-scale solar energy systems shall be permitted only by Special Permit by the Town Board in use districts where allowed in accordance with the criteria established in this Section, after SEQRA review, upon concurrent site plan approval issued by the Town of Shelby Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this Section.
2. Small rooftop mounted and small building mounted solar energy systems shall follow normal building permit procedures.
3. Small ground mounted solar energy systems shall follow normal building permit procedures, and must be accompanied by a scale map showing location, setbacks and lot coverage.

4. This section shall supersede over any inconsistent provisions of the Zoning Law of the Town of Shelby.
5. This Section shall not apply to any premises owned or controlled by the Town of Shelby.
6. Any applicant or entity proposing to install and/or operate a utility-scale solar energy system in the Town must enter into a host community agreement with the Town to compensate the Town for any expenses and impacts on the community associated with that solar energy system, and to provide other benefits for the community as may be negotiated between the Town and the applicant. Nothing in this law shall prevent the Town from entering into such additional agreements with the applicant as may be necessary to protect the Town's and its citizens' interests (e.g., separate road use and maintenance agreements, or decommissioning agreements). In addition, except where such funding is provided for by other New York State laws or regulations, any applicant for approval of a utility-scale solar energy system must also enter into an escrow agreement with the Town to pay the Town's technical, engineering, and legal costs and fees associated with the Town's review of the project application, including the review required by SEQRA and the Town's review and negotiation of agreements for community benefits, payments in lieu of taxes, or other agreements associated with the proposed system.

E. General Criteria

1. Rooftop mounted solar energy systems shall not be more than three feet higher than the finished roof to which it is mounted and in no instance shall any part of the system extend beyond three (3) feet before the edge of the roof. Maintenance access shall be incorporated into the system as determined by the Building Inspector.
2. Building-mounted solar energy systems shall not be more than three (3) feet from the building wall and in no instance shall any part of the system extend beyond the roof line or parapet wall.
3. Small ground mounted solar energy systems shall be subject to the following requirements:
 - a. The location of said solar energy system shall be placed no closer in accordance with setback requirements for an accessory structure of the use district in which it is located; and
 - b. The location of said solar energy system shall be only located in the side or rear yard;
 - c. The total surface area of said solar energy system on a lot shall not exceed the allowed accessory structures where permitted in the District.

4. Solar storage batteries. When solar storage batteries are included as part of any solar energy system, they shall be placed in secure container or enclosure meeting the requirements of the New York Building Code.
5. Any solar energy system shall be accessible by all emergency service vehicles and personnel.
6. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
7. The design, construction, operation and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks.
8. Artificial lighting of any solar energy system shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.

If the use of a solar energy system is discontinued or not maintained the owner or operator shall notify the Building Inspector within (30) days of such discontinuance and shall remove the system and properly dispose of all materials. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed non-operating or abandoned.

9. Decommissioning and Site Restoration. Any applicant or entity proposing to install and/or operate a utility-scale solar energy system shall submit a decommissioning plan to the Town, which shall include:
 - (i) the anticipated life of the solar energy system;
 - (ii) the estimated decommissioning costs in current dollars;
 - (iii) how said estimate was determined;
 - (iv) the method of ensuring that funds will be available for decommissioning and site restoration;
 - (v) the method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and
 - (vi) the manner in which the solar energy system will be decommissioned and the site restored, which shall include removal of all structures, panels, equipment, transmission lines, wiring, and debris from the surface and to a depth of three feet, restoration of the soil, and restoration of of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner. The plan shall include a copy of the decommissioning bond or other financial mechanism or instrument providing the financial assurance required by this Section. The decommissioning plan shall be reduced to a decommissioning agreement between the Town and the system applicant or operator.

10. Financial Assurance for Decommissioning and Site Restoration. For the life of the utility-scale solar system, the applicant, or its successors or assigns, shall continuously maintain a bond or other appropriate form of financial security that is acceptable to the Town and payable to the Town in an amount-unless such amount is otherwise established or required by New York State laws or regulations-at least equal to 125% of the estimated costs of removing all components of the utility-scale solar energy system (including any appurtenant equipment or facilities) and restoration of the system site(s) in accordance with the decommissioning plan. All expenses or costs of establishing or maintaining financial assurance shall be borne solely by the applicant or its successors or assigns.

F. Special Permit Requirements for Utility-Scale Solar Energy Systems

Applications under this Section shall be made as follows: Applicants for a special permit to place, construct, and make a major modification to a utility-scale solar energy system within the boundaries of the Town of Shelby shall submit twelve (12) sets of the following information to the Building Inspector, who shall first present it to the Town Board and the Town designated professional engineer or consultant for an initial review. The Town Board shall refer the matter to the Planning Board and may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. After considering such application in accordance with this Section, the Town Board may grant the application or grant the Special Use Permit, deny the Special Use Permit or grant the Special Use Permit and impose reasonable conditions and restrictions as authorized by Town Law §274(b)(4). The following information shall be contained in or accompany the application:

1. A completed State Environmental Quality Review Act (SEQRA) form.
2. Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner.
3. Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
4. Documentation of the clearing, grading, storm water and erosion control plans.
5. Utility interconnection data and copy of written notification to the utility of the proposed interconnection.
6. One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices.

7. A property owner who has installed or intends to install a utility-scale solar energy system may choose to negotiate with other property owners in the vicinity for necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with Town Code. In the event that solar easements are negotiated by an applicant or property owner for a utility-scale solar energy system, a copy or documentation of any solar skyspace easements shall be provided, properly recorded as such, negotiated with neighboring property owners that shall, at minimum, include:
 - a. The restrictions placed upon buildings, structures, vegetation and other objects or uses that would potentially obstruct the solar skyspace of the solar energy system; and
 - b. A description of the dimensions of the easement expressed in terms, such as the maximum height of buildings and structures, vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector may not be obstructed, or a combination of these descriptions; and
 - c. The amount, if any, of permissible obstruction of solar skyspace through the easement expressed in measurable terms, such as a specific percentage of the solar skyspace that may be obstructed or hours during the day; and
 - d. Provision for trimming vegetation that would impermissibly obstruct solar skyspace, including any compensation for trimming expenses; and
 - e. Provisions for compensation of the owner/operator benefitting from the easement in the event of impermissible obstruction of the solar skyspace that would be in violation of the easement; and
 - f. The terms or conditions, if any, under which the easement may be revised or terminated.
8. A site plan in accordance in accordance with the Town of Shelby's site plan requirements and drawn in sufficient detail as follows:
 - a. Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and utility lines, both above and below ground, on the site and adjacent to the site; and

- b. Property lot lines and the location and dimensions of all existing structures and uses on site within five hundred (500) feet of the solar panels; and
 - c. Proposed fencing and/or screening for said project.
9. Any such additional information as may be required by the Town Board, Town's professional engineer or consultant, Planning Board, Town Attorney, Building Inspector.

G. Special Permit Criteria; Restrictions

Special Permits issued for utility-scale solar energy systems shall meet the following conditions:

1. Minimum lot area: The minimum lot upon which the system is to be constructed shall be fifteen (15) acres.
2. Maximum coverage area: The maximum coverage area of the system shall be fifty (50) acres.
3. Setbacks: Any utility-scale solar energy system shall adhere to the following setbacks:
 - a. From any zoning district boundary.
 - b. From any property lot lines: A minimum of one hundred (100) feet from any property lot line.
 - c. From buildings or structures not on the lot proposed for the solar energy system:
 - i. A minimum of two hundred and fifty (250) feet.
 - ii. A minimum of five hundred (500) feet from any dwelling.
 - d. From buildings or structures on the lot proposed for the solar system: A minimum of one hundred (100) feet from any building, structure or dwelling.
 - e. From public roads:
 - i. A minimum of two hundred (200) feet from any public road (measured from the road right-of-way line); and,
 - f. From schools, public parks: A minimum of five hundred (500) feet from all property lot lines bordering a school or public park.

4. Maximum overall height. The height of a utility-scale solar energy system shall not exceed twenty (20) feet when oriented at maximum tilt.
5. Number of utility-scale solar energy systems allowed per lot: There shall only be allowed one utility-scale solar energy systems per lot.
6. A utility-scale solar energy system shall adhere to all applicable federal, state, county and Town of Shelby laws, regulations, building, plumbing electrical and fire codes, and the applicant shall provide any requested documentation of such correspondence.
7. Development and operation of a utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife or plant species or their critical habitats, or other significant habitats identified by the Town of Shelby or other federal or state regulatory agencies.
8. The design, construction, operation, and maintenance of a utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks in excess of that which already exists. The applicant for a utility-scale solar energy system shall provide adequate considerations for its use of local roads during the construction, operation, and maintenance activities for the system, including any road repairs, maintenance, or restoration that may be required due to heavy equipment or increased frequency of use associated with construction or operation of the system.
9. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
10. All transmission lines and wiring associated with a utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
11. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
12. Artificial lighting of utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
13. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations and shall not be illuminated.
14. The utility-scale energy system, as designed and constructed, shall provide adequate visual screening and site security measures. A berm and/or screening may be required along property lines abutting a residential lot.

15. Prior to issuance of a Certificate of Occupancy, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
16. Compliance with regulatory agencies: The applicant is required to obtain and maintain all necessary regulatory approvals and permits from all federal, state, county and local agencies having jurisdiction and approval related to the completion of a utility-scale solar energy system.
17. A bond or other appropriate form of security acceptable to the Town Board shall be provided to cover the cost of the removal and site restoration in accordance with Section 787. Said bond or security shall be established and provided to the Town prior to construction. Said bond or security shall not be revocable without the Town's written consent and shall extend for a period of not less than the actual system removal and restoration without limit as duration; and shall transfer to cover any subsequent owner or operator of the system.
 - a. The actual removal and restoration without limit as duration.
 - b. Shall transfer to cover any subsequent owner or operator of the system.
18. Clearing, grading, storm water and erosion control:
 - a. Before the Town of Shelby shall issue a clearing, grading, storm water or building permit for a utility-scale solar energy system, the applicant shall submit a storm water and Erosion Control Plan to the Engineering Department for its review and approval; and
 - b. The plan shall minimize the potential adverse impacts on Wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

H. Maintenance, Procedures, and Fees

1. Time limit on completion. Upon the granting of a special permit of a utility-scale solar energy system by the Town Board, the building permit shall be obtained within six months and the project shall be completed within twelve months of the granting of the Special Use Permit. If not constructed, the special use permit and site plan approval and building permit shall automatically lapse without notice.
2. Inspections. Upon reasonable notice, the Town of Shelby Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with requirements or conditions. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. The owner/operator shall authorize and cooperate in such inspection. Furthermore, a utility-scale solar energy system shall

be inspected annually by a New York State licensed professional engineer that has been approved by the Town or any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town's Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

3. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any for any violations of a special use or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
4. Continued Operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the systems' usage at any time.
5. Removal. All solar energy systems shall be dismantled and removed by the applicant/owner immediately from a lot when the special permit or approval has been revoked by the Town Board or the solar energy system has been deemed to be non-operating or abandoned by the Building Inspector for a period of more than three hundred and sixty-five (365), days at the cost of the applicant or owner. If the owner/operator or applicant does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner/operator or applicant shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and draw on the bond or other form of financial assurance provided to the Town for the solar energy system in accordance with this Section, or otherwise to place the cost of removal as a tax lien on said parcel. Such action shall be in addition to and not in lieu of any other enforcement remedies the Town may have.
6. Determination of Abandonment or Non-Operation. A determination of the abandonment or non-operation of a solar energy system shall be made by the Town Building Inspector, who shall provide the Owner/operator or applicant with written notice by personal service or certified mail at the address shown in the records of the Town or the application. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Shelby Zoning Board of Appeals within thirty days of the Building Inspector causing personal service or mailing certified mail of his written determination and the Board shall hold hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the three hundred sixty-six (366) days from the date of determination of abandonment or inoperability without reactivation approved or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.

7. Application and Annual Fees.

a. Utility-scale solar energy system. An applicant shall pay an initial fee of Two Thousand Five (\$2500) Dollars, or such other amount as the Town Board may, from time to time, determine by resolution, upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. If approved, the Owner shall pay annual fee of One Thousand (\$1000) Dollars, or such amount as the Town Board may, from time to time, determine by resolution, to cover the cost of processing and reviewing the annual inspection report and for administration, inspections and enforcement.

b. Said fees are in addition to fees for Building Permits. Fees are as follows:

i. 0.25 per square foot of the project area, or other amount as the Town may, from time to time, determine by resolution.

8. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county and local permits have been obtained.

9. Special permits for a utility-scale solar energy system granted under this Section shall be issued only following a public hearing held as required for special permits under the New York State Town Law.

10. The Town Board may:

a. For utility-scale solar energy systems, grant a Special Permit, deny a Special Permit, or grant a Special Permit with written stated conditions. Upon issuance of a Special Permit, the applicant shall obtain a building permit for the utility-scale solar energy system.

11. Any changes or alterations post construction to a utility-scale energy system shall be allowed only by amendment to the Special Permit and/or site plan (if required) subject to all requirements of this Code.

12. Special permits for utility-scale solar energy systems shall be assignable or transferable so long as they are in full compliance with this Section and all the conditions, and the Building Inspector is notified in writing at least fifteen (15) days prior thereto.

13. In addition to the requirements of this Section, the special permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.

I. Violation/Revocation.

1. Any violation of this Section or of the terms of a Special Use Permit constitutes a violation pursuant to the Zoning Code.

2. The Town may enforce this Section by obtaining an injunction, temporary restraining order, temporary injunction or any other remedy available in law or equity.
3. If the applicant violates any of the conditions of its special permit, site plan approval or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant owner/operator is notified in writing of the violations and the Town Board holds a hearing on same.

The purpose of this Section is to opt-out of the real property tax exemption for solar and wind projects pursuant to §487 of the Real Property Tax Law ("RPTL") of the State of New York.

Opt-Out. The Town hereby provides that no exemption under RPTL §487 shall be applicable with its jurisdiction with respect to any solar or wind energy system or farm waste energy system which begins construction subsequent to the effective date of this local law.

ARTICLE VIII: ADMINISTRATION AND ENFORCEMENT

SECTION 800 ENFORCEMENT

The duty of administering and enforcing the provisions of this Local Law is hereby conferred upon the Zoning Enforcement Officer (ZEO), who shall be appointed by the Town Board and shall carry out any directives from the Board relative to the duties of the position set forth below. The ZEO shall receive such compensation as the Town Board shall determine.

SECTION 801 DUTIES AND PROCEDURES OF THE ZONING ENFORCEMENT OFFICER

A. Administer the Zoning Law

1. The Zoning Enforcement Officer shall review all applications for zoning permits and, if the minimum requirements of this Local Law are met, the Officer shall issue a permit.
2. If the applicant's plans do not meet the Zoning requirements, the Officer must deny the permit. The Zoning Enforcement Officer may not use discretionary judgment. The Officer must enforce the "Letter of the Law."

B. Referral to the Zoning Board of Appeals

An applicant, after being denied a building permit, may appeal the Zoning Officer's findings to the Zoning Board of Appeals (ZBA) for an interpretation or a variance. Should an appeal be requested, the Zoning Enforcement Officer shall notify the Secretary of the ZBA of the request and forward all necessary supporting information.

C. Referral to Town Planning Board

Any application for a special permit, change of zoning district or use that requires Site Plan Review shall be forwarded by the Zoning Enforcement Officer to the Chairperson of the Town Planning Board of the request and forward all necessary supporting information.

D. Cite Zoning Violations

1. For any plans, construction, building, use or premise found in violation of this Local Law, the Zoning Enforcement Officer shall order the responsible party, in writing, to remedy the conditions. He shall have the authority to commence proceedings to punish violations pursuant to Sections 108 and 109 of this Local Law.
2. The Zoning Enforcement Officer may enter any premise or building during reasonable hours in the course of his duties in accordance with State Law after due written notice has been given.

E. Report to Town Board

A monthly report to the Town Board describing and enumerating actions taken and permits issued shall be given.

F. Public Record

The Zoning Enforcement Officer shall file all permit actions with the Town Clerk.

G. Upon written direction from the Planning Board, the Zoning Enforcement Officer shall issue special use permits. Upon approval of a variance by the Zoning Board of Appeals, the Zoning Enforcement Officer shall be empowered to issue the necessary permits with the specific conditions to be imposed.

H. The Zoning Enforcement Officer shall be authorized and empowered to issue appearance tickets pursuant to the New York State Criminal Procedure Law.

SECTION 810 CREATION, APPOINTMENT AND ORGANIZATION OF PLANNING BOARD

A. Creation and Appointment

1. The Town Board authorizes the appointment of a **five** member Planning Board as more fully described in Town Law Section 271. Terms of all Planning Board members shall be staggered as the law requires.
2. In making such appointments, the Town Board may require Planning Board members to complete training and continuing education courses in accordance with any local requirements for the training of such members. The Town Board may reimburse the members for appropriate expenses incurred in obtaining training.

B. Officer, Rules, Expenses

1. The Town Board may select a Chairman of the Planning Board, or on failure to do so, the Planning Board shall elect a chairman from its own members.
2. The Planning Board may adopt rules or bylaws for its operations.
3. The Town Board shall provide an appropriation to the Planning Board to cover necessary expenses including the means for the Planning Board to maintain a written record of its meetings and public hearings.

C. Functions of the Planning Board

1. To prepare, review and/or recommend revisions to the comprehensive plan for the development of the Town as provided under Section 272-a of Town Law and/or Town Board Resolution.

2. To review and comment on all proposed zoning amendments before referral to the County Planning Board.
3. Conduct Site Plan Review as authorized by Town Law 274-A and prescribed in Article X of this Local Law.
4. Review and grant or deny special permits as authorized by Article IX.
5. Render assistance to the Zoning Board of Appeals on its request.
6. Research and report on any matter referred to it by the Town Board.
7. Make investigations, maps, reports, and recommendations in any matter related to Planning and Development as it seems desirable providing expenditures of the Board do not exceed appropriations.
8. Authority to modify provisions of the zoning Local Law simultaneously with plot approval in accordance with Town Law Section 278.
9. All such powers and duties as are conferred upon Town Planning Boards and subject to the limitations set forth in Sections 272, 272-a, 274, 274-a, 274-b, 276, 277, and 278, of the New York State Town Law, as the same may be amended, modified, or changed from time to time, or any sections subsequently adopted pertaining to Planning Boards.

D. County Planning Board Representatives

The Town shall nominate a member of the Planning Board to serve on the County Planning Board when vacancies occur. Appointment to the County Planning Board is made by the County Legislature.

SECTION 820 ZONING BOARD OF APPEALS

A. Appointment of Zoning Board of Appeals

1. Pursuant to Section 267 of Town Law, there shall be a Zoning Board of Appeals consisting of five (5) members holding staggered five (5) year terms appointed by the Town Board. The Town Board shall appoint the ZBA's Chairman.
2. In making such appointments, the Town Board may require Board of Appeals members to complete training and continuing education courses in accordance with any local requirements for the training of such members. The Town Board may reimburse the members for appropriate expenses incurred in obtaining training.

B. Officers, Rules and Expenses

1. The ZBA may adopt rules or bylaws for its operation.

2. The Town Board shall provide an appropriation to ZBA to cover necessary expenses including the means for the ZBA to maintain a written record of its meetings and public hearings.
3. All decisions shall be by a majority vote of the membership (three) except in those cases of a County Planning Board disapproval referral recommendation. In such cases a majority plus one vote (four) shall be required for any decision.

C. Functions of the Zoning Board of Appeals.

1. Interpretation.

Upon appeal from a decision by the Zoning Enforcement Officer, the ZBA shall decide any question involving interpretation of any provision of this Local Law.

2. Appeals for Variances

Upon denial of zoning permit by the Zoning Enforcement Officer, the ZBA shall hear requests for variances as more fully described in Section 834 of this Local Law.

D. Appeals for Variance through the Zoning Board of Appeals (ZBA)

Unless otherwise provided for, all requests for variances shall be made to the ZBA after denial of a zoning permit by the Zoning Enforcement Officer.

E. Orders, Requirements, Decisions, Interpretations, Determinations

The ZBA may reverse or affirm, wholly or partly, or may modify order, requirement, decision, interpretation, or determination appealed from, and shall make such order, requirement, decision, interpretation, or determination as in its opinion ought to have been made in the matter by the Zoning Enforcement Officer and to that end shall have all the powers of the Zoning Enforcement Officer.

F. Area or Dimensional Variances.

1. The ZBA shall have the power, upon an appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances as defined herein.
2. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; 3) Whether the requested area variance is substantial; 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

3. and 5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
4. The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health safety and welfare of the community.
5. The ZBA shall, in the granting of an area variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and/or the period of time such variance shall be in effect. Such condition shall be consistent with the spirit and intent of the Zoning Local Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

G. Area Variances Procedures

Area variances shall be granted by the procedure established in Section 834

H. Use Variances

1. The ZBA, on appeal from the decision or determination of the Zoning Enforcement Officer shall have the power to grant use variances as defined herein.
2. No such use variance shall be granted by the ZBA without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that (1) under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.
3. The ZBA, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
4. The ZBA shall, in the granting of a use variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and/or the period of time such variance shall be in effect. Such condition shall be consistent with the spirit and intent of the Zoning Local Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

**SECTION 834 PROCEDURES FOR PROCESSING A VARIANCE
APPLICATION**

- A. All applications for variances shall be in writing on forms established by the ZBA and are available from the Zoning Enforcement Officer.
- B. Every application shall refer to the specific provision of the law involved and establish the details of why the variance should be granted.
- C. Agricultural Data Statement
 1. Any application for a variance that would occur on property within an agricultural district containing a farm operation or on property with boundaries within 500 feet of a farm operation located in an agricultural district, shall include an Agricultural Data Statement.
 2. The Zoning Board of Appeals shall evaluate and consider the Agricultural Data Statement in its review of the possible impacts on the proposed agricultural district.
 3. Upon the receipt of such application by the Zoning Board of Appeals, the clerk of such board shall send, through registered mail, written notice of such application to the owners of land as identified by the applicant in the Agricultural Data Statement. Such notice shall include a description of the proposed project and its location. The cost of mailing said notice will be borne by the applicant.
 4. An Agricultural Data Statement shall include the name and address of the applicant, a description of the proposed project and its location, the agricultural district which land contains farm operations and is located within 500 feet of the boundary upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the Agricultural Data Statement.
- D. Upon receipt of the completed application the ZBA shall:
 1. Schedule a public hearing.
 2. Arrange publication of notice of the public hearing as described in Section 835
 3. Refer the application to the County Planning Board as required by General Municipal Law Section 239, if required.
 4. Determine whether a draft Environmental Impact Statement should be required.
- E. Within 62 days of the public hearing, the ZBA shall render a decision. If the matter was referred to the County Planning Board, a copy of the ZBA's findings and decision must be sent to the County Planning Board.

SECTION 835 NOTICE OF PUBLIC HEARING

- A. Public Hearings shall be held scheduled within 62 days from the date of ZBA receipt of the appeal
- B. Notice of the public hearing shall be published in the official newspaper of the Town at least 5 days prior to the hearing. Such notice shall briefly describe the nature of the appeal and the time and place of the hearing.
- C. The Zoning Board of Appeals may require the applicant to place a sign on the property for which the variance is requested, indicating the date and time of the public hearing.
- D. A copy of the public notice may be sent to adjacent property owners within the Town, but failure to send such notice shall not affect the jurisdiction of the Board or the legality of this decision.
- E. Public records shall be taken by stenographic and/or tape recorder means and shall be accurate but not necessarily a verbatim transcript, but may be in narrative form. The factual record shall be taken by the secretary of the Board.

SECTION 836 MEETINGS OF THE ZONING BOARD OF APPEALS

- A. The Zoning Board of Appeals shall hold meetings at the call of the Chairperson, or the request of 3 or more members.
- B. The presence of the three (3) members shall constitute a quorum for the conduct of business before the Board.
- C. The presence of three (3) members of the Board shall be necessary to act on the application for any variance or to decide upon any other matter brought before the Board, unless otherwise stipulated in this Local Law.
- D. All votes of the Zoning Board of Appeals shall be taken by roll call.
- E. In accordance with General Municipal Law, Section 908, a member of the Zoning Board of Appeals having a conflict of interest shall abstain from any discussion or voting on that matter.
- F. The Zoning Board of Appeals may request and obtain any advice or opinions on the law relating to any matter before the Board from the town attorney, and require the town attorney to attend its meetings.
- G. The Zoning Board of Appeals may require the Zoning Enforcement Officer to attend its meetings to present any facts relating to any matter before the Board.
- H. All meetings of the Zoning Board of Appeals shall be open to the public.
- I. The Board of Appeals shall keep minutes of all its meetings. The Town Board shall provide a secretary for the Zoning Board of Appeals.

- J. The Zoning Board of Appeals shall make a factual record of all its proceedings including the reading of the case, public hearing, deliberation, voting and decisions of the Board. These factual records shall be taken by stenographic and/or tape recorder means and shall be accurate but not necessarily a verbatim transcript, but may be in narrative form. The factual record shall be taken by the secretary to the Board.

SECTION 840 - REQUIRED REFERRALS TO THE COUNTY PLANNING BOARD

- A. The Zoning Enabling Laws require that any of the following local zoning actions must be referred to the County Planning Board prior to action by the local Board, unless such actions are exempted from referral by an agreement between the County and the Town. Unless exempted by mutual agreement between the County and the Town: any proposal for a special permit, variance, site plan approval, or change in the zoning law text or map (rezoning or amending the zoning law) which would affect real property lying within a distance of 500 feet from the boundary of:

- any county
- any town.
- any village.
- any existing or proposed county or state park.
- any right-of-way of any county or state road or parkway,
- any stream or canal owned by the county.
- any existing or proposed county or state owned land on which a public building or institution is situated

must be referred to the County Planning Board who shall have 30 days from date of County receipt to take action on the matter. By mutual agreement of the county and the municipality such 30 day period may be extended in special cases.

B. EFFECT OF COUNTY PLANNING BOARD REVIEW

1. If the county approves a referral then the local board's decision is governed by a majority vote.
2. If the county disapproves or approves subject to stated conditions or modifications, the local board may override the county opinion only by a majority plus one vote.

C. REPORT ON FINAL LOCAL ACTION

The local board must send a copy of its final decision and reasons for such decision on a county referral case to the County Planning Board within 7 days after the local decision is reached.

ARTICLE IX: SPECIAL USE PERMITS AND PROCEDURES

SECTION 900 PURPOSE

It is the intent of this Local Law to use Special Use Permits to control the impact of certain uses upon areas where they will be incompatible unless conditioned in a manner suitable to a particular location. Special Use Permits bring needed flexibility and individuality to the otherwise rigid controls of zoning regulations.

SECTION 901 ADMINISTRATION

In accordance with Town Law, Section 274-b, the Town Planning Board will administer the review and granting of Special Permits.

SECTION 902 PROCEDURE

- A. The Zoning Enforcement Officer shall refer the completed special permit application to the Town Planning Board upon receiving a completed application.

If a variance would be required from the Zoning Board of Appeals in connection with the proposed use of the premises, the Zoning Enforcement Officer shall refer a copy of the application to the Zoning Board of Appeals. The Zoning Enforcement Officer shall notify the applicant of the need for such variance.

All applications shall be signed by the legal owner of the premises for which the Special Permit is sought.

- B. At its next regular or special meeting, the Town Planning Board shall designate a public hearing date within a reasonable period of time, not to exceed 62 days from the date the application was made.
- C. The Town Planning Board shall send a notice of the public hearing to the applicant and publish a notice of the public hearing in the Official Newspaper. Notices shall be sent to adjacent property owners and/or a sign shall be placed on the premises indicating the date of the public hearing.
- D. The Notice of the public hearing shall be sent and published at least five (5) days prior to the date of public hearing and shall include sufficient information so as to identify the property involved and the nature of the proposed action.
- E. The Town Planning Board shall make a factual record of all its proceedings involving the granting of a Special Permit. The decision of the Planning Board shall contain the reasons for its decision.

- F. The Town Planning Board shall render its decision, either approving, approving with conditions, or denying, within 62 days after the hearing, unless an extension is mutually agreed upon.
- G. Each application for a special permit shall be accompanied by a proposed plan showing the information required for site plan approval in Article X.
- H. Each special permit application must also receive site plan approval before the special permit may be granted.
- I. Agricultural Data Statement
 1. Any application for a special use permit that would occur on property within an agricultural district containing a farm operation or on property with boundaries within 500 feet of a farm operation located in an agricultural district, shall include an Agricultural Data Statement.
 2. The Planning Board shall evaluate and consider the Agricultural Data Statement in its review of the possible impacts of the proposed agricultural district.
 3. Upon the receipt of such application by the Planning Board, the clerk of such board shall send, through registered mail, written notice of such application to the owners of land as identified by the applicant in the Agricultural Data Statement. Such notice shall include a description of the proposed project and its location. The cost of mailing said notice will be borne by the applicant.
 4. An Agricultural Data Statement shall include the name and address of the applicant, a description of the proposed project and its location, the agricultural district which land contains farm operations and is located within 500 feet of the boundary upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the Agricultural Data Statement.
- J. If any Special Permit issued under this Local Law shall remain unexercised for a period of one (1) year from the date of issuance such permit shall be deemed revoked and the use shall not be commenced until another new application shall have been made to the Planning Board therefore and approved. The applicant may apply to the Planning Board for an extension of up to one year.
- K. If any use permitted by a Special Permit shall be discontinued for a period of one (1) year, such permit shall be deemed revoked and the use shall not be continued until another new application shall have been made to the Planning Board therefore and approved.

SECTION 903 FINDINGS

- A. The Town Planning Board may grant a special use permit for uses described in Article VII provided that all requirements and conditions set forth in that Article are complied with.

- B. The Planning Board shall make written findings for each special use permit decision. Findings shall state the reasoning behind, the basis for, and the evidence relied upon to reach the decision. Compliance with the requirements of Article VII shall be substantiated.
- C. The following considerations shall apply to all special use permit applications:
1. Ingress and egress to the property and proposed structures thereon, with particular reference to vehicular and pedestrian safety, and convenience, traffic flow and control, and access in case of fire or catastrophe.
 2. Off-street parking and loading areas where required, and the noise, glare or odor effects of the special use permit use on adjoining properties, and properties generally in the district, and the economic impact of the proposed special permit use.
 3. Refuse and service areas.
 4. Utilities as appropriate, with reference to locations, availability and compatibility.
 5. Storm drainage, including potential impact on downstream properties.
 6. Screening and buffering, with reference to type, dimensions and character.
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.
 8. Required yards and other open space.
 9. General compatibility with adjacent properties and other properties in the district.
- D. The Planning Board may impose additional conditions and requirements in order to ensure that the Special Use Permit will be consistent with the requirements of Article VII. Such conditions and requirements shall be clearly documented in the findings and reflected on the approved Site Plan for the special use.
- E. The Planning Board is hereby authorized to waive any of the requirements for Special Permits in this Section or those in Article IX (Special Permit Criteria), if it finds that such requirements are not needed to protect public health, safety or general welfare, or are inappropriate to the particular special use permit.
- F. At least ten (10) days prior to the date of the public hearing, the Zoning Enforcement Officer shall, on behalf of the Planning Board, transmit a copy of the complete application and supporting documents to the County Planning Board for review when required under Article 12-B, 239-m of the General Municipal Law.

- G. Each application for a special use permit shall be accompanied by a proposed site plan showing the information required for site plan approval as described in Article X of this Local Law.
- H. Public Hearing
1. Prior to taking action on an application for a special use permit, the Planning Board shall conduct a public hearing on the proposed request. Said hearing shall be conducted within 62 days following the receipt of a complete application and supporting documents from the Zoning Enforcement Officer.
 2. The Planning Board shall send a notice of the public hearing to the applicant and publish a notice of the public hearing in the official newspaper, one of general circulation in the Town.
 3. The notice of the public hearing shall be sent and published at least five (5) calendar days prior to the date of the public hearing. Such notice shall include sufficient information so as to identify the property involved and the nature of the proposed action.
- I. If the application is required to be transmitted to the County Planning Board under Article 12-B, 239-m of the General Municipal Law, the Planning Board shall not act within the first thirty (30) days following the referral of the application to the County Planning Board unless said Board provides a written reply to the Town within the thirty (30) day period.
- J. The Planning Board shall render its decision, either approving, approving with conditions, or denying the special use permit, within 62 days after the public hearing unless an extension is mutually agreed upon by the Planning Board and the applicant.
- K. In approving an application, the Planning Board may impose any modifications or conditions it deems necessary to conform with the goals and objectives of the Town's Comprehensive Plan and its principles of land use and development, and to protect the health, safety or general welfare of the public.
- L. If an application is approved by the Planning Board, the Zoning Enforcement Officer shall be furnished with a copy of the approving resolution of the Planning Board and he shall issue the permit applied for in accordance with the conditions imposed by the Board.
- M. If any application is disapproved by the Planning Board, the reasons for such denial shall be set forth in the Board resolution and a copy of such resolution shall be transmitted to the Zoning Enforcement Officer. The Zoning Enforcement Officer shall deny the application accordingly by providing the applicant with a copy of the Board's reasons for disapproval.
- N. The Zoning Enforcement Officer shall inspect the premises of a use authorized and approved with a special use permit not less than one time each calendar year. The inspection shall determine that the use is being operated consistent with the terms and conditions established by the Planning Board in approving the permit. If the Zoning Enforcement Officer shall determine that the use is not being operated in compliance

with the permit, the Zoning Enforcement Officer find the owner and operator of the use in violation of the Zoning Local Law. If such violation is not corrected, in accordance with the requirements of this Local Law, the Zoning Officer shall initiate enforcement action. If the violation is not corrected within 90 days of the annual inspection, the Planning Board may nullify the Special Use Permit and set forth the procedures and requirements for re-establishing the use. The use may not be operated until a new application is submitted and approved.

ARTICLE X: SITE PLAN REVIEW

SECTION 1000 PURPOSE

The intent of this section is to set forth additional general standards applying to certain uses and activities. The nature of these uses and activities require special consideration of their impacts upon surrounding properties, the environment, community character and the ability of the Town to accommodate development consistent with the objectives of this Local Law.

SECTION 1001 APPLICATIONS

- A. Site plan review shall be required for all applications for zoning permits, zoning variances, or special use permits, except those for one and two family dwellings, their permitted accessory uses, or any addition to a single family dwelling.
- B. Residential development within a Historic District must also have site plan approval.
- C. All development (including residential) within the General Business (B) Districts, Industrial (I) District, Light Industrial (LI), Historic District or Waterfront Development District must also have a site plan approval.
- D. No zoning permit shall be issued until all the requirements of this Article and all other applicable provisions of the Local Law have been met.

SECTION 1002 PROCEDURE

- A. Each application for Site Plan Review shall be referred to the Town Planning Board.
 - 1. The application shall be made to the Planning Board by filing it with the Town Clerk or the Zoning Enforcement Officer.
 - 2. The Zoning Enforcement Officer shall present it to the Planning Board at their next regularly scheduled meeting.
 - 3. The applicant should attend the Planning Board meeting to answer questions concerning the application.
- B. Within 62 days of receipt of the application the Planning Board shall render a decision to approve with conditions, or deny, and forward the decisions to the Zoning Enforcement Officer. Any extension of this 62 day period may be granted upon consent of both the applicant and the Town Planning Board. If the Planning Board fails to act within said 62 day period or extension that has been granted, the site plan shall be considered approved.

3. Boundaries of the property plotted to scale.
 4. Existing watercourse and bodies of water.
 5. Location of any slopes of 5% or greater.
 6. Proposed grading and drainage.
 7. Location, proposed use and height of all buildings and site improvements including culverts, drains, retaining walls and fences.
 8. Location, design and construction materials of all parking and truck loading areas, showing points of entry and exit from the site.
 9. Location of outdoor storage, if any.
 10. Description of the method of sewage disposal and location of the facilities.
 11. Identification of water source: if well, locate.
 12. Location, size and design and construction materials of all proposed signs.
 13. Location and proposed development of all buffer areas, including existing vegetation cover.
 14. Location and design of outdoor lighting facilities
 15. General landscaping plan.
- B. As necessary, the Planning Board may require the following:
1. Provision for pedestrian access if necessary.
 2. Location of fire lanes and hydrants.
 3. Designation of the amount of building area proposed for retail sales or similar commercial activity.
 4. Other elements integral to the proposed development as considered necessary by the Planning Board.

SECTION 1105 PLANNING BOARD REVIEW OF SITE PLAN

The Planning Board's review of the site plan shall include, as appropriate, the following:

A. General Considerations

1. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls, and including the maximum feasible redesign of private roads to conform to public access and rights of way.
2. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
3. Location, arrangement, appearance and sufficiency of off-street parking and loading.
4. Location, arrangement, size and design and general site compatibility of buildings, lighting and signs.
5. Adequacy of storm-water and drainage facilities.
6. Adequacy of water supply and sewage disposal facilities.
7. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum feasible retention of existing vegetation.
8. In the case of apartment complex or to other multiple dwelling, the adequacy of useable open space for play areas and informal recreation.
9. Protection of adjacent or neighboring properties against noise, glare, unsightliness or nuisances.
10. Protection of solar access on adjacent or neighboring properties.
11. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
12. Special attention to the adequacy of structures, road-ways and landscaping in areas with susceptibility to ponding, flooding and or erosion.
13. Special attention to the productive use and access with "backlot" areas, indicating present and future intended uses
14. Consistency with the general intent of the town's comprehensive Master Planning Process.

B. Consultant Review

The Planning Board may consult with the town building inspector, fire commissioners, highway departments, county planning department, and other local county officials, in addition to representatives of federal and state agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.

C. Public Hearing

1. The Planning Board may conduct a public hearing of the site plan. If a public hearing is considered desirable by a majority of the Planning Board, such public hearing shall be conducted within sixty-two (62) days of the receipt of the application and shall be advertised in the official newspaper of the town at least five (5) days before the public hearing. Decision shall be rendered within sixty-two (62) days of the public hearing.
2. If a public hearing is scheduled, the Planning Board may notify adjacent property owners and may require the applicant to place a sign on the property that indicates the date of the public hearing.

TOWN OF SHELBY SUBDIVISION LAW

ARTICLE 1. INTRODUCTION

Section 105. Title

This law shall be known and may be cited as the "Town of Shelby Subdivision Law."

Section 110. Purpose

This law has been enacted for the purpose of providing for the future growth and development of the Town and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population.

Section 115. Authority

By the authority of Article 2 and 3 of Municipal Home Rule Law and Article 16 of the Town Law of the State of New York, the Planning Board of the Town of Shelby is authorized and empowered to approve preliminary and final plats of subdivisions showing lots, blocks or sites with or without streets or highways, and to approve the development of plats entirely or partially undeveloped, which were filed in the office of the county clerk prior to the appointment of the planning board and the grant to the planning board of the power to approve plats.

All applicable statutes, laws and local ordinances in conflict with the provisions of this chapter, including §276 and §277 of the New York State Town Law, are hereby superseded to the extent necessary to give this Article full force and effect.

Section 120. Previous Regulations

This law shall replace and supersede the prior existing subdivision law.

Section 125. Definitions

For the purpose of this law, certain words and terms used herein are defined as follows:

Cluster Development: A form of development for subdivisions that permits a reduction in lot area requirements for some or all lots in a tract, provided there is no increase in the number of lots permitted under a conventional subdivision, and where the resultant land is either 1) devoted to permanent open space, or 2) is permanently combined with the remainder of the lots, where only some of the lots are reduced in area.

Easement: An authorization by a property owner for the use of any designated part of a property by another, and for a specific purpose.

Lot: A designated parcel or tract of land established by plat, subdivision, or as otherwise permitted by law, to be developed or built upon as a unit.

Open Space: Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners, occupants, and their guests of land adjoining or neighboring such open space.

Parcel: Any area of land established by plat, subdivision, or as otherwise permitted by law, regardless of whether it is defined as a "lot" or whether it is to be developed or built upon as a unit.

Planning Board: The Town of Shelby Planning Board

Plat: A map of subdivision.

Plot Plan: A surveyor's plat constructed from deed descriptions and actual physical building or improvement measurements.

Reallotment: The relocation of lot lines of any lot or parcel, the deed to which was previously recorded in the office of the county clerk; but not including conveyances made so as to combine existing lots by deed or other instrument.

Resubdivision: The further division of lots or parcels.

Road, Private: Any driveway, right-of-way, or vehicular access which is not intended to be used by the public.

Road, Public: Any vehicular way which is: 1) and existing state, county or town roadway: 2) shown upon a plat approved pursuant to law as a public road: 3) approved by other official action; or 4) shown as a public road on a plat duly filed in the office of the county clerk prior to the grant of plat approval authority to the planning board. A *public road* includes the land within the right-of-way, whether improved or unimproved.

Subdivider: Any person, firm, corporation, partnership or association, or their agent, who shall lay out any subdivision or part thereof as defined herein, either for himself or others.

Subdivision: The division of any parcel of land into three or more lots or parcels, including any remainder of the original parcel, with or without roads, and including reallotment and resubdivision.

Subdivision, Major: A subdivision not classified as a minor subdivision.

Subdivision, Minor: A subdivision containing three to ten lots or parcels, and not involving: 1) the creation of any new public road, 2) the dedication of lands or facilities to the public, 3) the extension of municipal facilities or other structural public improvements other than minor drainage facilities, or 4) the set-aside of open space through cluster development.

Town Board: The Town Board of the Town Of Shelby

Undeveloped Plat: A plat where 20 percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.

Zoning Law: Zoning Law of the Town of Shelby adopted by Local Law No. 4 of 2003, as subsequently amended.

Section 130. Sketch Plan Conference

All potential subdividers are encouraged to meet with the planning board prior to the submission of a formal application for a subdivision approval. Such a meeting may be used to expedite the review process by allowing the planning board and the applicant to be advised of the following:

1. The potential classification of the subdivision as minor or major
2. The requirements under the State Environmental Quality Review Act
3. The possible involvement of other government agencies in the review process
4. The determination of wetlands and floodplains
5. The need for referral to the county planning board pursuant to General Municipal Law Section 239-n

Section 135. Procedural Waiver

The Planning Board may waive the application and review procedure as provided for in this law if the Planning Board determines that:

1. The proposed subdivision does not involve the creation of more than four lots.
2. The applicant has provided evidence acceptable to the Planning Board that all proposed lots conform to the requirements of the Zoning Law. Such evidence may consist of proposed deeds, plot plans or surveys of the lands in the proposed subdivision, or of part of the lands in the proposed subdivision where such part provided the planning board with evidence sufficient to make a determination.
3. The proposed subdivision does not involve the creation of any new road or the extension of public water or sewer service.

4. The proposed subdivision has no negative environmental significance pursuant to 6 NYCRR Part 617. The applicant shall complete Part 1 of the Short Environmental Assessment Form to assist the Planning

Such waiver shall be in writing and shall document that the above criteria have been met.

Section 140. Subdivision Process

Proposed subdivisions shall be determined by the planning board to be either minor or major as defined in this law, and shall follow the procedures as summarized below:

Minor subdivision shall follow the procedures of Article 2 of this law, summarized as follows:

1. Submission of application for preliminary plat approval.
2. Planning board review
3. Public hearing
4. Planning board action on final plat
5. Filing of plat in office of county clerk by subdivider

Major subdivisions shall follow the procedures of Article 3 of this law, summarized as follows:

1. Submission of application for preliminary plat approval.
2. Planning Board review.
3. Public hearing
4. Planning board action on preliminary plat.
5. Submission of application for final plat approval.
6. Planning board review
7. Public hearing (optional).
8. Planning board action on final plat.
9. Filing of plat in office of county clerk by subdivider.

Section 141. Subdivision Process Not Applicable

The provisions of this local law shall not be applicable to the division of any parcel of land into less than three lots or parcels.

Section 145. Fees

Fees for subdivision reviews shall be established in the Town of Shelby Fee Schedule as adopted.

Section 150. Waiver of Required Improvements

Where the planning board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements subject to appropriate conditions, provided that such waiver will not have the effect of nullifying the intent and purpose of the zoning law. In granting waivers, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so waived.

Section 155. Separability

If any clause, sentence, subsection, section, or article of this law be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, section, or article thereof directly involved in the controversy in which said judgment shall have been rendered.

Section 160. Violations and Penalties

1. Any violation of this law is an offense punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$750 nor more than \$1000 or imprisonment for a period not to exceed six months or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
2. The town board may institute any appropriate action or proceedings to prevent unlawful division of land, to restrain, correct or abate any violation of this law, or to prevent the use or occupancy of said land; and upon the refusal of the town board to institute any such appropriate action or proceeding for a period of ten days after written request by a resident taxpayer of the town so to proceed, any three taxpayers of the town residing in the zoning district wherein the violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such town board is authorized to do.

Section 165. Effective Date

This law shall take effect upon filing in the Office of the Secretary of State and upon filing in the Office of the Town Clerk.

ARTICLE 2. MINOR SUBDIVISION REVIEW PROCEDURE

Section 205. Submission of Application

Applications and fees shall be submitted to the planning board at least ten days prior to the meeting at which it is to be considered. The application shall contain all items as required in Article 4 of this law.

Section 210. Acceptance of Completed Application – Official Submission Date

The application shall not be considered complete until 1) all information as required in Article 4 of this law is provided, and 2) either a negative declaration has been filed, or notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of 6 NYCRR Part 617. Upon acceptance of a completed application, the planning board shall establish the official submission date of the application.

Section 220. Referral to County Planning Board

The planning board shall refer all applications that fall within those areas specified under General Municipal Law Section 239-n to the county planning board. This shall include any use that falls within 500 feet of the following; the boundary of the town; a state or county park or recreation area; a state or county highway owned drainage channel; state or county land where a public building or institution is located; or a farm operation in an agricultural district. If the county planning board does not respond within 30 days from the time it received a full statement on the referral matter, then the planning board may act without such report.

Section 225. Area Variance

In order to expedite the review process, where the application shows lots which are not in compliance with the zoning law, the planning board may, at its discretion and upon agreement with the applicant stay the review process and refer the application to the zoning board of appeals for the consideration of an area variance review without the necessity of disapproving the application and requiring its resubmission.

Section 230. Public Hearing

Following the review of the application and supplementary material submitted in conformance with this law, and following negotiations with the subdivider on changes deemed advisable, the planning board shall hold a public hearing. This hearing shall be held within 62 days of the official submission date of the application. The subdivider shall attend the hearing. This hearing shall also fulfill the requirements of the State Environmental Quality Review Act for the draft environmental impact statement, where such hearing may be required. The hearing shall be advertised at least once in a newspaper of general circulation in the town at least five days before the hearing. The hearing shall be closed within 120 days after it has been opened.

Section 235. Action on Application

The planning board shall by resolution 1) grant final approval by the signature of the planning board chairman on the plat, 2) conditionally approve, with or without modifications (see Section 240 below), or 3) disapprove the application. Such action shall be taken within 62 days of the close of the public hearing. The time in which the planning board must take action may be extended by mutual consent of the subdivider and the planning board. A certified copy of any resolution granting conditional or final approval shall be filed with the board, with the town clerk and mailed to the applicant within five business days of the action. If disapproved, the grounds for disapproval shall be stated in the record of the planning board, including reference to the provisions violated by the application.

Section 240. Conditional Approval of Application

A statement of the requirements that shall accompany the application which, when completed, will authorize the signing of the conditionally approved plat shall be provided to the applicant. Conditional approval of an application shall expire 180 days after the date of the resolution granting conditional approval. The planning board may extend the expiration time, not to exceed two additional approval requirements as stated in the conditional approval resolution, the planning board chairman shall sign the plat, granting final approval.

Section 245. Filing of Plat

The subdivider shall file the plat, or section thereof, in the office of the county clerk within 62 days after the date of final approval; otherwise the plat shall be considered void and must again be submitted along with complete application and appropriate fees to the planning board for approval before filing in the office of the county clerk. When filing a plat which has been approved pursuant to the provisions of Article 8 (zoning modifications) of this law, a copy of the plat shall be filed with the town clerk who shall make appropriate notations and references thereto in the town zoning law or map.

Section 250. Modification of Designs After Approval

If at any time it is demonstrated that unforeseen conditions make it necessary to modify the location or design of improvements required by the planning board, the board may authorize such modifications, provided these modifications are within the spirit and intent of the board's approval and do not substantially alter the function of any such improvement required by the board. Any such authorization issued under this section shall be in writing and shall be entered into the record of the board.

ARTICLE 3. MAJOR SUBDIVISION PROCEDURE

Section 305. Preliminary Plat Procedure

The preliminary plat review procedure shall follow the steps outlined for minor subdivision approval as set forth in Sections 205 through 230 of this law, and shall then continue with the provisions of the Article as follows.

Section 310. Preliminary Action

Within 62 days of the close of the public hearing, the planning board shall approve, with or without modifications, or disapprove the preliminary application and state its reasons for disapproval. The time in which the planning board must take action may be extended by mutual consents of the subdivider and the planning board. Within five days of approval, the action of the planning board shall be noted on three copies of the preliminary plat and reference made to any modifications determined. One copy shall be returned to the subdivider and the other two copies retained by the planning board.

Section 315. Effect of Approval

Approval of a preliminary application shall not constitute approval of the final application, but shall be a guide to the preparation of the final plat. Before submission of the final plat or any portion thereof for formal approval, the subdivider shall comply with this law and all requirements set forth by the planning board in their review of the preliminary plat.

Section 320. Application – Final Plat

All major subdivisions shall require final application approval by the planning board. If the final application is not submitted for approval within six months of preliminary application approval, the planning board may revoke the preliminary application approval. The subdivider shall file an application with appropriate fees for final application approval, accompanied by documentation as specified in Article 4 of this law, with the planning board. Such application shall be submitted at least 10 days prior to the meeting at which it is to be considered by the planning board.

Section 325. Official Submission Date

The planning board shall establish an official submission date for the major subdivision final application. Such date shall be the date that the planning board determines the application to be complete, including all information required in Article 4 of this law.

Section 335. Public Hearing

A public hearing may be held by the planning board after a complete application is filed and prior to rendering a decision. This hearing shall be held within 62 days of

the official submission date of the application. The subdivider shall attend the hearing. The hearing shall be advertised at least once in a newspaper of general circulation in the Town at least five days before the hearing. The hearing shall be closed within 120 days after it has been opened. The public hearing may be waived by the planning board if the final application is in substantial agreement with the preliminary application. If the final application is not in substantial agreement with the approved preliminary application, then the public hearing shall be conducted.

Section 340. Guarantees for Required Improvements

In order that the town has the assurance that construction and installation of public improvements will be guaranteed, the applicant shall either; 1) construct all improvements as required by this law, and by the planning board, prior to final approval of the application, or 2) furnish guarantee as provided in Town Law Section 277 and Article 8 of this law.

Section 345. Action on Application

The planning board shall by resolution 1) grant final approval by the signature of the planning board chairman on the plat, 2) conditionally approve, with or without modifications (see Section 350 below), or 3) disapprove the application; within 62 days of the close of the public hearing. If the public hearing has been waived, the planning board shall act within 62 days of the final application official submission date. The time in which the planning board must take action may be extended by mutual consent of the subdivider and the planning board. A certified copy of any resolution granting conditional or final approval shall be filed with the board, with the town clerk, and mailed to the applicant within five business days of the action. If disapproved, the grounds for disapproval shall be stated in the record of the planning board, including reference to the provisions violated by the application. Within 30 days of final action on any matter referred to the county planning board pursuant to Section 220 of this law, the planning board shall file a report of the final action it has taken with the county planning board.

Section 350. Conditional Approval

A statement of the requirements that shall accompany the application which, when completed, will authorize the signing of the conditionally approved plat shall be provided to the applicant. Conditional approval of an application shall expire 180 days after the date of the resolution granting conditional approval. The planning board may extend the expiration time, not to exceed two additional periods of 90 days each. Upon planning board acceptance of the completion of the conditional approval requirements as stated in the conditional approval resolution, the planning board chairman shall sign the plat, granting final approval.

Section 355. Approval of Plats in Sections

Prior to granting conditional or final approval of a plat in final form, the planning board may permit the plat to be divided into two or more sections and may in its resolution granting conditional or final approval state such requirements as it deems

necessary to insure the orderly development of the plat be completed before such sections may be signed by the planning board chairman. Conditional or final approval of the sections of a final plat, subject to any conditions imposed by the planning board, may be granted concurrently with conditional or final approval of the entire plat. In the event the owner shall file only a section of such approved plat in the office of the county clerk, the entire approved plat shall be filed within 30 days of the filing of such section with the town clerk. Such section shall encompass at least ten percent of the total number of lots contained in the approved plat and the approval of the remaining sections of the approved plat shall expire unless said sections are filed in the office of the county clerk within three years of the filing of the first section with the county clerk.

Section 360. Filing of Plat

The subdivider shall file the plat, or section thereof, in the office of the county clerk within 62 days after the date of final approval; otherwise the plat shall be considered void and must again be submitted along with complete application and appropriate fees to the planning board for approval before filing in the office of the county clerk. When filing a plat which has been approved pursuant to the provisions of Article 7 (Cluster Development) of this law, a copy of the plat shall be filed with the town clerk who shall make appropriate notations and references thereto in the town zoning map.

Section 365. Modification of Designs After Approval

If at any time it is demonstrated that unforeseen conditions make it necessary to modify the location or design of improvements required by the planning board, the board may authorize such modifications, provided these modifications are within the spirit and intent of the board's approval and do not substantially alter the function of any such improvement required by the board. Any such authorization issued under this section shall be in writing and shall be entered into the record of the board.

Section 370. Public Acceptance of Improvements

The approval by the planning board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the town of any road, park, playground, recreation area, easement, public utility, or any other improvement. The plat shall be endorsed with appropriate notes to this effect. The planning board may also require the filing of a written agreement between the applicant and the town board covering future deed and title, dedication, and provision for the costs of developing and maintaining any such improvements.

ARTICLE 4. DOCUMENTS TO BE SUBMITTED

Section 400. General

Minor subdivisions must comply with sections 410 and 420 below.

Preliminary applications for major subdivisions must comply with sections 450 and 460 below.

Section 410. Application Requirements for All Subdivisions

All applications for minor subdivisions and preliminary plats for major subdivisions shall include the following:

1. 4 copies of the application form.
2. A nonrefundable application fee.
3. A copy of any covenants or deed restrictions which are intended to cover all or part of the tract.
4. 4 copies of the plat prepared at a scale of not more than 100 feet to the inch.
5. A statement of the nature and extent of the interest of any state employee, or officer or employee of the town in the applicant pursuant to General Municipal Law Section 809, when applicable.
6. An environmental assessment form (EAF) and, when applicable, a draft environmental impact statement (EIS) pursuant to 6 NYCRR Part 617.

Section 420. Minor Subdivision Plat Requirements

All minor subdivision plats shall be prepared and drawn in conformity with appendix A of this law and shall show:

1. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, the location and type of all monuments, and including elevation contours at USGS intervals, minimum, and referenced corners of the tract; and shall be made and certified to by a licensed land surveyor.
2. The proposed pattern of parcels and lots; including parcel and lot widths, depths, and areas within the subdivided area. Calculations of lot area shall exclude public road areas.
3. The locations of all zoning front, side and rear yard lines; zoning district lines and the names of all applicable zones; floodplains; wetlands; and easements.
4. The words "final plat."
5. Any other specifications required by the planning board.

Section 430. Preliminary Plat – Major Subdivision Application Requirements

Preliminary plat applications for major subdivisions shall contain the following:

1. All items specified in Section 410 above.
2. If the application is for a subdivision in sections, covering only a part of the subdivider's entire holding, a map of the entire subdivision, drawn at scale of not less than 300 feet to the inch showing an outline of the platted area with its proposed roads and indication of the probable future road system with its grades and drainage in the remaining portion of the subdivision and the probable future drainage layout of the entire subdivision shall be submitted. The section submitted shall be considered in the context of the entire subdivision.

Section 440. Preliminary Plat – Major Subdivision Plat Requirements

The preliminary plat for major subdivisions shall be prepared and drawn in conformity with Appendix A of this law and shall show:

1. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, the location and type of all monuments, and referenced corners of the tract; and shall be made and certified to be a licensed land surveyor.
2. The proposed pattern of parcels and lots; including parcel and lot widths, depths, and areas within the subdivided area.
3. The locations of all zoning front, side and rear yard lines, zoning district lines and the names of all applicable zones.
4. The parcels of land proposed to be dedicated to public use and the conditions of such dedication.
5. The location of existing property lines, easements, buildings, water courses, wetlands, rock outcrops, wooded areas, floodplains, and other significant existing features for the proposed subdivision and adjacent property.
6. The location of existing wells, on-site sewage disposal systems, sewers, water mains, culverts and drains on the property, with pipe sizes, grades and direction of flow.
7. Contours with intervals of five feet or less, or as required by the planning board, including elevations on existing roads; and a grading plan, where natural contours are to be changed more than 2 feet.

8. The width and location of any roads or public ways or places shown on the comprehensive plan, within the area to be subdivided, and the width, location, grades and road profiles of all roads or public ways proposed by the developer.
9. The approximate location and size of all proposed water lines, valves, hydrants and sewer lines, and fire alarm boxes; and connection to existing lines or alternate means of water supply or sewage disposal and treatment as provided in the Public Health Law; and profiles of all proposed water and sewer lines.
10. A storm drainage plan indicating the approximate location and size of proposed lines and their profiles; and connection to existing lines or alternate means of disposal.
11. Plans and cross-sections of the proposed location and type of sidewalks, road lighting standards, road trees, curbs, water mains, sanitary sewers and storms drains, and the size and type thereof, the character, width and depth of pavements and sub-base, the location of manholes, basins and underground conduits.
12. Preliminary designs of any bridges or culverts which may be required.
13. The words "preliminary plat."
14. Any other specifications required by the planning board.

Section 450. Final Plat – Major Subdivision Application Requirements

Final plat applications for major subdivisions shall contain the following:

1. 5 copies of the application form.
2. A nonrefundable application fee.
3. Copies of agreements or other documents showing the manner in which public open space areas are to be maintained and the provisions made therefore.
4. Offers of cession and covenants governing the maintenance of unceded open space, bearing the certificate of approval of the town attorney as to their legal sufficiency.
5. A map indicating the location of monuments marking all underground utilities as actually installed.
6. 10 copies of the plat prepared at a scale of not more than 100 feet to the inch.

Section 460. Final Plat – Major Subdivision Plat Requirements

The final plat shall be prepared and drawn in conformity with Appendix A of this law and show:

1. Sufficient data from an actual field survey to determine readily the location, bearing and length of every road line, lot line, boundary line, and to reproduce such lines upon the ground.
2. The length and bearing of all straight lines; the radii, length, central angles and cord bearings for road curves; the dimensions and angles of the lines of each lot; and all dimensions in feet and decimals of a foot.
3. Road lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.
4. The locations of all zoning front, side and rear yard lines; zoning district lines and the names of all applicable zones; floodplains; wetlands; and easements.
5. Public open spaces for which deeds are included, and those spaces title to which is reserved by the developer.
6. Lots and blocks numbered and lettered in accordance with the prevailing town practice.
7. Permanent reference monuments.
8. The words "final plat."
9. Any other specifications required by the planning board.

Section 470. Waiver of Submission Requirements

The planning board may waive any of the submission requirements above where it deems that the information is either not applicable or necessary for a particular review.

ARTICLE 5. GENERAL DESIGN STANDARDS

Section 505. General

Land to be subdivided shall be of such character that it can be used safely for development without danger to public health or safety; the subdivision plan shall be in harmony with the comprehensive plan for the community; and all required improvements shall be constructed and installed in conformance with town specifications.

Section 510. Future Resubdivision

Where land is subdivided into lots substantially larger than the minimum size required in the zoning district in which the subdivision is located, the lots and roads shall be laid out so as to permit future resubdivision in accordance with the requirements contained in this law.

Section 515. Approval of Substandard Parcels

All parcels shall comply with the provisions of the zoning law, except that the planning board may, in unique circumstances, approve parcels which are substandard in terms of size or dimension in the following circumstances:

1. for road or access rights-of-ways,
2. where the parcel is intended to be used permanently for nonstructural recreational purposes,
3. where land is intended to be conveyed to an adjacent landowner for purposes of combination with an adjacent parcel.
4. where land is intended to be left permanently undeveloped, or
5. where land is to be used for essential facilities as defined by the zoning law.

Section 520. Lot Arrangement

1. The lot arrangement shall be such that in constructing a building in compliance with the zoning law there will be no foreseeable difficulties for reasons of topography or other natural conditions, and each lot shall have a buildable area, free from development restrictions such as wetlands, floodplains, steep slopes, rock outcrops or unbuildable soils.
2. All lot dimensions and areas shall conform to the requirements of the zoning law, except where such requirements have been modified pursuant to Article 8 (Cluster Development) of this law.
3. Lots fronting on two roads, other than corner lots, shall be avoided.

4. Corner lots shall have sufficient width to allow appropriate building setbacks from, and orientation to, all abutting roads.
5. Extremely elongated lots having a depth to width ratio greater than 5:1 shall be avoided.
6. Side lot lines shall be approximately at right angles to straight roads or radial to curved roads. Lot lines shall generally not joint at less than a 75 degree angle or greater than 105 degree angle. Lot lines shall be straight on large lots, except where the topography of the site would make this impractical.
7. Where a community sewage disposal system is not required, each lot shall have sufficient area so as to make adequate provision for such on-site disposal systems as are required by the New York State and County Health Department.

Section 525. Lot Access

1. Each lot shall directly abut a public or approved road meeting the requirements of this law, as required by Town Law Section 280-a. this abutment shall include at least 15 feet of road frontage suitable for access by emergency vehicles. Easements may be considered for access.
2. All lots shall be designed so as to allow for safe access.
3. All lots shall be designed so as to allow for safe access.
4. Where lots shall be designed so as to allow for the construction of driveways within the road right-of-way not exceeding a 10 percent grade.
5. At least one 50 foot right-of-way shall be reserved at a location suitable to the planning board, allowing access to land behind road frontage lots.
6. Reserve strips of land which might be used to control access from the proposed subdivision to any neighboring property, or to any land within the subdivision itself shall be prohibited.

Section 530. Monuments

Permanent monuments shall be set at the subdivision boundaries at all corners, and at such other points as required by the planning board. Such monuments shall be of either iron rods or pipes, or concrete.

Section 535. Water Supply and Sewage Disposal

All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the New York State and County Health Department.

Section 540. Preservation of Natural Features

Top soil moved during the course of construction shall be replaced so as to cover all areas of the subdivision and shall be stabilized by seeding and plantings. Existing vegetation should be conserved by the subdivider where possible. Care shall be exercised in construction so as to avoid damage to existing trees and shrubs. Streams, lakes, ponds and wetlands shall be left unaltered unless such alteration would serve to enhance the utility and quality of the subdivision. Easements along water courses as a part of a comprehensive recreational and open space plan for the development are encouraged. Unique physical, historical, and cultural sites which add value to the community, such as large trees or groves, water courses and falls, historic spots, vistas and similar irreplaceable assets shall be preserved where possible.

Section 550. Storm Water Management

No storm water shall be caused to be discharged upon neighboring properties, across public sidewalks or into public streets. Surface water drainage facilities shall be designed to handle all on-site runoff (ten-year storm frequency as the minimum design criteria), and the discharge into public storm sewers shall be at a rate which can be adequately handled by existing storm sewers and drainageways. Where storm sewers do not exist, the planning board may approve alternative means of discharging storm water upon approval of a storm water management plan, where such alternative adequately protects the public health, safety and welfare.

Section 555. Development in Floodplains

All subdivisions shall comply with the provisions of the Town of Shelby Flood Damage Prevention Law, Local Law No. 1 of 1982, as subsequently amended.

Section 560. Steep Slopes

Development of steep slope sites of over 15% grade will be conditionally accepted only if there is no prudent or feasible alternative site, erosion and sedimentation control measures are incorporated in the design, construction, and operation of the development according to standards set by the U.S. Natural Resource Conservation Service.

Section 565. Protection of Agricultural infrastructure and Significant Agricultural Lands

The subdivision shall be designed to maintain the viability of neighboring agricultural land and protect significant agricultural lands by minimizing adverse impacts on the following features:

- Agricultural land remaining from the subdivision
- Prime and unique agricultural soils
- Adjoining or nearby agricultural land and operations
- Existing natural buffers
- Agricultural infrastructure including but not limited to surface and subsurface agricultural drainage systems, farm equipment access points, and equipment lanes.

ARTICLE 6. ROAD STANDARDS

Section 605. General

The road plan of a proposed subdivision shall bear a logical relationship to the topography of the property, and all roads shall be arranged so as to obtain as many of the building sites as possible at or above the grade of the roads. Road grades shall conform as closely as possible to the original topography, and shall not be greater than ten percent. No grade shall be more than three percent within 50 feet of any intersection. All changes in grade shall be connected by vertical curves of length and radius such that clear visibility shall be provided for a safe distance. A combination of steep grades and curves shall be avoided.

Section 620. Road Connections to Adjacent Properties

The arrangement of roads shall provide for the continuation of principal roads adjoining subdivisions, and for the proper projection of principal roads into adjoining properties which are not yet subdivided, in order to make possible necessary fire protection, movement of traffic and the construction or extension, presently or when later required, of needed utilities and public services such as sewers, water and drainage facilities. Stub roads providing access to parcels adjacent to the subdivision may be required. Turnarounds may not be required for stub roads which do not provide access to dwellings within the subdivision.

Section 625. Dead-end Roads

1. The creation of dead-end roads may be allowed whenever such type of development will not interfere with normal traffic circulation in the area.
2. A 20 foot wide easement may be required to provide for the continuation of pedestrian traffic and utilities to the next road or public property.
3. Roads designed to be permanently dead-ended shall not generally exceed 800 feet in length or 20 dwelling units. Such roads shall be terminated in a circular turn-around having a minimum right-of-way radius of 75 feet and pavement radius of 50 feet.
4. Roads designed to be dead-ended shall have a "No Outlet" or "Dead End" sign at the entrance.

Section 630. Intersections

1. In general, all roads shall join each other so that for a distance of at least 100 feet the road is approximately at right angles to the road that it joins. Roads shall not intersect at angles of less than 60 degrees.
2. Intersections of minor roads with collector or major roads shall, in general, be at least 500 feet apart.
3. Road jogs with centerline offsets of less than 125 feet shall be avoided.
4. All road rights-of-way at intersections shall be rounded by curves of at least 20 feet radius and curbs shall be adjusted accordingly.
5. All corner lots shall be cleared of all growth and other obstructions, except for isolated trees, a level of three feet or higher above the centerline of the road, so as to achieve safe visibility for traffic entering the intersection.
6. No intersection of more than two roads is allowed.

Section 635. Curve Radii

In general, road lines shall be connected with a curve, the radius of which for the centerline of road shall not be less than 200 feet on collector roads, and 100 feet on minor roads.

Section 640. Partial Roads

Partial roads of less than full width are prohibited

Section 645. Road Names

All roads shall be named and the names placed on the plat. Road names shall not be numbers or letters. Road names shall be selected so as not to be confused in sound or spelling with existing or platted road names. Roads that join or align with roads of an abutting or neighboring property shall bear the same name. Signs bearing road names shall be erected by the subdivider at all intersections.

Section 650. Treatment Along Major Highways

In order to minimize driveway entrances onto major highways, the planning board may require marginal access roads parallel to major highways, or reverse frontage lots. Marginal access roads shall be separated from major highways by a distance which allows for an appropriate use of the intervening land. Where reverse frontage lots are required, an access control easement of up to ten feet in width may be required along major highways, sufficient to prohibit access to the highway from rear yards.

Section 655. Underground Utilities

Underground utilities shall be placed, wherever possible, in the road right-of-way between the paved roadway and the road line to simplify location and repair of utilities. Underground service connections shall be installed to the lot line of each lot for all required utilities prior to road pavement. Where topography is such as to make impractical the inclusion of underground utilities within the road right-of-way, perpetual unobstructed easements at least 25 feet wide shall be provided with satisfactory access to the road. Such easements shall be cleared and graded where required.

Section 660. Private Roads

1. Private roads shall meet all of the standards for public roads if they are intended to serve five or more residential lots.
2. Road Maintenance Agreement (RMA) for Private Roads. As a condition to the approval of a private road, the Planning Board may require the applicant to submit to the Planning Board and designated Planning Board Attorney for their approval, a Road Maintenance Agreement. Such Agreement shall provide for the sharing of the obligation and cost of the repair and maintenance of the proposed road to be executed by the owners of allots or parcels to which access is obtained by use of said road. Said agreement shall run with the land and be binding on the owners, their successors, distributes and assigns. The Road Maintenance Agreement shall be recorded in the Office of the County Clerk simultaneously with the filing of the approved subdivision Plat. A maintenance bond or fund may be required as per Article V, Section 4.

ARTICLE 7. CLUSTER DEVELOPMENT

Section 710. Authority

The planning board is authorized and empowered pursuant to Section 278 of the Town Law to modify certain provisions of the zoning law as allowed by this Article, simultaneously with the approval of any subdivision application within the town.

Section 720. Applicable Provisions

The planning board may consider, or require, applications for major subdivisions which include the following deviations from the zoning law for any one of the following purposes:

1. to eliminate side and rear yard requirements to allow for innovative attached housing types;

2. to reduce side and rear yard requirements for existing structures on the site of a plat where, in unique and special circumstances, it will result in the more efficient use of land;
3. to reduce road frontages to allow cul-de-sacs;
4. to reduce lot areas, widths, depths, yard sizes, lot coverage, and road frontages to accomplish cluster development.

Section 730. General Criteria for Cluster Development

The planning board may allow, or require, cluster development when the proposed development;

1. will be in harmony with the general purpose, goals, objectives, and standards of the comprehensive plan and this law;
2. complies with all applicable provisions of the zoning law, except as modified pursuant to the authority of this law;
3. will not have substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety, and general welfare;
4. will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property;
5. will be served adequately by essential public facilities and services such as roads, parking spaces, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; and
6. will not result in the destruction, loss, or damage of any natural, scenic, or historic feature of significant importance.

Section 740. Required Clustering

Cluster development may be required by the planning board to meet any one of the following objectives;

1. The clustering of development will reserve open space, recreational areas, large groves of trees, water courses and falls, beaches, historic spots, vistas and other similar assets, in furtherance of the comprehensive plan for the community;
2. The clustering of development will aid in the provision of road right-of-ways or for the protection of future road right-of-ways in furtherance of the comprehensive plan for the community
3. The clustering of development will provide for the more economical and efficient provision of municipal utilities and road services.

Section 750. Determination of Overall Development Density

Cluster development subdivision applications shall include the submission of a sketch plat showing a convention, unclustered subdivision which complies with all provisions of the zoning district in which it is located. The purpose of this sketch plat shall be to aid the planning board in determining the maximum number of dwelling units permissible, the overall development density, on the parcel under the zoning law. All lots on the sketch plat shall be buildable lots. The planning board shall make a determination of the maximum permissible number of dwelling units permissible on the parcel prior to the acceptance of an application for a cluster development subdivision.

Section 760. Approval of Cluster Open Space

The area, configuration, location, ownership, use and maintenance of residual open spaces created by clustering shall be subject to review and approval of the planning board.

Section 770. Use of Cluster Open Space

Cluster open space may be made accessible to all residents of the subdivision or available for the use of the general public unless the planning board finds that the size, location, type of development, or cost of development or maintenance of such cluster open space, or the availability of public open space, would make public use undesirable or unnecessary.

Section 780. Undedicated Cluster Open Space

If cluster open space is not dedicated to public use, it shall be protected by legal arrangements, satisfactory to the planning board, sufficient to assure its maintenance and preservation for whatever purpose it is intended. Covenants or other legal arrangements shall specify ownership of the cluster open space; method of maintenance; responsibility for maintenance; maintenance taxes and insurance; compulsory membership and compulsory assessment provisions; guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the planning board; and any other specifications deemed necessary by the planning board.

ARTICLE 8. FINANCIAL GUARANTEES FOR PUBLIC IMPROVEMENTS

Section 805. Required Public Improvements

All public improvements required pursuant to this law shall be constructed and completed to the standards required by state and local laws, rules and regulations. Applicants for sub division plats shall provide the town with acceptable financial

security in an amount sufficient to guarantee the installation of basic public improvements. Such public improvements may include public water supply, sewage disposal systems, storm drains and sewers, roads, pavement markings and traffic signs and signals, sidewalks, and other public required improvements.

Section 810. Time Limit on Installation of Improvements

The construction or installation of any improvements or facilities, other than roads, for which a financial guarantee has been made pursuant to this article shall be completed within one year from the date of the approval of the subdivision plat. At the end of such time, if the required public improvements are not completed and accepted by the town, the town may use as much of the financial security required by this article to construct and install, maintain, or perfect the improvements as necessary to meet all applicable state and local laws, ordinances, rules, and regulations.

Section 815. Extension of Time Limit

The Applicant may request an extension of time to perform required public improvements provided reasonable cause can be shown for the inability to construct and install said improvements within the required time. Such extension of time shall not exceed six months.

Section 820. Inspections of Improvements

At least five days prior to commencing construction of required public improvements the applicant shall pay to the town clerk the inspection fee required by the municipality and shall notify the town board or an official designated by the town board in writing of the time when the construction of such improvements will be commenced so that the town board may cause inspections to be made to assure that all applicable specifications and requirements shall be met in the construction of such improvements, and to assure the satisfactory completion of public improvements required by the planning board.

Section 825. Financial Security Options

Acceptable financial security shall be provided to the town in the form of a bond executed by a surety company, a certified check, or an irrevocable letter of credit drawn in favor of the town. Any such financial security shall be presented to the town clerk in an amount equal to the cost of construction of the public improvements required by the planning board pursuant to this law.

Section 830. Review of Proposed Financial Security

All required public improvements shall be shown on subdivision plats and the total amount of the required financial security shall be based thereon. Such estimates shall be certified by a licensed professional engineer, and shall be reviewed by the town board for financial adequacy as a guarantee of construction and of reasonable performance during a warranty period. The town board and the town attorney shall

jointly review the guarantee agreement for sufficiency of form and execution and for the soundness of the financial guarantee offered by the applicant.

Section 835. Schedule of Improvements

When a guarantee agreement has been approved by the town board and the required surety bond, certified check, or letter of credit has been received by the town clerk, the town and the applicant shall enter into a written agreement itemizing the required public improvements, establishing a schedule for the construction and installation of such improvement, and itemizing the cost of construction and installation for each improvement. Whenever feasible, costs shall be organized by logical phases of work completion in order to facilitate the partial release of funds held as a financial guarantee by the municipality to the applicant as work is satisfactorily completed.

Section 840. Staged Refunding of Financial Guarantees

As such times as the applicant wishes to have guarantee funds released in consideration of work performed and accepted, the applicant shall cause to be prepared an accurate statement of the work performed and accepted as of a date certain. This statement shall use the same item structure as was employed in the written agreement itemizing the required public improvements. The applicant, after preparing such statement, shall submit it for review, approval, and signature by an engineer acting on behalf of the town, by the appropriate municipal inspectors, and by the town fiscal officer. If the statement is approved by the town fiscal officer, the statement shall be forwarded promptly to the town clerk, together with a recommendation that the amount approved on said statement be released from the financial guarantee provided by the applicant. Where the financial guarantee provided by the applicant makes staged refunding possible, the town clerk will then direct in writing to the surety company of financial institution having custody of the guarantee funds to release the approved amount of those funds to the applicant.

Section 845. Acceptance of Required Public Improvements

When the project inspector, following final inspection of the project, certified to the planning board and the town board that all required public improvements have been completed in accordance with all applicable requirements, the town board may act by resolution to accept the public improvements.

Section 850. Maintenance Guarantee Required

Upon acceptance of the required public improvements, a maintenance guarantee shall be established. All such guarantees shall be for ten percent of the financial guarantee originally required of the applicant. The applicant may provide a maintenance guarantee by one of the methods provided for in Section 825 above, but no maintenance bond shall be for less than \$5000 face value. All maintenance guarantees required by this section shall commence immediately upon acceptance of the required public improvements by the municipality and shall extend for two years therefrom or for two years from the June first next succeeding the acceptance of the required public improvements, whichever period is longer.

Section 855.

- A.) If any part or section of this Local Law shall be held to be invalid, the remaining provisions thereof shall not fail but remain in full force and effect.
- B.) All local laws, ordinances, rules or regulations, or parts or portions thereof that conflict or are contrary to any provisions of this local law are hereby repealed.

Chapter 182

ZONING

GENERAL REFERENCES

Unsafe buildings — See Ch. 61.

Land separation — See Ch. 117.

Uniform construction codes — See Ch. 68.

Noise — See Ch. 126.

Dumps and dumping — See Ch. 75.

Subdivision of land — See Ch. 152.

Flood damage prevention — See Ch. 89.

ARTICLE I
General Provisions

§ 182-1. Enactment.

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Stafford hereby adopts and enacts as follows.

§ 182-2. Title.

This chapter shall be known as the "Zoning Law of the Town of Stafford."

§ 182-3. Purpose.

This chapter is adopted for the protection and promotion of the public health, safety, morals and general welfare of the community, as follows:

- A. To guide the future growth and development of the Town in accordance with a comprehensive land use and population density that represents the most beneficial and convenient relationships among the residential, nonresidential and public areas within the Town, considering the suitability of each area for such uses, as indicated by existing conditions, trends in population and mode of living, and having regard for the use of land, building development and economic activity, considering such conditions and trends both within the Town and with respect to the relation of the Town to areas outside thereof.
- B. To provide adequate light, air and privacy; to promote safety from fire, flood and other danger, and to prevent overcrowding of the land and undue congestion of the population.
- C. To protect and conserve the value of the land throughout the Town and the value of buildings appropriate to the various districts established by this chapter.
- D. To protect the character and the social and economic stability of all parts of the Town, and to encourage the orderly and beneficial development of all parts of the Town.
- E. To bring about conformity of the uses of land and buildings through the comprehensive zoning plan set forth in this chapter, and to minimize the conflicts among the uses of land and buildings.
- F. To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard to the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian traffic movement appropriate to the various uses of land and buildings throughout the Town.

- G. To provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the Town.
- H. To prevent over development which exceeds the availability and capacity of public facilities and services.
- I. To prevent the pollution of streams and ponds, to safeguard the water table, and to encourage the wise use and sound management of the natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.

§ 182-4. Applicability.

- A. No building or land shall hereafter be used or occupied, and no building or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located, and no building shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building is located, and what is specified within this chapter as to dimensional and similar area requirements is further limited and qualified by any restrictions imposed by any applicable additional requirements, standards, and/or regulations contained in this chapter. No building, structure, or premises shall be used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind, that is noxious by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the health or safety of the community. **[Amended 9-14-2015 by L.L. No. 1-2015]**
- B. In interpreting and applying this chapter, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public safety, health, morals and general welfare. This chapter shall not be deemed to affect in any manner whatsoever any easements, covenants or other agreements between parties; however, where this chapter imposes greater restrictions than are imposed by other ordinances, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, then the provisions of this chapter shall prevail.
- C. Any use not specifically set forth as a permitted use (as of right, accessory, or upon special permit, as the context may admit) in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. Without limiting the generality of

the foregoing, for purposes of clarity certain uses are explicitly prohibited in each and every zoning district as more fully set forth in § 182-17.1A hereof. **[Amended 9-14-2015 by L.L. No. 1-2015]**

- D. Nothing herein contained shall require any change in plans or construction of a building for which a zoning permit has been issued.
- E. All buildings under construction at the time this chapter is adopted shall conform to the Zoning Ordinance in effect at the time construction was commenced.

§ 182-5. Definitions; word usage.

- A. Except where specifically defined or otherwise specifically provided herein, all words used in this chapter shall carry their customary dictionary meanings. For purposes hereof, certain terms and words shall be interpreted as follows: words used in the present tense shall include the future; the plural usage includes the singular, and the singular the plural; the word "shall" is mandatory; the word "may" is permissive; the word "building" includes the word "structure," and both "building" and "structure" include any part thereof; the word "lot" includes the words "plot" and "parcel"; and the words "occupied" and "used" shall be interpreted as though followed by the words "or intended, arranged, or designed to be used or occupied." Where the precise meaning of a word is in doubt by any board or official, the Zoning Board of Appeals shall make a determination in accordance with the purpose and intent of this chapter and the Comprehensive Plan. **[Amended 9-14-2015 by L.L. No. 1-2015]**

- B. For purposes of this chapter, unless otherwise specifically provided, the following terms and words shall have the meanings set forth below: **[Amended 9-14-2015 by L.L. No. 1-2015]**

ACCESSORY USE — Use of buildings customarily incidental and subordinate to principal use or buildings, and located on the same lot. Under no circumstances shall any explicitly prohibited use qualify as an accessory use. **[Amended 9-14-2015 by L.L. No. 1-2015]**

ADMINISTRATIVE OFFICE — An establishment primarily engaged in overall management and general supervisory functions, such as executive, personnel, finance, legal, and sales activities, performed in a single location or building for other branches or divisions of the same company or organization.

ADULT CARE — The provision of temporary or long-term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29 and 31 of the Mental Hygiene Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

ADULT CARE FACILITY — A facility other than a family-type home, which provides adult care. For the purposes of this chapter, an adult care facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult care facility as defined by NYS Department of Social Services Chapter II, Subchapter D, Part 485.

ADULT USES — See § 182-34.

AGRICULTURAL ACCESSORY USE — Any activity connected with the raising of crops, livestock or production of livestock products, including but not limited to field crops, fruits, vegetables, horticultural specialties, livestock and livestock products, furs, maple sap, Christmas trees, aquaculture products and woody biomass. This shall encompass any activity or use now permitted by law, engaged in by or on behalf of a farmer in connection with farming, including, but not limited to, housing for farm workers; stables and other tourist activities; the collection, transportation, distribution and storage of animal and poultry waste; storage, transportation and use of equipment for tillage, planting, harvesting and marketing; transportation, storage and use of fertilizers and limes, and legally permitted insecticides, herbicides, and fungicides; construction of farm structures and facilities, including farm wineries and other on-farm food processing; construction and maintenance of fences and other enclosures; and the use and/or maintenance of related pastures, idle or fallow land, woodland, wetland, farm ponds, farm roads and certain farm buildings and other structures related to the agriculture practices. Agricultural accessory uses shall also include the processing and wholesale and retail marketing, including U-pick sales, of the agricultural output of the farm and related products that contribute to farm income, including the sale at the owner's farm stand of agricultural products so long as a substantial portion of the annual gross sales of the farm stand have been grown on said farm. Under no circumstances shall any explicitly prohibited use qualify as an agricultural accessory use. **[Amended 9-14-2015 by L.L. No. 1-2015]**

AGRICULTURAL BASED BUSINESS — A business which primarily serves agricultural uses (i.e., farm operations), including services such as those that sell and/or apply herbicides, pesticides or fertilizer, dry and/or store grains, sell seeds, etc.

AGRICULTURAL USE — Any parcel of land containing at least five acres used for the raising of food products or other useful or valuable growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other sound agricultural practice as defined in this section, where the same is carried on as a business or otherwise for profit. Such uses shall include the establishment of necessary farm structures within the prescribed limits and the storage of equipment used in connection therewith. Agricultural uses shall exclude riding academies or dog kennels.

ALTERATION — Structural changes, rearrangements, change of location, or addition to a building, other than repairs and modification in building equipment.

ANIMAL SHELTER — A kennel (including private ones, see definition of "kennel"), stable, veterinary hospital or service facility, and similar uses oriented to the care or harboring of animals, whether commercial or nonprofit (not including agricultural uses such as dairy farms, beef cattle, etc., see also "stabling of farm animals").

ANIMAL WASTE STORAGE FACILITY — Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

ANTENNA — An arrangement of wires or metal rods used in transmitting or receiving electromagnetic waves.

AWNING — An overhead structure attached to a building wall and that consists of fabric or other material covering a frame extending at least 12 inches from the face of a building.

BED-AND-BREAKFAST — An owner-occupied dwelling in which a room or rooms are rented on a nightly basis for periods of less than two weeks. Meals may or may not be provided.

BELOW-REGULATORY CONCERN — Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR 20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town. **[Added 9-14-2015 by L.L. No. 1-2015]**

BOARDING HOUSE — Owner-occupied dwelling wherein more than two people are sheltered for profit for periods of more than two weeks in any consecutive six-month period.

BUILDING — Any structure having a roof supported by columns or by walls, and intended for the shelter, housing or enclosure of persons, animals, machinery, equipment or other material.

BUILDING ACCESSORY — A subordinate building on the lot and used for purposes customarily accessory to that of the principal building.

BUILDING FACE or BUILDING FRONT — The outer surface of a building, including the outer and inner surface of windows thereon, visible from any private or public street or highway.

BUILDING, FRONT LINE OF — The line of that face of the building nearest the street line, or if there are street lines on two or more sides of the building, it is the line of that face of the building frontage on that street line where the principal entrance is located. This face includes covered porches, whether enclosed or unenclosed, but does not include steps.

BUILDING, HEIGHT OF — The vertical distances measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof.

BUILDING, TEMPORARY — A temporary building or temporary structure is one erected, constructed or placed upon the premises, to exist there for a brief or temporary duration of time, not exceeding nine months. All other buildings or structures shall be deemed and considered as permanent for the purposes of this chapter.

CAMP — Land on which is located one or more cabins, trailers, shelters, houseboats, recreational vehicles, or other accommodation for seasonal or temporary living purposes, excluding manufactured or mobile homes.

CARPORT — A roofed structure providing space for the parking of motor vehicles and enclosed on not more than three sides.

CAR WASH — Any building or premises or portions thereof used for washing motor vehicles.

CERTIFICATE OF COMPLIANCE — A certificate issued by the Zoning Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building or land. Said certificate shall acknowledge compliance with all the requirements of this chapter only and such adjustment thereto granted by the Board of Appeals or Planning Board.

CHILD DAY CARE —

- (1) Care for a child on a regular basis provided away from the child's residence for less than 24 hours per day by someone other than the parent, step-parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child, as defined by NYS Department of Social Services Chapter II, Subchapter C, Part 413.
- (2) Child day care does not refer to care provided in:
 - (a) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code.
 - (b) A program for school age children operated solely for the purpose of religious education, sports, classes, lessons or recreation.
 - (c) A facility providing day service under an operating certificate issued by the Department.
 - (d) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities.
 - (e) A kindergarten, prekindergarten or nursery school for children three years of age or older, or a program for school-age

children three years of age or older, or a program for school-age children conducted during nonschool hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, prekindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

CHILD DAY-CARE CENTER — A program or facility in which child day care is provided on a regular basis to more than six children for more than three hours per day per child for compensation or otherwise, as defined by NYS Department of Social Services Chapter II, Subchapter C, Part 413, except those programs operating as a group family day-care home, a family day-care home or school-age child care program, as defined in this section.

CLUB — A building or use for an organization established pursuant to the New York State Not-For-Profit Law for a social, educational or recreational purpose, catering exclusively to members and their guests, whose activities are not conducted primarily for profit and are not conducted in conjunction with a public tavern, cafe or other place of business.

COMMERCIAL COMMUNICATION TOWER — A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizens' bands, amateur radio and other similar communications.

COMMERCIAL EXCAVATION — Notwithstanding any provision hereof to the contrary, for purposes of this chapter in no event shall the term "commercial excavation," or any variation thereof, be construed to mean, be, include, or authorize within the Town any natural gas and/or petroleum extraction activities or any other explicitly prohibited use. **[Added 9-14-2015 by L.L. No. 1-2015]**

COMMUNITY CENTER — Meeting hall, place of assembly, museum, art gallery, library, not operated primarily for profit.

COMMUNITY RESIDENCE — A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than 14 individuals and provides client supervision on a twenty-four-hour basis. For purposes of this chapter, an approved community residence as defined herein is considered a one-family dwelling.

COMPREHENSIVE PLAN — Any document, styled Comprehensive or Master Plan or otherwise, adopted by the Town Board for the protection, enhancement, growth, and development of the Town,

immediate as well as long-range, specifically pursuant to § 272-a of the New York State Town Law, together with all other materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material, adopted by the Town Board, that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the protection, enhancement, growth and development of the Town. **[Added 9-14-2015 by L.L. No. 1-2015]**

CONTRACTOR'S YARD — Parking or storage of two or more pieces of contractor's equipment (i.e., back hoe, bulldozer, compressors, commercial trucks, etc.) or bulk storage of construction material on a lot, for other than on site or personal use.

CONVALESCENT HOME or EXTENDED CARE FACILITY — See "hospital."

COVERAGE — That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

DAY-CARE CENTER (FACILITY) — A place, person, association, corporation, institution or agency which provides day care as defined by NYS Department of Social Services Chapter II, Subchapter C, Part 413, in which parents, guardians or others responsible for care place children, excluding family day-care homes and group family day-care homes as defined herein. The name, description or form of the entity which operates a day-care center shall not affect its status as a day-care center.

DISPOSAL TRANSFER STATION — A solid waste management facility, other than a recyclables handling and recovery facility exclusively handling nonputrescible recyclables, that can have a combination of structures, machinery or devices where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility. Notwithstanding any provision hereof to the contrary, for purposes of this chapter in no event shall the term "disposal transfer station" or any variation thereof contained in this chapter, be construed to mean, be, include, or authorize within the Town a land application facility, a natural gas and/or petroleum exploration, extraction or production wastes disposal/storage facility, a natural gas and/or petroleum extraction, exploration or production wastes dump, or any other explicitly prohibited use. **[Amended 9-14-2015 by L.L. No. 1-2015]**

DISTRIBUTION CENTER — An enclosed establishment engaged in the receipt, storage, and distribution of goods, products, cargo, and materials, including transshipment by boat, rail, air or motor vehicle.

DRIVE-IN SERVICE — Building or use where a product is sold to or a service performed for customers while they are in or near their motor vehicle.

DUMP and DUMPING — Notwithstanding any provision hereof to the contrary, for purposes of this chapter in no event shall the term "dump,"

"dumping," or any variation thereof contained in this chapter, be construed to mean, be, include, or authorize within the Town a land application facility, a natural gas and/or petroleum exploration, extraction or production wastes disposal/storage facility, a natural gas and/or petroleum extraction, exploration or production wastes dump, or any other explicitly prohibited use. **[Added 9-14-2015 by L.L. No. 1-2015]**

DWELLING — A detached building designed or used exclusively as living quarters for one or more families; the term shall not be deemed to include an automobile court, recreational vehicle, motel, boarding or rooming house, tourist home, or tent. For the purposes set forth in this chapter, a mobile home shall be considered a dwelling or dwelling unit only if it is located in the Town of Stafford in those situations permitted under Article V of this chapter.

DWELLING UNIT — A building, or portion thereof, providing complete housekeeping facilities for one family.

DWELLING UNIT, EFFICIENCY — A dwelling unit consisting of not more than one habitable room (as defined in NYS Uniform Code) together with kitchen or kitchenette and sanitary facilities.

DWELLING, MULTIFAMILY — A dwelling containing three or more dwelling units.

DWELLING, ONE-FAMILY — A dwelling containing one dwelling unit only.

DWELLING, TWO-FAMILY — A dwelling containing two dwelling units only.

EDUCATIONAL INSTITUTION, PRIVATE — Any nonpublic school or other organization or institution conducting a regularly scheduled curriculum of study similar to that of the public schools and operated under the Education Law of New York State and recognized by the appropriate educational authorities.

EXPLICITLY PROHIBITED USE(S) — The explicitly prohibited uses defined and described in § 182-17.1A of this chapter. **[Added 9-14-2015 by L.L. No. 1-2015]**

FAMILY — One or more persons who live together in one dwelling unit and maintain a common household, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

FAMILY DAY-CARE HOME — As defined by NYS Department of Social Services Chapter II, Subchapter C, Part 413, an owner-occupied residence in which child day care is provided on a regular basis for up to six children for compensation or otherwise. For the purposes of this chapter, a family day-care home shall be considered an accessory use to a family dwelling unit.

FARM — See "agricultural use."

FARM WOODLAND — Land used for the production for sale of woodland products, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products.

FARM-WORKER HOUSING — On-farm housing provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products) for seasonal and/or full-time employees and their families to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The employee to be housed is engaged in the production function(s) of the farm operation and is not a partner or owner of the farm operation. The primary residence of the owner or partner of the farm operation shall not be considered farm-worker housing.

FLOOR AREA OF A BUILDING — The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

FLOOR, LOWEST — Lowest level, including basement, crawl space, or garage of lowest enclosed area.

FRONTAGE — The contiguous extent of a building or a lot along one public road as defined herein.

GARAGE, PRIVATE — An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit herein nor space therein for more than one car is leased to a nonresident of the premises.

GASOLINE STATION — Building or land used for sale of motor fuel, oil and motor vehicle accessories, and which may include facilities for lubricating, washing or servicing vehicles, but not including painting or body repairs.

GASOLINE STATION-MARKET — A gasoline station which provides a second commercial service, such as a restaurant, dairy bar, beverage market, or food market or such a commercial use which provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

GROUP FAMILY DAY CARE — An owner-occupied residence in which child day care is provided on a regular basis for more than three hours per day per child for seven to 12 children for compensation or otherwise, as defined by NYS Department of Social Services Chapter II, Subchapter C, Part 413.

HABITABLE FLOOR AREA — Any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation or

combination thereof. A floor used only for storage purposes is not habitable.

HOME OCCUPATION —

(1) An occupation or profession which:

- (a) Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; and
- (b) Is carried on by a member of the immediate family residing in the dwelling unit; and
- (c) Is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and
- (d) Which conforms to the following additional conditions:

[1] The occupation of profession is carried on wholly within the principal building or within a building or other structure accessory thereto.

[2] No more than one person outside the immediate family is employed in the home occupation.

[3] There is no exterior display and no exterior sign larger than four square feet, no exterior storage of materials and no exterior indication of the home occupation or variations of the residential character of the principal building.

[4] A home occupation(s) shall not occupy more than 25% of the total floor area of a dwelling unit up to a maximum of 500 square feet.

[5] Multiple home occupations located on a single lot shall not exceed in total the limitations for a single home occupation.

[6] No offensive noise, vibration, smoke, dust, odors, heat, or glare is produced, nor does the home occupation result in:

[a] Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

[b] Hazard or fire explosion or other physical hazard to any person, building or vegetation.

[c] Radiation or interference with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

[7] Adequate parking is provided as set forth in § 182-30.

- (2) In particular, a home occupation may include, but is not limited to, the following: art studio, barbershop, beauty parlors (when limited to two work stations), cook, day nursing, draftsman, dress maker, electrical/radio/television repair, laundering, musician, photographer, professional office of a physician, dentist, lawyer, engineer, architect or accountant within a dwelling occupied by the same, upholsterer, teaching or tutoring, real estate offices, insurance offices.
- (3) However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and kennels, restaurants.

HOSPITAL — Hospital, sanitarium, clinic, rest home, nursing home, convalescent home, home for aged, and any place of diagnosis and treatment of human ailments, except a doctor's office.

HOSPITAL, ANIMAL — An establishment for the medical and/or surgical care of injured and/or diseased animals.

HOTEL/MOTEL — Building(s) containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room may be provided within the building or in an accessory building.

INDUSTRIAL/INDUSTRIAL USES/INDUSTRY — Notwithstanding any provision hereof to the contrary, for purposes of this chapter in no event shall the terms "industrial," "industrial uses," "industry," "industry, heavy," or any variation thereof contained in this chapter, be construed to mean, be, include, or authorize within the Town natural gas and/or petroleum exploration activities, natural gas and/or petroleum extraction activities, a land application facility, a natural gas and/or petroleum exploration, extraction or production wastes disposal/storage facility, a natural gas and/or petroleum extraction, exploration or production wastes dump, or any other explicitly prohibited use.**[Added 9-14-2015 by L.L. No. 1-2015]**

INDUSTRIAL PARK — A tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses, with consideration to transportation facilities (rail and highway), circulation, parking, utility needs, aesthetics, and compatibility.

INJECTION WELL — A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension of the hole, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than 90% of such fluids return to the surface within a period of 90 days.**[Added 9-14-2015 by L.L. No. 1-2015]**

JUNK — Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or abandoned, scrapped, ruined, dismantled or

wrecked motor vehicles or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material, tires, lumber, pallets or other wood debris. Notwithstanding any provision hereof to the contrary, for purposes of this chapter in no event shall the term "junk" or any variation thereof contained in this chapter, be construed to mean, be, include, or authorize within the Town a land application facility, a natural gas and/or petroleum exploration, extraction or production wastes disposal/storage facility, a natural gas and/or petroleum extraction, exploration or production wastes dump, or any other explicitly prohibited use. **[Amended 9-14-2015 by L.L. No. 1-2015]**

JUNKYARD — Outside storage or deposit, whether in connection with another business or not, where one or more unregistered, old or secondhand motor vehicles no longer intended or in condition for legal use on the public highways, or one or more pieces of farm equipment or machinery no longer intended or in condition for agricultural use, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles and/or material defined as junk by this chapter which, taken together equal in volume more than 100 cubic feet. In addition, a junkyard shall include any land or structure used for collecting, storage or sale of wastepaper, rags, scrap metal, pallets, other discarded material or 10 or more used and unmounted tires other than within a fully enclosed building. The following conditions do not constitute a junkyard:

- (1) Storage of a single motor vehicle for use on a seasonal basis (i.e., a winter car), provided such vehicle is intact, located in other than the front yard, and has a NYS motor vehicle inspection sticker which was issued within the previous 12 months;
- (2) A single-motor vehicle offered for sale for a total period of time, consecutive or nonconsecutive, not to exceed 30 days;
- (3) Machinery equipment and other materials incidental to an agricultural use when located on premises being actively used for agricultural purposes.

KENNEL — Building, structure or land used for harboring four or more dogs over six months old, for profit.

LAND APPLICATION FACILITY — A site where any natural gas and/or petroleum extraction, exploration or production wastes are applied to the soil surface or injected into the upper layer of the soil. **[Added 9-14-2015 by L.L. No. 1-2015]**

LANDFILL, SANITARY — The depositing of refuse in a natural or man-made depression or trench, or dumping it at ground level, compacting to the smallest practical volume, and covering with earth or other

material in a systematic and sanitary manner. Notwithstanding any provision hereof to the contrary, for purposes of this chapter in no event shall the term "landfill, sanitary" or any variation thereof contained in this chapter, be construed to mean, be, include, or authorize within the Town a land application facility, a natural gas and/or petroleum exploration, extraction or production wastes disposal/storage facility, a natural gas and/or petroleum extraction, exploration or production wastes dump, or any other explicitly prohibited use. **[Amended 9-14-2015 by L.L. No. 1-2015]**

LOT — An area completely bounded by property lines whose minimum area, width, and depth meet the requirements for a lot in the district in which such land is situated; and having frontage on a road, or other means of access as may be determined by the Planning Board to be adequate as a condition for issuance of a zoning permit.

LOT AREA — Total area within property lines.

LOT, CORNER — A lot located at the junction of and fronting on two or more intersecting streets (also see definition "lot line front").

LOT DEPTH — Mean horizontal distance from street right-of-way line of the lot to its opposite rear line measured at right angles to building line.

LOT LINE, FRONT — In the case of a lot abutting upon only one street, the line separating the lot from the street right-of-way; in the case of a lot abutting more than one street, each street line shall be considered a front lot line.

LOT LINE, REAR — The lot line which is generally opposite the front lot line, if the rear lot line is less than 10 feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line, not less than 10 feet long, lying wholly within the lot and farthest from the front lot line.

LOT LINE, SIDE — The property line or lines extending from the front lot line to the rear lot line.

LOT LINES — The property lines bounding a lot as defined herein.

LOT OF RECORD — A lot which exists as shown or described on a plat or deed in the records of the County Clerk.

LOT WIDTH — The horizontal distance between the side lot lines, measured at right angles to the lot depth.

MANUFACTURED HOME — As defined by the NYS Uniform Fire Prevention and Building Code, a manufactured dwelling unit built on or after June 15, 1976, and conforming to the requirements of the Department of Housing and Urban Development (HUD), Manufactured Home Construction and Safety Standards, 24 CFR Part 3208, 4-1-1993, transportable in one or more sections, which in the traveling mode is eight feet or more in width or 40 feet or more in length, or, when erected on site is 320 square feet minimum, constructed on a

permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. The term "manufactured home" shall also include any structure that meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Federal Department of Housing and Urban Development and complies with the standards established under the national Manufactured Housing Construction and Safety Act of 1974, as amended. The term "manufactured home" shall not include any self-propelled recreational vehicle.

MANUFACTURED HOME PARK — A parcel that has been improved for the rental or lease of two or more spaces and the provision of services for manufactured homes or mobile homes for nontransient residential use.

MANUFACTURING — Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of components parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors. Processing on farms shall not be classified as manufacturing if the raw material is grown on the farm or is accessory to the major use of farming.

MINERAL DEPOSITS; NATURAL MINERAL DEPOSITS — In no event shall "mineral deposits," "natural mineral deposits," or any variation thereof be construed to mean, be, or include natural gas or any component thereof. **[Added 9-14-2015 by L.L. No. 1-2015]**

MOBILE HOME — A factory-manufactured dwelling unit built prior to June 15, 1976, with or without a label certifying compliance with NFPA, ANSI or a specific state standard, transportable in one or more sections, which in the traveling mode is eight feet or more in width or 40 feet or more in length, or, when erected on site is 320 square feet minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term "mobile home" shall not include travel trailers or any self-propelled recreational vehicle.

MOTEL — See "hotel."

MOTOR VEHICLE REPAIR SHOP — A building used for repair and servicing of motor vehicles.

MOTOR VEHICLE SALES — The use of any building, land area, or other premises for the display and sale of new or used motor vehicles, including cars, light trucks, vans, trailers, or recreational vehicles, and including any vehicle preparation or repair work conducted as an accessory use.

NATURAL GAS — Methane and any gaseous substance, either combustible or noncombustible, which is produced in a natural state

from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.**[Added 9-14-2015 by L.L. No. 1-2015]**

NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES — Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.**[Added 9-14-2015 by L.L. No. 1-2015]**

NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES — The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.**[Added 9-14-2015 by L.L. No. 1-2015]**

NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES**[Added 9-14-2015 by L.L. No. 1-2015]** —

- (1) Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste:
 - (a) Natural gas or petroleum drilling fluids;
 - (b) Natural gas or petroleum exploration, drilling, production or processing wastes;
 - (c) Natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semiliquid material);
 - (d) Any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum;
 - (e) Soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum;
 - (f) Drill cuttings from natural gas or petroleum wells; or
 - (g) Any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum.

- (2) This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 CFR 261.4(b). The definition of natural gas and/or petroleum extraction, exploration or production wastes does not include recognizable and nonrecognizable food wastes, liquid (human) septic tank waste, or animal manure (liquid or otherwise) or other waste generated by agriculture use.

NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES DISPOSAL/STORAGE FACILITY — Any of the following:**[Added 9-14-2015 by L.L. No. 1-2015]**

- (1) Tanks of any construction (metal, fiberglass, concrete, etc.);
- (2) Impoundments;
- (3) Pits;
- (4) Evaporation ponds; or
- (5) Other facilities, in any case used for the storage or treatment of natural gas and/or petroleum extraction, exploration or production wastes that are being held for initial use, have been used and are being held for subsequent reuse or recycling, are being held for treatment, or are being held for storage.

NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES DUMP — Land upon which natural gas and/or petroleum extraction, exploration or production wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.**[Added 9-14-2015 by L.L. No. 1-2015]**

NATURAL GAS COMPRESSION FACILITY — A facility constructed or operated to raise the pressure of natural gas in connection with its extraction, processing, or storage, or its delivery into or out of the transmission pipeline system; the term shall not include the transmission pipeline itself; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.**[Added 9-14-2015 by L.L. No. 1-2015]**

NATURAL GAS PROCESSING FACILITY — Those facilities that separate and recover natural gas liquids (NGLs) and/or other nonmethane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.**[Added 9-14-2015 by L.L. No. 1-2015]**

NYS UNIFORM CODE — The New York State Uniform Fire Prevention and Building Code, 9 NYCRR.

NONCONFORMING USE — A use of a building or of land that does not conform to the regulations as to use in the district in which it is situated, which was lawful under preceding ordinances or laws at the time the use was established or, if established before 1964, was lawful before such date and in either event has not been extended after becoming a nonconforming use.

NURSING HOME — A facility providing therein nursing care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board or health-related service, or any combination of the foregoing, and in addition thereto, providing nursing care and health-related service, or either of them, to persons who are not occupants of the facility, as defined by Article 28 of the NYS Public Health Law.

OWNER — Person or persons holding legal or equitable title to the property.

PARCEL — A lot or tract of land.

PARKING SPACE — An off-street space available for the parking of one motor vehicle on a transient basis and having a width of 10 feet, and an area of not less than 200 square feet, exclusive of passageways and driveways, and having direct usable access to a street.

PERSONAL SERVICES — Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. Such services include laundry, dry cleaning, beauty shops, barbershops, shoe repair, funeral services, health clubs, masseuse, educational, social and domestic services.

PLANNING BOARD — The Town of Stafford Planning Board as established in § 182-48 of this chapter. All references to a "Planning Board" within this chapter shall be to the Town of Stafford Planning Board unless otherwise indicated (i.e., County Planning Board).

POND — A man-made body of water, other than a swimming pool, greater than two feet in depth (see § 182-40).

PROFESSIONAL OFFICE — The office of a member of a recognized profession maintained for the conduct of that profession.

QUARRY, SAND PIT, GRAVEL PIT, TOP SOIL STRIPPING — A parcel or part thereof used for the purpose of extracting stone, sand, gravel, or topsoil, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a zoning permit has been made. Notwithstanding any provision hereof to the contrary, for purposes of this chapter in no event shall the terms "quarry, sand pit, gravel pit, topsoil stripping" or any variation thereof contained in this chapter be construed to mean, be, include, or authorize within the Town, natural gas and/or petroleum exploration activities, natural gas and/or petroleum extraction activities, a land application facility, or any other explicitly prohibited use. **[Amended 9-14-2015 by L.L. No. 1-2015]**

RADIATION — The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.**[Added 9-14-2015 by L.L. No. 1-2015]**

RADIOACTIVE MATERIAL — Material in any form that emits radiation. This definition specifically includes NORM (naturally occurring radioactive material), but only if such naturally occurring material has been moved from its naturally occurring location through a mechanical or other man-made process. All such material is "radioactive material" for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the New York State Department of Labor, the U.S. Nuclear Regulatory Commission, the U.S. Environmental Protection Agency, the U.S. Department of Energy, the U.S. Department of Transportation, or any other regulatory agency.**[Added 9-14-2015 by L.L. No. 1-2015]**

RECREATION, INDOOR — Includes, but is not limited to, bowling alley, theater, table tennis, and pool hall, skating rink, gymnasium, swimming pool, hobby workshop, and similar places of indoor recreation.

RECREATION, OUTDOOR — Includes, but is not limited to, golf courses, golf driving range, trap, skeet, and archery range, swimming pool, skating rink, riding stable, tennis court, recreation stadium, skiing facility, hunting preserve, and similar places of outdoor recreation.

RECREATIONAL VEHICLE or RV — A vehicular-type portable structure without permanent foundation that can be towed, hauled, or driven and primarily designed as a temporary living accommodation for emergency, recreational, camping, and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.

RECYCLABLES HANDLING AND RECOVERY FACILITY — A solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected.

RELIGIOUS INSTITUTION — Church, rectory, temple, parish house, convent, seminary and retreat house.

RESEARCH AND DEVELOPMENT FACILITY — An establishment or other facility for carrying on investigation in the natural, physical, or social sciences, that may include engineering and product development.

RETAIL SALES — Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. Some characteristics of retail sales: it is usually a place of business and is engaged in activity to attract the general public to buy; the establishment buys and receives as well as sells merchandise; it may process or manufacture some of the products, such as a jeweler or bakery, but such processing or manufacturing usually is incidental or subordinate to the selling activities; and retail establishments sell

to customers for their own personal or household use. This general definition shall not include retail sales of motor vehicles, agricultural equipment, manufactured homes, or industrial equipment or adult use materials.

RETAIL SERVICES — Establishments providing services or entertainment, as opposed to products, to the general public for personal or household use, including eating and drinking places, finance, real estate and insurance, internet hot spots, motion pictures, amusement and recreation services, and galleries. This general definition shall not include hotels or motels, adult use related entertainment, or the repair of motor vehicles, agricultural equipment, or industrial equipment.

RETAIL STORE — Enclosed store for sale of retail goods, personal service shop, farm market, department store and restaurant, shall exclude any drive-up service, freestanding retail stand, gasoline service and motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service.

ROAD —

- (1) Any vehicular way which:
 - (a) Is an existing state, county or Town highway; or
 - (b) Is shown upon a plat approved pursuant to law; or
 - (c) Is approved by other official action; or
 - (d) Is shown on a plat duly filed and recorded in the office of the County Clerk.
- (2) For the purposes of this chapter, the term "road" shall include not only the area paved but the entire right-of-way dedicated for such use.

ROADWAY — Any vehicular way on private property limited to use by individuals on such property.

SCHOOL — Any building or part thereof which is designed, constructed, or used for education or instruction in any branch of knowledge, including but not limited to business schools, trade schools, schools of dance and martial arts, as well as academic institutions.

SELF-SERVICE STORAGE FACILITY — A building or group of buildings divided into separate units or compartments used to meet the temporary storage needs of businesses and residential users. A warehouse operated for a specific commercial or industrial establishment shall not be considered a self-service storage facility.

SHOPPING CENTER — Any group of two or more stores which share a common vehicular entrance or entranceways and common off-street parking.

SIGN — See § 182-31.

SITE PLAN — The development plan for one or more lots on which is shown the existing and proposed conditions of the lot, including: topography, vegetation, drainage, floodplains, marshes and waterways, open spaces, walkways, means of ingress and egress, utility services, landscaping, structures and signs, lighting, and screening devices; any other information that reasonably may be required in order than an informed decision can be made by the Planning Board or any other approving authority.

SOUND AGRICULTURAL PRACTICE — Practices necessary for the on-farm production, preparation and marketing of agricultural commodities. When located within a NYS Certified Agricultural District shall include, but are not limited to, operation of farm equipment; farm-worker housing; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on farm; agricultural tourism; production, management and harvesting of farm woodland, as defined in this section and construction and use of farm structures. In order for a practice to be considered sound, it must be legal, not harmful, necessary, and supported by expert guidance or opinion. Notwithstanding any provision hereof to the contrary, for purposes of this chapter in no event shall the term "sound agricultural practice" or any variation thereof contained in this chapter be construed to mean, be, include, or authorize within the Town a land application facility or any other explicitly prohibited use. **[Amended 9-14-2015 by L.L. No. 1-2015]**

STABLING OF FARM ANIMALS — Livestock, poultry or fur-bearing animals within a building, structure or other defined area for the purpose of housing or feeding.

STRUCTURE — An assembly of materials, forming a construction framed of component structural parts for occupancy or use, including buildings.

SUBSURFACE — Below the surface of the earth, or of a body of water, as the context may require. **[Added 9-14-2015 by L.L. No. 1-2015]**

SWIMMING POOL — Any structure intended for swimming, recreational bathing or wading that can hold water over 24 inches deep. This includes in-ground, aboveground and on-ground pools; hot tubs; spas and fixed-in-place wading pools.

TEMPORARY USE — An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this chapter. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

TOURIST HOME — Owner-occupied dwelling in which overnight accommodation is provided for transient guests for profit.

TRAILER — A structure standing on wheels, towed or hauled by another vehicle, and used for short-term human occupancy, carrying of materials, goods, or objects, or as a temporary office.

TRUCK STOP — Any building, premises, or land in which or upon which a business, service, or industry involving the maintenance, servicing, storage, or repair of commercial vehicles is conducted or rendered, including the dispensing of motor vehicles and the sale of accessories or equipment for trucks and similar commercial vehicles. A truck stop also may include overnight accommodations and restaurant facilities primarily for the use of truck crews.

TRUCK TERMINAL — An area and building where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation. Truck terminals often include the storage or parking of trucks awaiting cargo as well as facilities for servicing of trucks.

UNDERGROUND INJECTION — Subsurface emplacement of natural gas and/or petroleum extraction, exploration or production wastes, including emplacement by or into an injection well. **[Added 9-14-2015 by L.L. No. 1-2015]**

UNDERGROUND NATURAL GAS STORAGE — Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location, whether for the purpose of load balancing the production of natural gas or for any other reason, including without limitation short-term, long-term, or intermittent storage for product quality, processing, or transportation purposes, or because of market conditions. Without limitation, this term includes compression and dehydration facilities. **[Added 9-14-2015 by L.L. No. 1-2015]**

USE — The purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.

UTILITIES, PRIVATE — In no event shall "private utility," "utility, private" or any variation thereof be construed to mean, be, include, or authorize within the Town a natural gas compression facility, natural gas processing facility, or any other explicitly prohibited use. **[Added 9-14-2015 by L.L. No. 1-2015]**

UTILITY; UTILITY, PUBLIC; PUBLIC UTILITY FACILITY, ETC. — An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility station, structure, or use is a facility, structure, or use which is operated by a public utility, and which provides electric, gas, steam, CATV, telephone or other communication service, water or sewerage directly to the general public. In no event shall "public utility," "public utility facility," "utility," or any variation thereof be construed to mean, be, include, or authorize within the Town a natural gas compression facility,

natural gas processing facility, or any other explicitly prohibited use.**[Amended 9-14-2015 by L.L. No. 1-2015]**

VARIANCE — An area variance or a use variance, as the context may admit.**[Added 9-14-2015 by L.L. No. 1-2015]**

VARIANCE, AREA — The authorization by the Zoning Board of Appeals for the use of land in a manner that is not allowed by the dimensional requirements of the applicable zoning regulations.**[Added 9-14-2015 by L.L. No. 1-2015]**

VARIANCE, USE — The authorization by the Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.**[Added 9-14-2015 by L.L. No. 1-2015]**

WAREHOUSE — A building used for the enclosed short- or long-term storage of goods and materials for redistribution or shipment to other locations for ultimate dispersal. A warehouse may also include very limited space for support activities related to the warehouse, such as an office. No other uses or activities shall be allowed, including, but not limited to, the following:

- (1) As a primary or secondary business operation location.
- (2) For overnight parking or short-term storage of commercial vehicles related to business.
- (3) For manufacturing, processing or servicing of goods or materials.

WHOLESALE TRADE — Enclosed establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users; to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

WIND ENERGY — See § 182-41.

YARD — An unoccupied space, open to the sky, on the same lot with the building(s), structure(s) and/or uses.

YARD, FRONT — An open unoccupied space on the same lot with the building, situated between the front line of the building and the road line and extending the full width of the lot (see "yard" definition).

YARD, REAR — The area of the lot extending across the entire rear of the lot, bounded by the real property lot line and the rear building line and between the two side lot lines (see "yard" definition).

YARD, SIDE — The area between the side building line and the related side lot line and between the front yard and the rear yard (see "yard" definition).

ZONING BOARD OF APPEALS — The Town of Stafford Zoning Board of Appeals as established in § 182-49 of this chapter.

ARTICLE II
Establishment of Zoning Districts

§ 182-6. Zoning district classification.

The Town of Stafford is hereby divided into the following zoning districts:

- R Residential District
- A-R Agriculture-Residential District
- C Commercial District
- I Industrial District
- PUD Planned Unit Development District
- H Hamlet District
- IP Industrial Park District

§ 182-7. Zoning Map established. [Amended 9-14-2015 by L.L. No. 1-2015]

The boundaries of the zoning districts are shown on the map entitled "Zoning Map of the Town of Stafford, NY," which is hereby declared to be a part of this Law. The Zoning Map shall be kept on file in the office of the Town Clerk. Unofficial reductions of this map shall be for reference purposes only. Changes may be made in district boundaries only by a zoning amendment adopted by the Town Board. Any such changes shall be noted by the Town Clerk on the Zoning Map promptly after the Town Board adopts such an amendment. In the event of a conflict between the Zoning Map in the Town Clerk's office and the specific local law adopting a Zoning Map amendment, the specific local law shall be the controlling authority as to the current zoning status of lands, structures and uses in the Town.

§ 182-8. Interpretation of zoning district boundaries.

Where uncertainty exists as to the location of any boundaries shown on the Zoning Map, the following rules shall apply:

- A. Zoning district boundary lines are intended to follow streets, rights-of-way, watercourses or lot lines, or be parallel or perpendicular thereto, unless such district boundary lines are fixed by dimensions, as shown on the Zoning Map.
- B. Where zoning district boundaries are indicated as following approximate streets, rights-of-way or watercourses, the center lines thereof shall be construed to be such boundaries.
- C. Where zoning district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs or other bodies of water, mean high water lines thereof shall be construed to be the zoning district boundaries.

- D. Where zoning district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.
- E. If the zoning district classification of any land is in question it shall be deemed to be in the most restrictive adjoining zoning district.

§ 182-9. Order of restrictiveness.

Where zoning districts are referred to as "more restrictive" or "less restrictive," the designation shall refer to the order in which the districts are named in § 182-6, the first named being the most restrictive (exclusive of the Floodplain Overlay District and Planned Unit Development District).

§ 182-10. Lots in two or more districts.

Where a zoning district boundary line divides a lot in single ownership at the effective date of this chapter, leaving part subject to permissive regulations and part subject to prohibitive regulations, the Zoning Board of Appeals, after public hearing, may permit an extension of the use of that lot into the district where it is prohibited, provided the extension does not extend more than 50 feet into that district. Furthermore, the Board may impose conditions of that extension as protection to neighboring property.

ARTICLE III
Regulations for Zoning Districts

§ 182-11. Any use not specifically articulated as allowed is prohibited. [Amended 9-14-2015 by L.L. No. 1-2015]

Any use not specifically set forth as a permitted use (as of right, accessory, or upon special permit, as the context may admit) in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. Without limiting the generality of the foregoing, for purposes of clarity, certain uses are explicitly prohibited in each and every zoning district as more fully set forth in § 182-17.1A hereof.

§ 182-12. Buildings, uses and lots.

- A. One principal building and use per lot. There shall not be more than one principal building and one principal use on any one lot in the Agricultural Residential A-R and the Residential R Districts, except as provided for in the following:
- (1) An approved multifamily dwelling project.
 - (2) A single-family dwelling accompanying a nonresidential use permitted on a lot in A-R and R Districts.
 - (3) A single-family dwelling accompanying a nonresidential use requiring a special use permit in A-R and R Districts, if approved by the Planning Board as part of the special use permit application process.
- B. Yard and open space for every building. No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building; no yard or any other open space on one lot shall be considered as a yard or open space for a building on any other lot.
- C. Subdivision of a lot. Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation shall be effected in such manner as not to impair conformity with any of the requirements of this chapter with respect to the existing building and all yards and other required spaces in connection therewith, and no permit shall be issued for the erection of a building on the new lot thus created unless it complies with all the provisions of this chapter.
- D. Irregularly shaped lots. Where a question exists as to the proper application of any of the requirements of this chapter to a particular lot or parcel because of the peculiar or irregular shape of the lot or parcel, the Board of Appeals shall determine how the requirements of this chapter shall be applied.

- E. Lots under water or subject to flooding. No more than 25% of the minimum area requirements of a lot may be fulfilled by land which is under water or subject to periodic flooding. Land which is under water that is open to use by persons other than the owner of the lot shall be excluded entirely from the computation of the minimum area of the lot. For the purposes of this section, land in the bed of a stream not exceeding five feet in width at mean water level, and land in any pond not exceeding 150 square feet in area shall not be considered as under water. Where any area is separated from the main body by water, such separated land shall not be included in computing lot area.
- F. Required road frontage. No zoning permit shall be issued for any structure unless the lot upon which that structure is to be built has a continuous stretch of required frontage on a road, as defined herein, which road frontage provides the actual access to such structure, and which road shall have been suitably improved to Town Board standards or a bond posted therefor to the satisfaction of the Town Board or Planning Board, as provided in § 280-a of the Town Law.
- G. Parts of lot not counted toward area requirements. For any lot created by subdivision subsequent to the effective date of this chapter, no part of such lot less in width than 1/2 of the minimum requirements for the district in which it is located shall be counted as part of the minimum required lot area.
- H. Lot width required. Within any residential district, no part of any dwelling or other structure housing a main use, and within any business district, no part of any residence structure, shall be created on any part of the lot which has a width of less than the minimum requirements for the district in which it is located.
- I. Fire and Building Code. All structures, including, but not limited to, manufactured housing, including factory manufactured units, double-wide premanufactured units and mobile home units, installed, built, erected or placed within the Town of Stafford shall meet the then existing criteria of the New York State Uniform Fire and Building Code as it exists from time to time.

§ 182-13. Yards, yard requirements, building projections, setbacks, other features.

- A. Porches and decks. An unenclosed porch or deck may project into a required yard area not more than eight feet. To be considered unenclosed, a porch or deck may have a roof but shall not have any vertical enclosures other than a security railing. Any enclosed porch or deck or any two-story porch or deck shall be considered a part of the principal building and shall not project into any required yard area.
- B. Projecting horizontal architectural features. Architectural features, such as window sills, belt courses, chimneys, cornices, eaves or bay windows, shall not project more than three feet into any required yard,

but not nearer than eight feet from the lot line in any case. The sum of any bay window projections on any wall shall not exceed 1/4 the length of any said wall.

- C. Fire escapes. Open fire escapes may extend into any required yard.
- D. Walls and fences. See Chapter 82, Fences. **[Amended 9-12-2016 by L.L. No. 2-2016]**
- E. Corner lots. Any yard adjoining a street shall be considered a front yard for the purposes of this chapter and shall comply with all requirements for a front yard in the district in which located. The remaining yards shall be considered side yards.
- F. Swimming pools. All swimming pools shall be considered accessory structures and shall be located in either the rear or side yard and set back the minimum distance required for other buildings and structures. Swimming pools shall be fenced in and alarmed in accordance with the provisions of the New York State Uniform Fire Prevention and Building Code.
- G. Buffer areas. Wherever a buffer area is required by this chapter, it shall meet the following standards:
 - (1) Be at least 15 feet in width along any lot line abutting a lot in an R or A-R District, unless otherwise specified or reduced by the Planning Board through the site plan review process.
 - (2) Be of evergreen planting of such type, height and spacing as, in the judgment of the Planning Board, will screen the activities on the lot from view of a person standing at street level on the adjoining residential lot. The plan and specifications for such planting shall be filed with the approved site plan for the use of the lot.
 - (3) A wall or fence of location, height and design approved by the Planning Board may be substituted for the required planting.
- H. Exterior lighting. All exterior lighting in commercial and industrial zoning districts, including the lighting of signs, shall be of such type and location and shall have such shading as will prevent the source of the light from being seen from any adjacent residential property or from the street.
- I. Height exceptions.
 - (1) District building height regulations shall not apply to flagpoles, radio or television antennae, transmission towers or cables, spires or cupolas, chimneys, elevator or stair bulkheads, penthouses, parapets or railings, water tanks or cooling towers, or any similar structures, provided that such structures are located on the roof and in their aggregate coverage occupy no more than 10% of the roof area of the building, and provided such structures pose no hazard to aircraft operations.

- (2) District building height regulations shall not apply to radio or television antennas and commercial communication antennas or towers, provided such structures do not present a hazard to aircraft operations.

§ 182-14. Nonconforming uses, structures and lots; preexisting, nonconforming natural gas and/or petroleum extraction activities.

Except as hereinafter provided, the lawful use of any buildings or land existing at the time of the enactment or amendment of this chapter may be continued although such use does not conform with this chapter.

- A. Nonconforming lots. A nonconforming lot shall not be further reduced.
- B. Nonconforming structures. A nonconforming structure or part thereof may be restored to a safe condition only to the extent of its prior nonconformity or in compliance with this section. Subject always to the provisions of Subsection D of this § 182-14, a nonconforming structure may be enlarged as a matter of right, provided the enlargement does not either increase the nonconformity of the structure with respect to property boundaries (minimum required yard areas) or result in extension of the structure into an area which is less than 50% of the minimum required yard area. For example, a structure nonconforming by reason of its nearness to a side lot line may be extended rearward, provided the extension does not further reduce the side yard, is located a distance which is at least 1/2 the minimum required yard area off of the property line and does not extend into any other required yard area. This section shall not apply to nonconforming signs (see § 182-31).
[Amended 9-14-2015 by L.L. No. 1-2015]
- C. Nonconforming uses. Subject always to the provisions of Subsection D of this § 182-14: **[Amended 9-14-2015 by L.L. No. 1-2015]**
 - (1) A nonconforming use may be converted to a conforming use as a matter of right, however, once a nonconforming use has been changed to a conforming use, it shall not then be changed back to a nonconforming use.
 - (2) A nonconforming use may be enlarged by special permit only (see § 182-50) as long as:
 - (a) The enlargement is in connection with the same business.
 - (b) The enlargement is upon the same lot occupied by the use at the effective date of this chapter.
 - (c) The enlargement does not create a greater deviation from the standards contained in this chapter.
 - (d) Such other conditions as may be deemed appropriate by the Planning Board are met.

- (3) The right to continue a nonconforming use, once established and not abandoned, runs with the land, and this right is not confined to any one individual or corporation.
 - (4) A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50% of the assessed value of the building unless said building is changed to a conforming use.
 - (5) A nonconforming use discontinued for a period of one year or more shall be considered abandoned and shall not be reestablished or revived except by grant of a special use permit by the Planning Board.
- D. Preexisting, nonconforming natural gas and/or petroleum extraction activities. Notwithstanding any provision of this chapter to the contrary, any natural gas and/or petroleum extraction activities that are being conducted in the Town as of the effective date of Local Law 1 of 2015 shall be subject to the following: **[Added 9-14-2015 by L.L. No. 1-2015]**
- (1) Preexisting, nonconforming uses.
 - (a) If, as of the effective date of Local Law 1 of 2015, a natural gas well located within the Town is producing usable quantities of natural gas which are being consumed by the owner of such well, then and only then such well shall be considered a preexisting, nonconforming use and shall be allowed to continue, subject, however, to the provisions of Subsections (2) and (3) of this Subsection D.
 - (b) Natural gas and/or petroleum extraction activities that are being conducted in the Town as of the effective date of Local Law 1 of 2015 and which do not qualify for treatment under the preceding Subsection (1)(a) of this Subsection D shall not be grandfathered (or be permitted to continue or deemed lawful preexisting uses).
 - (2) Upon the depletion, closing, or reclamation of any well which is allowed to remain in operation after the effective date of this subsection by virtue of Subsection (1)(a) of this Subsection D, or upon any other substantive cessation of natural gas and/or petroleum extraction activities for a period of more than 12 months, then and in either of such events the preexisting and/or nonconforming use status (and any related "grandfathering rights") of or relating to such activity shall terminate.
 - (3) Notwithstanding any provision hereof to the contrary, the preexisting, nonconforming status conferred and recognized by Subsection (1)(a) of this Subsection D is not intended, and shall not be construed, to authorize or grandfather any natural gas and/or petroleum extraction activities extending beyond those existing as

of the effective date of Local Law 1 of 2015, and any expansion or attempted or purported expansion of a grandfathered well, whether as to its production, depth, horizon(s) or otherwise, shall not be grandfathered under Subsection (1)(a) of this Subsection D.

§ 182-15. Location of accessory buildings and structures.

- A. Accessory buildings and structures, other than temporary school bus stations and vegetable stands, shall not be located within the front yard.
- B. Accessory buildings are permitted as follows:
 - (1) Accessory building with a total floor area of 150 square feet or less and a building height of not more than nine feet shall be permitted within five feet of the rear and side lot lines when located in the rear yard area.
 - (2) Accessory buildings with a total floor area between 151 square feet and 500 square feet and a building height of less than 20 feet, shall be permitted within 15 feet of the rear and side lot lines when located in the rear yard.
 - (3) Accessory buildings with a total floor area greater than 500 square feet or a building height greater than 20 feet shall be located in compliance with the required yard areas for principal buildings in the respective district.
- C. Accessory structures, other than buildings, are permitted as follows:
 - (1) Accessory structures equal to or less than 15 feet in height, including satellite dishes with a diameter of 13 feet or less, shall be permitted within five feet of the rear and side lot lines when located in the rear yard area. Satellite dishes of three feet or less in diameter, if located in the rear yard area, and if in compliance with the lot line requirements contained in this subparagraph, may be located without a prior permit.
 - (2) Accessory structures greater than 15 feet in height, including production model wind energy conservation systems (windmills) and satellite dishes greater than 13 feet in diameter, shall be located in compliance with the required yard areas for principal buildings in the respective district.
 - (3) Satellite dishes of greater than six feet in diameter are not permitted on the roof of any building or structure.
 - (4) Swimming pools shall be located in the rear yard and shall comply with the required rear and side yard areas for principal buildings in the respective district.

§ 182-16. Dwelling front yard grade.

Surface grades of front yards of dwellings measured at the midpoint of the front wall shall be at least one foot above the elevation of the road's center line, unless adequate site drainage is provided otherwise.

§ 182-17. Any use not specifically articulated as allowed is prohibited. [Amended 9-14-2015 by L.L. No. 1-2015]

Any use not specifically set forth as a permitted use (as of right, accessory, or upon special permit, as the context may admit) in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. Without limiting the generality of the foregoing, for purposes of clarity certain uses are explicitly prohibited in each and every zoning district as more fully set forth in § 182-17.1A hereof.

§ 182-17.1. Explicitly prohibited uses; prohibition against natural gas and/or petroleum extraction, exploration or production wastes. [Added 9-14-2015 by L.L. No. 1-2015]**A. Explicitly prohibited uses.**

- (1) Without limiting the generality of the statements elsewhere in this chapter that any use not specifically set forth as a permitted use (as of right, accessory, or upon special permit, as the context may admit) in any particular zoning district shall be expressly prohibited in that district, the following uses and activities are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:
 - (a) Land application facility;
 - (b) Natural gas and/or petroleum exploration activities;
 - (c) Natural gas and/or petroleum extraction activities;
 - (d) Natural gas and/or petroleum exploration, extraction or production wastes disposal/storage facility;
 - (e) Natural gas and/or petroleum exploration, extraction, or production wastes dump;
 - (f) Natural gas compression facility;
 - (g) Natural gas processing facility;
 - (h) Underground injection; and
 - (i) Underground natural gas storage.

- (2) Any condition caused or permitted to exist in violation of this Subsection A is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as "explicitly prohibited uses," any one of the above expressly prohibited uses may be referred to in this chapter as an "explicitly prohibited use," and any combination of more than one such use may also be referred to as "explicitly prohibited uses."
- B. Prohibition against natural gas and/or petroleum exploration, extraction or production wastes.
- (1) The Town of Stafford hereby exercises its authority and right under New York Environmental Conservation Law § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this section complies "with at least the minimum applicable requirements" set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.
 - (2) It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose, release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any natural gas and/or petroleum exploration, extraction or production wastes.
- C. No application to customary local distribution lines, etc. The prohibitions set forth above in Subsection A of this § 182-17.1 are not intended, and shall not be construed, to:
- (1) Prevent or prohibit the right to use roadways in commerce or otherwise for travel;
 - (2) Prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or
 - (3) Prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal agricultural, residential, business, commercial, and other uses within the Town.

§ 182-18. One- and two-family dwellings on individual lots.

All one- and two-family dwelling units located on individual lots shall have a minimum outside width of at least 18 feet. This provision shall not prohibit the construction of smaller additions or projections from larger units (less than 18 feet wide), provided a eighteen-foot minimum width is clearly established for the overall unit. This minimum dimensional criteria shall be required at all conventional built (i.e., on-site and factory manufactured)

units and mobile homes, other than replacement of existing mobile homes in compliance with § 182-28.

§ 182-19. Schedule of regulations for zoning districts.

See Zoning Schedule A.¹

§ 182-20. Residential District – R.

The R District is designed to accommodate primarily residential uses on lots with a minimum area of 30,000 square feet, or 20,000 square feet if serviced by public water and with zoning permit contingent upon proper documentation and approvals from the County Health Department that the wastewater (septic) system is appropriately designed. The purpose of this district is to encourage residential growth in areas of the Town which have existing concentrations of residential uses. The Residential District will allow for more economical provisions of public services, such as water and sanitary sewer, should the need arise at some future date.

A. Permitted uses. The following uses are permitted in R Zones:

- (1) Residential:
 - (a) Single-family dwellings.
 - (b) Two-family dwellings.
 - (c) Family day-care homes.
 - (d) Group family day-care homes.
 - (e) Family-type homes for adults.
- (2) Home occupations.
- (3) Agricultural uses and all sound agricultural practices, excluding the storage of manure and stabling of farm animals outside of a NYS Certified Agricultural District.
- (4) Public and institutional:
 - (a) Churches and places of worship.
 - (b) Public parks and recreational facilities.
- (5) Accessory uses and buildings and buildings incidental to and on the same lot as the principal use, which may include but are not limited to, the following:
 - (a) Private garages.
 - (b) Accessory apartments.

1. Editor's Note: Schedule A is included at the end of this chapter.

- (c) Swimming pools and tennis courts (noncommercial).
 - (d) Agricultural accessory uses, excluding the storage of manure and stabling of farm animals outside of a NYS Certified Agricultural District.
 - (e) Signs and off-street parking subject to the provisions of this chapter.
- B. Uses by special use permit. The following uses, including accessory buildings, are permitted in R Districts upon issuance of special use permit by the Planning Board unless reserved for the Town Board and so indicated by reference in parenthesis in this text or amendment thereof.
- (1) Residential:
 - (a) Multifamily dwellings.
 - (b) Boarding houses.
 - (c) Manufactured home parks (Town Board).
 - (2) Public and institutional:
 - (a) Utilities (public and private).
 - (b) Public telecommunication equipment (including wireless).
 - (c) Schools (public and private).
 - (3) Neighborhood commercial. An individual commercial use (or leasable business space) shall not exceed 2,000 square feet of floor area per story and shall not include drive-through services. Maximum commercial floor area shall not exceed 5,000 square feet total per neighborhood commercial site. Floor area is measured by totaling the interior floor area of all building stories, except crawl spaces (i.e., with less than 7 1/2 feet of vertical clearance).
 - (a) Child day-care centers (excluding group family day-care homes, and family day-care homes).
 - (b) Adult care facilities (excluding family-type homes for adults).

§ 182-21. Agricultural-Residential District – A-R.

The Agricultural-Residential District is designed to accommodate primarily agricultural uses in order to preserve the Town's agricultural base and maintain its rural nature, but residential uses are permitted therein. The minimum lot size for a single-family dwelling is 40,000 square feet. It is recognized, however, that agricultural and residential uses have a number of inherent conflicts between them. Individuals who plan to develop residential uses within the A-R District should be aware of such inherent conflicts and that residences are a secondary use.

- A. Permitted uses. The following uses are permitted in A-R Zones:
- (1) Agricultural uses and all sound agricultural practices and similar activities are carried out in compliance with § 182-33.
 - (2) Residential:
 - (a) Single-family dwellings.
 - (b) Two-family dwellings.
 - (c) Family day-care homes.
 - (d) Group family day-care homes.
 - (e) Family-type homes for adults.
 - (3) Home occupations.
 - (4) Public and institutional:
 - (a) Churches and places of worship.
 - (b) Government offices and facilities.
 - (c) Emergency services (public and volunteer).
 - (d) Community centers.
 - (e) Public parks and recreational facilities.
 - (f) Clubs (provided that any outdoor shooting range associated with any club shall be located a minimum distance of 750 feet from the club's property line, with adequate noise mitigation, environmental protection and safety features).
 - (5) Accessory uses and buildings and buildings incidental to and on the same lot as the principal use, which may include but are not limited to, the following:
 - (a) Private garages.
 - (b) Accessory apartments.
 - (c) Swimming pools and tennis courts (noncommercial).
 - (d) Agricultural accessory uses.
 - (e) Signs and off-street parking subject to the provisions of this chapter.
- B. Uses by special use permit. The following uses, including accessory buildings, are permitted in A-R Zones upon issuance of a special use permit by the Planning Board unless reserved for the Town Board and so indicated by reference in parenthesis in this text or amendment thereof.

- (1) Residential:
 - (a) Multifamily dwellings.
 - (b) Boarding houses.
 - (c) Manufactured home parks (Town Board).
- (2) Public and institutional:
 - (a) Utilities (public and private).
 - (b) Public telecommunication equipment (including wireless).
 - (c) Schools (public and private).
 - (d) Clubs (provided that any outdoor shooting range associated with any club shall be located a minimum distance of 750 feet from the club's property line, with adequate noise mitigation, environmental protection and safety features).
- (3) Commercial:
 - (a) Agricultural equipment sales, service, repair.
 - (b) Aviation landing fields limited to five fixed base aircraft.
 - (c) Animal shelters (with an animal waste management plan acceptable to the Genesee County Soil and Water Conservation District).
 - (d) Commercial recreation, indoor or outdoor (Town Board).
 - (e) Agricultural based business.
 - (f) Dumps and dumping in accordance with Chapter 75, Dumps and Dumping, of the Code of the Town of Stafford, as amended (Town Board).
 - (g) Child day-care centers (excluding group family day-care homes, and family day-care homes).
 - (h) Adult care facilities (excluding family-type homes for adults).
 - (i) Animal waste storage facilities (see § 182-37).
 - (j) Self-service storage facilities.
 - (k) Bed-and-breakfasts.
 - (l) Recyclables handling and recovery facilities (Town Board).
 - (m) Disposal transfer stations (Town Board).
 - (n) Commercial communication towers (see § 182-39).
- (4) Industrial:

- (a) Agricultural equipment welding and fabrication.
- (b) Commercial excavations (see § 182-36).
- (c) Wholesale trade.
- (d) Warehouses.
- (e) Distribution centers.
- (f) Light manufacturing assembly processes which are enclosed.
- (5) Wind energy conversion systems (WECS) (see § 182-41).
- (6) Ponds (see § 182-40).

§ 182-22. Commercial Zone – C.

The C Zone is designed to accommodate commercial and selected light industrial uses.

A. Permitted uses. The following uses are permitted in C Zones:

- (1) Commercial:
 - (a) Retail sales and services.
 - (b) Personal services.
 - (c) Professional and administrative offices.
 - (d) Hotels and motels.
 - (e) Bed-and-breakfasts.
 - (f) Self-service storage facilities.
 - (g) Child day-care centers (excluding group family day-care homes and family day-care homes).
 - (h) Adult care facilities (excluding family-type homes for adults).
 - (i) Boarding houses.
- (2) Industrial:
 - (a) Wholesale trade.
 - (b) Warehouses.
 - (c) Distribution centers.
- (3) Public and institutional:
 - (a) Clubs (provided that any outdoor shooting range associated with any club shall be located a minimum distance of 750 feet

from the club's property line, with adequate noise mitigation, environmental protection and safety features).

- (b) Community centers.
 - (4) Home occupations.
 - (5) Agricultural uses and all sound agricultural practices and similar activities are carried out in compliance with § 182-33.
 - (6) Residential:
 - (a) Replacement and/or alteration of an existing residential structures.
 - (b) Family day-care homes.
 - (c) Group family day-care homes.
 - (d) Family-type homes for adults.
 - (7) Accessory uses and buildings and buildings incidental to and on the same lot as the principal use, which may include but are not limited to, the following:
 - (a) Private garages.
 - (b) Accessory apartments.
 - (c) Swimming pools and tennis courts.
 - (d) Agricultural accessory uses, excluding the storage of manure and stabling of farm animals outside of a NYS Certified Agricultural District.
 - (e) Signs and off-street parking subject to the provisions of this chapter.
- B. Uses by special use permit. The following uses, including accessory buildings, are permitted in C Zones upon issuance of a special use permit by the Planning Board unless reserved for the Town Board and so indicated by reference in parenthesis in this text or amendment thereof:
- (1) Commercial:
 - (a) Drive-in services.
 - (b) Gasoline stations and station-markets.
 - (c) Car washes.
 - (d) Agricultural equipment sales, service, repair.
 - (e) Motor vehicle sales.

- (f) Motor vehicle repair shops.
 - (g) Truck stops.
 - (h) Manufactured home sales.
 - (i) Contractor's yards.
 - (j) Recyclables handling and recovery facilities (Town Board).
 - (k) Disposal transfer stations (Town Board).
 - (l) Commercial communication towers (see § 182-39).
- (2) Industrial:
- (a) Light manufacturing assembly processes which are enclosed.
 - (b) Truck terminals.
- (3) Public and institutional:
- (a) Utilities (public and private).
- (4) Agricultural uses and all sound agricultural practices and similar activities are carried out in compliance with § 182-33.
- (5) Ponds (see § 182-40).

§ 182-23. Industrial Zone — I.

The I Zone is designed to accommodate both light and heavy industrial uses.

A. Permitted uses. The following uses are permitted in I Zones:

- (1) Industrial:
- (a) Enclosed manufacturing, processing and service.
 - (b) Warehouses.
 - (c) Wholesale uses.
 - (d) Distribution centers.
 - (e) Truck terminals.
- (2) Commercial:
- (a) Enclosed equipment sales, service and repair.
 - (b) Motor vehicle repair shops.
- (3) Public and institutional:
- (a) Utilities (public and private).
- (4) Home occupations.

- (5) Accessory uses and buildings and buildings incidental to and on the same lot as the principal use, which may include but are not limited to, the following:
 - (a) Private garages.
 - (b) Signs and off-street parking subject to the provisions of this chapter.
- B. Uses by special use permit. The following uses, including accessory buildings, are permitted in I Zones upon issuance of a special use permit by the Planning Board unless reserved for the Town Board and so indicated by reference in parenthesis in this text or amendment thereof:
 - (1) Industrial:
 - (a) Commercial excavation (see § 182-36).
 - (b) Junkyards (see § 182-35) (Town Board).
 - (2) Commercial.
 - (a) Gasoline stations and station-markets.
 - (b) Adult uses (see § 182-34) (Town Board).
 - (c) Commercial communication tower (see § 182-39).
 - (d) Contractor's yards.
 - (3) Ponds (see § 182-40).

§ 182-24. Planned unit development (PUD). [Amended 9-14-2015 by L.L. No. 1-2015]

The purpose of the planned unit development is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities, to provide harmonious land uses which offer a high level of amenities, to permit a mixture of residential and/or nonresidential uses, and to preserve natural and scenic qualities of the site during the development process; provided, however, that notwithstanding any provision hereof to the contrary and in any event, under no circumstances shall any explicitly prohibited uses be conducted on or from any planned unit development.

A. Procedure for creation of a PUD District.

- (1) The owner of any tract of land in the Town of Stafford consisting of a minimum of five contiguous acres may petition the Town Board through the Planning Board to designate the property described in the petition as a PUD District.

- (2) The petition shall contain the exact name and address of the petitioner and reference records in the office of the Genesee County Clerk at which the deed conveying the property in question to the petitioner is recorded.
- (3) A PUD District may be created by the Town Board in accordance with the procedures detailed in Subsection B of this section.

B. Procedure for approval.

- (1) Preapplication conference. Before submission of a preliminary application for approval as a planned unit development, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of his application before entering into any binding commitments or incurring substantial expenses of site plan preparation.
- (2) Preliminary plan (rezoning).
 - (a) Planning Board review and approval. A preliminary plan application shall be submitted to the Planning Board at least 15 days prior to a regularly scheduled meeting. Within 45 days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board. Failure by the Planning Board to act within the required time period shall constitute approval and the application shall be forwarded to the Town Board.
 - (b) Submission requirements. The applicant shall submit six sets of such plans, drawings, elevations, and specifications as may be necessary and comparable to the requirements of subdivision plat approval. These six sets shall be submitted to the Zoning Enforcement Officer. The preliminary plans shall be accompanied by a detailed justification for the proposal, including such maps, charts and written material necessary for the Planning Board to make an impartial judgment on the suitability and impact of the proposed PUD for the Town. Such material shall include, but not be limited to, the following:
 - [1] A mapped preliminary development plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multifamily housing areas, commercial and open space areas, etc.), the number of residential structures and dwelling units within each residential area, the approximate square footage of nonresidential use within each nonresidential area and the amount of open space.
 - [2] A written description of the proposal, including the major planning assumptions and objectives, the probable effect

on adjoining properties, the effect on the overall Town development plan and the effect on this chapter.

- [3] Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of nonresidential floor area, including the approximate selling and/or rental price, the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.
 - [4] Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the Town. Such material shall include, but not be limited to: the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the applicant intends to provide needed facilities, a fiscal impact statement, including a summary of new costs and revenues to the Town due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.
- (c) Review considerations. In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by this chapter, and the protection of the established and permitted uses in the area. It shall consider the location of main and accessory buildings and their relation to one another; the circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental effects of the proposed development on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the Town; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.
 - (d) Town Board review and approval. Upon receipt of the Planning Board's recommendation, the Town Board may, after a public hearing and forwarding the proposed zone change to the County Planning Board for review, amend this chapter so as to establish and define the boundaries of the planned unit development; provided, however, that notwithstanding any provision hereof to the contrary and in any event, under no

circumstances may any explicitly prohibited uses be authorized or allowed to be conducted on or from any planned unit development. If the rezoning request is approved to the PUD, such action does not authorize improvements to the rezoned land. **[Amended 9-14-2015 by L.L. No. 1-2015]**

(3) Final plan.

- (a) Ownership. Before final approval of the PUD, the applicant must show evidence of the full legal ownership in the land.
- (b) Planning Board review and approval. Upon approval of the zone change, the applicant has one year in which to submit a final plan to the Planning Board for review and recommendation to the Town Board. This submittal must be presented at least 15 days prior to the next regularly scheduled meeting of the Planning Board. Within 45 days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with conditions or disapproval of the application to the Town Board.
- (c) Submission requirements. The applicant shall submit detailed site plans comparable to the requirements for final approval of a subdivision plat.
- (d) Town Board review and approval. The Town Board shall make final approval in accordance with official Town development policies and may impose reasonable conditions relating to that plan.

C. Design standards.

- (1) Area requirements. Area, yard, coverage, height, density and supplementary regulation requirements shall be comparable to minimum requirements in appropriate zoning districts for each specific use, except where the Planning Board finds that it is in the public interest to modify these requirements.
- (2) Traffic and circulation. All proposed public roads should meet municipal design and construction specifications. Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.
- (3) Common open space. All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:
 - (a) Public dedication.
 - (b) Establishment of a home owners' association.

- (c) Retention of responsibilities, control and maintenance by the developer.
- (d) Performance and maintenance bonds. Performance and maintenance bonds may be required in the discretion of the Town Board.

§ 182-25. Hamlet District — H.

A. The Hamlet District (H) is intended to promote the livability, stability and improvement of the Town's historic center. This section provides standards for the orderly expansion and improvement of this area based on the following principles:

- (1) Make efficient use of land and public services, and implement the Comprehensive Plan, by maintaining the character of the Stafford Hamlet.
- (2) Accommodate a range of housing needs and appropriately scaled commercial uses.
- (3) Provide for compatible building and site design at an appropriate neighborhood scale.
- (4) Reduce reliance on the automobile for neighborhood travel and provide options for walking and bicycling.
- (5) Provide direct and convenient access to parks, civic buildings and neighborhood services.

B. Permitted uses. The following uses are permitted in H Zones:

- (1) Residential:
 - (a) Single-family dwelling.
 - (b) Two-family dwelling.
 - (c) Family day-care home.
 - (d) Group family day-care home.
 - (e) Family-type home for adults.
- (2) Home occupations.
- (3) Agricultural uses and all sound agricultural practices, excluding the storage of manure and stabling of farm animals outside of a NYS Certified Agricultural District.
- (4) Public and institutional:
 - (a) Churches and places of worship.
 - (b) Government offices and facilities.

- (c) Emergency services (public and volunteer).
 - (d) Community centers.
 - (e) Public parks and recreational facilities.
 - (f) Clubs (provided that any outdoor shooting range associated with any club shall be located a minimum distance of 750 feet from the club's property line, with adequate noise mitigation, environmental protection and safety features).
- (5) Accessory uses and buildings and buildings incidental to and on the same lot as the principal use, which may include but are not limited to, the following:
- (a) Private garages.
 - (b) Accessory apartments.
 - (c) Swimming pools and tennis courts (noncommercial).
 - (d) Agricultural accessory uses, excluding the storage of manure and stabling of farm animals outside of a NYS Certified Agricultural District.
 - (e) Signs and off-street parking subject to the provisions of this chapter.
- (6) Neighborhood commercial. An individual commercial use (or leasable business space) shall not exceed 2,000 square feet of floor area per story and shall not include drive-through services. Maximum commercial floor area shall not exceed 5,000 square feet total per neighborhood commercial site. Floor area is measured by totaling the interior floor area of all building stories, except crawl spaces (i.e., with less than 7 1/2 feet).
- (a) Retail sales and services.
 - (b) Personal services.
 - (c) Professional and administrative offices.
 - (d) Bed-and-breakfast.
- C. Uses by special use permit. The following uses, including accessory buildings, are permitted in H Districts upon issuance of special use permit by the Planning Board unless reserved for the Town Board and so indicated by reference in parenthesis in this text or amendment thereof.
- (1) Residential:
- (a) Multifamily dwellings.
 - (b) Boarding houses.

- (2) Public and institutional:
 - (a) Utilities (public and private).
 - (b) Public telecommunication equipment (including wireless).
 - (c) Schools (public and private).
- (3) Neighborhood commercial. An individual commercial use (or leasable business space) shall not exceed 2,000 square feet of floor area per story and shall not include drive-through services. Maximum commercial floor area shall not exceed 5,000 square feet total per neighborhood commercial site. Floor area is measured by totaling the interior floor area of all building stories, except crawl spaces (i.e., with less than 7 1/2 feet of vertical clearance).
 - (a) Child day-care centers (excluding group family day-care home and family day-care home).
 - (b) Adult care facilities (excluding family-type home for adults).
 - (c) Mixed use building (residential and neighborhood commercial uses may be mixed "vertically," meaning that a residential use is developed above the commercial use (i.e., ground floor retail/office with upper-story apartments), or may be mixed "horizontally," meaning commercial and residential uses both occupy ground floor space.

§ 182-26. Industrial Park – IP.

The Industrial Park (IP) District is designed to provide areas within the Town for the design of and development as industrial parks. The IP District will encompass properties that typically are not accessed directly from a major highway but instead are serviced by a road system designed and intended for use by operations within or immediately adjacent to the industrial park. The IP District is designed to blend commercial and enclosed industrial uses, thus maximizing the development potential by encouraging land uses which will complement, rather than detract from, one another. Given the industrial park setting, the required minimum lot frontages, lot widths and yard setbacks are less than those required within the general Industrial (I) Districts.

- A. Permitted uses. The following uses are permitted in the Industrial Park (IP) District:
 - (1) Industrial:
 - (a) Warehouse.
 - (b) Enclosed manufacturing.
 - (c) Wholesale trade.
 - (d) Research and development facility.

- (2) Commercial:
 - (a) Professional and administrative offices.
 - (3) Public and institutional:
 - (a) Government offices and facilities.
 - (4) Agricultural uses and all sound agricultural practices and similar activities are carried out in compliance with § 182-33.
 - (5) Accessory uses and buildings and buildings incidental to and on the same lot as the principal use, which may include but are not limited to, the following:
 - (a) Private garages.
 - (b) Agricultural accessory uses, excluding the storage of manure outside of a NYS Certified Agricultural District.
 - (c) Signs and off-street parking subject to the provisions of this chapter.
- B. Uses by special use permit. The following uses are permitted in the Industrial Park (IP) District upon the issuance of a special use permit:
- (1) Commercial:
 - (a) Retail sales and services.
 - (b) Personal services.
 - (c) Mixed use buildings (residential on upper floors, other allowed uses on lower floors).
 - (d) Child day-care centers (excluding group family day-care home and family day-care home).
 - (e) Adult care facilities (excluding family-type home for adults).
 - (f) Commercial communication tower (see § 182-39).
 - (2) Public and institutional:
 - (a) Utilities (public and private).
 - (b) Public telecommunication equipment (including wireless).
 - (c) Schools (public and private).
 - (3) Residential:
 - (a) Multifamily dwellings.
 - (4) Ponds (see § 182-40).

ARTICLE IV
Site Plan Review

§ 182-27. Site plan review and approval.

Site plan review and approval shall be required for all development within the Town of Stafford excluding one- and two-family dwellings and their accessory buildings and uses and buildings designed and intended for agricultural purposes and their accessory buildings and uses. The Planning Board shall review and approve, or approve with modifications, or disapprove a site plan in connection with any matter as set forth by this chapter requiring submission of a site plan.

- A. Notice and public hearing. The Planning Board may, in its sole discretion, hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within 62 days from the date the complete application for site plan review is received by it, and public notice thereof shall be published in a newspaper of general circulation in the Town at least five days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least 10 days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property located within 300 feet of the property which is the subject of the application is located at least 10 days before the date of the hearing. When necessary under § 239-m of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.²
- B. Submission of site plan and data. The applicant shall submit to the Town Clerk 10 copies of a site plan and supporting data in a form satisfactory to the Planning Board, including, but not limited to, the following information presented in graphic form and accompanied by a written text.
- (1) Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, rights-of-way, zoning and ownership of surrounding property.
 - (2) Layout sketch showing proposed lots, blocks, building locations and land use area.
 - (3) Traffic circulation, parking and loading spaces, and pedestrian walks.
 - (4) Landscaping plans, including site grading, landscape design, open space and buffer zone.
 - (5) Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (6) Preliminary engineering plans, street improvements, storm drainage, water supply and sanitary sewer facilities and fire protection.
 - (7) Engineering feasibility study of any anticipated problem which may arise from the proposed development, as required by the Planning Board.
 - (8) Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
 - (9) Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
 - (10) Together with any other permits or applications made to other governmental agencies and any additional information requested by the Planning Board.
- C. Site plan review criteria. The Town Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:
- (1) Harmonious relationship between proposed uses and existing adjacent uses.
 - (2) Maximum safety of vehicular circulation between the site and street including emergency vehicle access.
 - (3) Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.
 - (4) Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.
 - (5) Adequacy of municipal facilities to serve the proposal, including streets, water supply and wastewater treatment systems, stormwater control systems, and fire protection.
- D. Area variances. Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one or more features which do not comply with this chapter, applications may be made to the Zoning Board of Appeals for an area variance pursuant to NYS Town Law § 274-a, without the necessity of a decision or determination of an administrative official charged with the enforcement of this chapter.
- E. Modifications and conditions.
- (1) The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning

Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making the changes or additions.

- (2) The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.
- F. Waiver of requirements. The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this chapter, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.
- G. Reservation of parkland on site plans containing residential units.
- (1) Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Planning Board or this chapter, a park or parks suitably located for playground or other recreational purposes.
 - (2) Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.
 - (3) In the event the Planning Board makes a finding pursuant to Subsection G(2) that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require (on the consent of the Town Board) a sum of money to be deposited by the developer in lieu thereof in a trust fund to be established by the Town Board as provided below. In making such determination of suitability, the Board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors, including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board to be deposited in lieu of land for park, playground or other recreational

purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property.

- (4) Notwithstanding the foregoing provisions of this subsection, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to NYS Town Law § 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.
- H. Performance bond or letter of credit as a condition of site plan approval. The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or letter of credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.
 - I. Performance standards. In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may in its discretion reject any uses if it determines that insufficient evidence has been submitted to show compliance with these environmental standards. However, final responsibility for compliance with all environmental laws and regulations lies with the applicant.
 - J. Decisions. The Planning Board shall decide any matter referred to it under this section within 62 days after the first regular monthly meeting of the Planning Board at least 10 days prior to which the site plan and all supporting data required by this article are submitted to the Town Clerk. Such time may be extended by mutual consent of the Planning Board and the developer. Prior to rendering its decision, the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law § 239-m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five business days after such decision is rendered, and a copy mailed to the applicant by regular mail.
 - K. Changes and revisions. Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

ARTICLE V

Manufactured Homes and Manufactured Home Parks**§ 182-28. Single manufactured homes.**

- A. Regular housing situation. Single manufactured homes may be permitted temporarily on a lot in the A-R and R Districts upon the issuance of a temporary use permit by the Planning Board. In order to apply for such a temporary use there must first be a valid zoning permit issued for the erection of a residential dwelling on that lot and the manufactured home unit must comply with the current construction and safety standards set forth by the U.S. Department of Housing and Urban Development. Such manufactured home shall be removed from the lot upon expiration of the temporary use permit, or upon completion of the dwelling, whichever condition comes first.
- B. Emergency housing situation. Single manufactured homes, mobile homes or recreational vehicles (RV) may be permitted as a temporary residence in any district upon the determination that an emergency housing situation exists. Such emergency housing situation shall be limited to either man-made or natural disasters (i.e., fire, flooding, hazardous material incidents, etc.) which rendered existing housing unit(s) uninhabitable. The location of such emergency housing is not limited to the site containing the uninhabitable housing unit(s). The Zoning Enforcement Officer may grant a nonrenewable temporary emergency housing permit for a period of time not exceeding 90 days. Any extension of an emergency housing permit past this initial ninety-day period shall only be granted by the Planning Board as set forth under § 182-48 of this chapter. Such manufactured home, mobile home or RV shall be removed from the lot upon expiration of the emergency housing permit.
- C. Single mobile home; replacement of existing unit.
- (1) An existing mobile home which is occupied as a one-family dwelling on any lot in a R, A-R, C or PUD District may be replaced with another mobile home, provided the following criteria are met:
 - (a) The replacement mobile home unit shall be constructed in accordance with regulations set forth in the Code of Federal Regulations (CFR), Title 24, Housing and Urban Development, Chapter XX, Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280, Manufactured Mobile Home Construction and Safety Standards.
 - (b) The location of the replacement mobile home shall not increase the degree of nonconformity (other than unit size, square footage) relative to the area requirements that exist with the current mobile home.

- (c) The mobile home shall be installed in compliance with the NYS Uniform Fire Prevention and Building Code.

§ 182-29. Manufactured home parks.

Manufactured home parks may be permitted in the A-R and R Districts upon the issuance of a special use permit, provided the following standards and requirements are complied with:

- A. Size. The size of all manufactured home parks shall be a minimum of 10 acres.
- B. Construction and safety standards. All manufactured homes within the park shall comply with the current construction and safety standards set forth by the U.S. Department of Housing and Urban Development.
- (1) Manufactured homes shall have a minimum habitable floor area of 800 square feet.
 - (2) Solid fuel-burning devices shall not be permitted within any manufactured home in a manufactured home park.
- C. Layout and design.
- (1) Double access. All manufactured home parks containing 20 or more units shall have access to a public highway at two points, with such points being separated by at least 100 feet. This provision may be waived by the Town Board if the applicant's proposal contains acceptable alternatives for emergency access.
 - (2) Buffer area. The site shall be located and laid out so that no manufactured home is located within 300 feet of any adjacent public highway right-of-way or within 100 feet of any other adjoining property line. Additional buffer areas may be required by the Planning Board if deemed necessary in order to avoid potential conflicts with existing or planned land uses.
 - (3) Sales area. Commercial areas may be provided for the display and sales of manufacture homes within the confines of the manufactured home park, except on the frontage established in the buffer area. Model units shall only be placed upon individual lots, limited to one unit per lot.
 - (4) Other principal structures. A private conventional residence may be located within the confines of the manufactured home park. Lot location and minimum distances shall be fixed by the Town Board after due consideration of each case.
 - (5) Interior roadways. The layout of interior roadways, driveways, and walkways shall be designed and maintained in such a manner as to provide for safe, efficient and orderly vehicular and pedestrian traffic acceptable to the Town Board. In addition, all interior

roadways shall be clearly identified by signs at each intersection. Such signs shall be acceptable to the Town Board.

- (6) Roadway (or driveway) clear zone width. All roadways shall have a minimum clear zone width of 40 feet which is completely clear of obstructions to a height of 12 feet.
- (7) Roadway grades. The maximum roadway grade shall be 7%. Entrance gradients shall be less than 3% for a distance of 75 feet from the edge of the right-of-way of the public highway.
- (8) Minimum radius. The minimum radius of curvature for any street shall be 75 feet.
- (9) Alignment. Roadways shall be laid out so as to intersect as nearly as possible at right angles, and in no case shall any angle or intersection be less than 75°. Roadways in four way intersections shall be directly across from one another or offset a minimum of 125 feet.
- (10) Roadways. Roadway or driveway pavement shall be located in the center of the roadway clear zone and shall be at least 20 feet wide. If parking provision is made within the roadway clear zone such parking shall be off the pavement and the clear zone shall be increased accordingly.
- (11) Parking. Two parking spaces shall be provided for each manufactured home lot to meet the needs of occupants of the manufactured home park and their guests without interference with normal movement of vehicular or pedestrian traffic. Such parking may be in tandem. Each parking space shall have minimum dimensions of at least 10 feet by 20 feet per vehicle and shall have an all-weather surfacing.
- (12) Auxiliary parking. Auxiliary parking areas for motor vehicles shall be provided at a ratio of one parking space to every five manufactured home units. Additional auxiliary parking areas are to be provided for parking trucks, maintenance equipment, boat trailers, utility trailers, and similar such equipment and vehicles.
- (13) Manufactured home lot size. All lots shall be a minimum of 8,000 square feet exclusive of any common areas and shall have a minimum dimension of 80 feet across the lot. No common areas such as buffer areas, roadway clear zones, auxiliary parking lots, recreational areas, service buildings and areas, sales areas, etc., shall be counted towards required individual manufactured home lot areas.
- (14) Walkways. Walkways shall be laid out so as to connect service buildings, dry yards, and storage lockers with roadways. Walkways shall also provide access to recreation areas if such areas are not located adjacent to a roadway. Each roadway shall have a walkway

running parallel to it, separated from the roadway by a minimum distance of seven feet. Additional walkways may also be placed along the rear of each lot. All walkways shall be a minimum of three feet wide and thickness of four inches and shall be provided with joints so designed as to minimize cracking. All walkways shall be made of concrete or blacktop or other similar material approved by the Planning Board.

- (15) Recreation areas. Recreation areas shall be provided in central locations at an amount equal to 10% of the total park area. Recreational areas shall include playgrounds for children and separate areas for more passive enjoyment by adults. The playgrounds shall be equipped with play equipment for children under 10 years of age and should be away from traffic.
 - (16) Public telephone. If public telephones are provided within the court, they shall be located directly adjacent to service buildings.
 - (17) Mailboxes. Mailboxes shall be located in compliance with U.S. Postal Service regulations and shall not be placed in any location where they constitute a safety hazard to pedestrians or to vehicles.
 - (18) Trees. All existing trees shall be preserved insofar as possible in the design of the park.
- D. Siting of manufactured homes. Manufactured homes shall be so situated within the manufactured home park in conformance with the following:
- (1) The following minimum distances shall be maintained when providing specific locations of manufactured homes as related to each other within the park:
 - (a) Laterally (side of manufactured home facing the side of the next): 30 feet.
 - (b) Longitudinally (end of manufactured home and building): 20 feet.
 - (c) Perpendicularly (end of one manufactured home facing the side of another): 25 feet.
 - (2) In cases of irregularly shaped lots, the Town Board shall determine the application of the above-listed provisions but in no case shall any two manufactured homes be closer than 20 feet from one another.
 - (3) No manufactured home shall be located less than 50 feet from any service or storage building other than approved accessory buildings located on and serving the specific manufactured home lot as set forth in Subsection E(12) of this section.

- (4) The minimum setback from the roadway line (clear zone rather than pavement) shall be 15 feet. Minimum setback from all interior lot lines shall be five feet.
- (5) The percent lot coverage for an individual manufactured home lot shall be no greater than 25%.
- (6) The minimum distance between a manufactured home and a parking space for motor vehicles shall be 10 feet.
- (7) No occupied travel or vacation trailer or other form of temporary type living units shall be permitted in a manufactured home park.
- (8) Every manufactured home lot shall be clearly identified by a number located on a sign or light post located on the lot.

E. Required improvements.

- (1) Water and sewage system. Water supply and sewage treatment facilities shall be installed and maintained in compliance with the requirements of the New York State Health Department, Department of Environmental Conservation and the Genesee County Health Department.
- (2) Underground utilities. Electrical systems, gas piping systems, cable and telephone wires, and community and individual fuel storage shall be installed underground and maintained in compliance with the NYS Uniform Code.
- (3) Artificial lighting. Artificial lighting shall be provided from dusk to dawn to illuminate walks, driveways, roadways and parking spaces for the safe movement of pedestrians and vehicles. Specifically, roadway lighting standards shall be provided as follows:
 - (a) Overhead roadway lighting standards shall be placed no farther than 100 feet apart, have a minimum clearance above the pavement of 12 feet and shall have a minimum capacity of 100 watts or as specified by the Town Board.
 - (b) Service buildings shall have sufficient exterior lighting fixtures so as to properly illuminate entrances and drying yards connected therewith.
- (4) Refuse disposal. It shall be the responsibility of the park owner to insure that garbage and rubbish shall be collected and properly disposed of outside the park as frequently as may be necessary to insure that garbage receptacles do not overflow. This responsibility shall include either the provision of garbage cans with tight fitting covers to each unit or dumpsters which service a number of units. Exterior property areas shall be maintained free from organic and inorganic material that might become a health, incident or fire hazard. Suitable screening shall be provided for all community refuse (dumpster) areas.

- (5) Roadway paving. All roadways within the park shall be paved for a minimum width of 20 feet in accordance with specifications acceptable to the Town Board.
- (6) Parking area paving. Areas for motor vehicle parking and access driveways shall be surfaced with asphalt or concrete.
- (7) Manufactured home lot. Each manufactured home lot shall contain a manufactured home stand to provide adequate support for the placement and tiedown of the manufactured home. The stand shall not heave, shift, or settle unevenly under the weight of the manufactured home as a result of any frost action, inadequate drainage, vibration or other such forces. The material used in constructing the stand should be durable and capable of supporting the expected load regardless of the weather, and shall be constructed in compliance with the NYS Uniform Fire Prevention and Building Code. In addition, the footings and the load-carrying portion of the ground anchors shall extend below the frost line.
- (8) Patios/decks. Manufactured home lots may be provided with patios and/or decks. If installed, patios and/or decks may be covered and shall conform to distance separations, lot setbacks and percent lot coverage requirements, and shall not be enclosed (insect screening is allowable).
- (9) Stormwater drainage. Manufactured home parks shall have adequate facilities for drainage of surface and subsurface water. The entire manufactured home park shall be graded to facilitate the safe and efficient drainage of surface water and to permit no ponding areas where water will stand for lengths of time so as to constitute a health or other hazard. Drainage ditches shall be provided where necessary to provide for the removal of surface drainage. Such ditches shall be provided in such a way as not to constitute a hazard to pedestrians. Gutters, culverts, catch basins, drain inlets, stormwater sewers or other satisfactory drainage systems shall be utilized where deemed necessary and shall be acceptable for a size specified by the Town Board and the Genesee County Soil and Water Conservation District.
- (10) Landscaping. Each manufactured home lot shall be provided with at least two shade trees with trunks not less than 1 1/2 inches in diameter as measured three feet from the ground. Poplars, silver or soft maples, box elders, catalpas, and horse chestnuts shall not be planted. Shade trees shall also be planted at intervals of not less than 50 feet within the buffer areas to the sides and rear of the manufactured home court. Shade trees are recommended in the buffer area between the public highway and the adjacent manufactured home lots. Due regard shall be had to the obstructive qualities of limbs and branches along manufactured home movement and accessways.

- (11) Service buildings. The developer shall be required to furnish service buildings in conformance with the following:
- (a) Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a manufactured home lot.
 - (b) Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the NYS Uniform Code and the New York State Sanitary Code.
 - (c) The service buildings shall be well lighted at all times from dusk to dawn and shall be well ventilated with screened openings, shall be constructed of such moisture proof material, including painted woodwork, as shall permit repeated cleaning and washing, and be maintained at a temperature of at least 68° F. during the period of October 1 to June 1. The floors of such buildings shall be of concrete and supplied with drains.
- (12) Additional structures on manufactured home lots. Additional structures on manufactured home lots are subject to the following:
- (a) No nonintegral structural addition or other accessory building or structure in excess of 100 square feet shall be permitted on any manufactured home lot.
 - (b) Structural additions, accessory buildings, and awnings shall conform to distance separations, lot setbacks and percent lot coverage requirements.
 - (c) Accessory buildings shall not be placed in front yards.
- (13) Manufactured home park owner obligations. In general, manufactured home parks shall be properly maintained so as to insure the desirable residential character of the property. Specifically, the following shall apply:
- (a) Yard maintenance. Manufactured home parks shall be maintained reasonably free from holes and excavations, sharp protrusions, and other objects or conditions which might be a potential cause of personal injury. Walks, steps, driveways and roadways that contain holes or tripping hazards shall be filled, repaired, or replaced as the need indicates. Trees or limbs of trees that constitute a hazard shall be removed. Snow removal is the responsibility of the manufactured home park owner.
 - (b) Noxious weeds. Ragweed and other noxious weeds considered detrimental to health such as a poison ivy or poison sumac shall be completely eliminated from all areas of the manufactured home park. Open areas shall be maintained free of heavy undergrowths of any description.

- (c) Accessory structures. All accessory buildings or structures shall be kept in good repair, free from health, fire and accident hazards. They shall be of durable construction and appropriate for intended use and location, exterior wood surface of all structures that are not inherently resistant to deterioration shall be periodically treated with a protective coating or paint or other suitable preservative.
 - (d) Gravel areas. All areas surfaced with gravel shall be kept clear of all forms of vegetation.
 - (e) Infestation. Grounds and structures shall be maintained free of insect, vermin, and rodent harborage and infestation. Methods used for purposes of extermination shall conform with generally accepted practice.
 - (f) Skirts. Skirts for individual manufactured homes are required and shall conform to the New York State Uniform Fire Prevention and Building Code. Such skirting shall be installed within 30 days of the installation of the manufactured home and must be maintained.
- (14) Manufactured home park plans and registration of manufactured home park occupants. It shall be the duty of each manufactured home park owner/operator to keep a register containing a record of all manufactured home owners and occupants located within the park. This register shall contain the following:
- (a) The name and legal address of all occupants.
 - (b) The name and address of the owner of each manufactured home.
 - (c) The make, model, year, and license number of each manufactured home.

ARTICLE VI
Supplementary Regulations

§ 182-30. Off-street parking requirements.

For every building hereafter erected, altered or changed in use there shall be provided at least the minimum number of off-street parking spaces set forth below. All off-street parking shall be designed in such a manner as to allow vehicles to exit onto the road without backing out on to it. The Planning Board shall review all proposals requiring the provision or alteration of required off-street parking as set forth in this section, excluding one- and two-family dwellings.

A. Residential uses:

- (1) One- and two-family dwellings: two parking spaces for every dwelling unit.
- (2) Multifamily dwellings: a minimum of two parking spaces for every dwelling unit. Additional parking spaces may be required by the Planning Board.
- (3) Home occupation: three parking spaces, plus one additional parking space for every 200 square feet of office or nonresidential area in addition to whatever parking spaces are required for the residential uses on the lot. Additional parking spaces may be required by the Planning Board.

B. Nonresidential uses:

- (1) Motels, hotels and boarding houses: one parking space per sleeping or dwelling unit, plus one space for each employee.
- (2) Barbershops and beauty shops: one parking space per station or chair, plus one space for each employee.
- (3) Business and professional offices, retail and service shops: one parking space for every 200 square feet of building area, plus one space for each employee.
- (4) Stores for the sale of furniture, appliances, or hardware: one parking space for every 300 square feet of building area, plus one space for each employee.
- (5) Supermarkets, self-service food stores: one parking space for every 200 square feet of building area, plus one space for each employee.
- (6) Motor vehicle sales, farm equipment sales: one parking space per every 300 square feet of building area.
- (7) Restaurant, cafeterias, bars, taverns: one space for every three seats for customers, plus one space for each employee.
- (8) Bowling alleys: eight parking spaces for each bowling lane.

- (9) Laundromats: one parking space for every two washing machines.
- (10) Churches and similar public meeting places: one parking space for every four seats in the main assembly unit, plus one space for each employee.
- (11) Funeral homes: one parking space for every 50 square feet.
- (12) Clubs: one parking space for every four seats for members, plus one space for each employee.
- (13) Industrial uses: one space for each employee per shift. Additional parking to account for shift overlap may be required by the Planning Board.
- (14) Off-site parking. Required off-street parking areas for the above-permitted uses may, under unusual circumstances and hardship, be located off-site, provided that the parking area is not more than 400 feet from the premises of the principal building or use to be served by such areas, and provided that the owner or owners of said off-site parking areas relinquish all development rights over this property until such time that parking space is provided elsewhere.

C. Off-street loading and unloading requirements.

- (1) Truck loading and unloading facilities shall be provided on the property to permit the transfer of goods in other than the front yards, customer parking area, or public street. A landscaping screen of no less than six feet in height shall be required where off-street loading areas abut residential zones. Such off-street loading areas shall have access to a public alley or street.
- (2) Number of spaces required is as follows:
 - (a) Any business use with less than 3,000 square feet in total floor area: none.
 - (b) For structures containing more than 3,000 square feet but less than 25,000 square feet of floor area: one space (at least 10 feet wide and 60 feet long) for each 12,500 square feet.
 - (c) For structures containing 25,000 square feet or more of gross floor area, the number of spaces to be provided shall be as specified in the following table:

Square Feet	Number of Spaces
25,000 to 40,000	2
40,001 to 100,000	3
100,001 to 160,000	4
160,001 to 240,000	5
240,001 to 320,000	6

For each additional 100,000 1 additional
or fraction thereof

- (3) Location of off-street loading areas. Required off-street loading areas in all cases shall be located on the same lot or parcel of land as the structure they are intended to serve. In no case shall the required off-street loading space be considered as part of the area provided to satisfy off-street parking requirements as listed herein.
- (4) Where off-street parking areas abut residential zones, a planted buffer area at least 10 feet wide and six feet high shall be provided between the parking area and the adjoining property. This requirement may be modified by the Planning Board.

§ 182-31. Signs.

- A. General provisions. Every sign shall be designed and located in such a manner as to:
 - (1) Not impair public safety.
 - (2) Not restrict clear vision between a sidewalk and street.
 - (3) Not be confused with any traffic sign or signal.
 - (4) Not prevent free access to any door, window or fire escape.
 - (5) Withstand a wind pressure load of 30 pounds per square foot.
- B. Signs may be illuminated by a steady light, provided that lighting does not directly illuminate adjacent property. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare. Additional sign permits may be required from NYS Department of Transportation for signs located along state highways.
- C. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

ADVERTISEMENT BANNER — Any banner intended to act as signage to advertise a specific business or the sale of a specific product or not-for-profit-sponsored community event or service.

AWNING SIGN — A sign that is painted, printed, or stenciled onto the surface of an awning.

BANNER — A temporary sign intended to be hung either with or without a frame, possessing characters, letters, illustrations, or ornamentations applied to paper, plastic, or fabric of any kind.

BILLBOARD — Any freestanding sign that advertises business conducted, services provided or products sold on properties other than the property on which the sign is erected.

BUILDING SIGN — Any sign erected on any part of a building or structure or on a sign structure attached to a building. Building signs include awning, canopy, fascia, roof, wall and window signs.

CANOPY — A roof-like structure that shelters a drive lane use, such as, but not restricted to, a gasoline pump island. A canopy is open on two or more sides and may be supported by either columns or by being attached to the building to which it is accessory.

CANOPY SIGN — A sign that is painted, printed, or stenciled onto the surface of a canopy.

DECORATIVE BANNER — Cloth banners designed for long-term use that are not intended to act as signage to advertise a specific business or the sale of a specific product. Decorative banners may, however, contain sponsor tags.

DIRECTIONAL SIGN — A small ground-mounted sign or sign affixed to an exterior wall of a building, the purpose of which is to direct traffic safely into and out of the premises.

FASCIA SIGN — A sign erected or painted on the horizontal fascia or eave trim of a roof, including signs in the filled-in portion of any roof gable. Such signs shall not extend beyond any edge of the surface on which they are mounted.

FREESTANDING SIGN — Any sign or sign structure not attached to the exterior of a building or other structure. Freestanding signs include pole and monument signs.

INFLATABLE SIGN — Any display capable of being expanded by air or other gas and used to advertise a product, event, or business. All inflatable signs are considered temporary signs.

MONUMENT SIGN — A sign or signs mounted, painted on or fastened to a freestanding wall, pier or other sign structure of which any horizontal dimension of a structural member exceeds 18 inches between two feet and eight feet above grade level.

OFF-PREMISES SIGN — See "billboard."

POLE SIGN — A sign or signs mounted on a freestanding sign structure consisting of one or more poles, columns or piers, none of which supporting members shall exceed 18 inches in any horizontal dimension between two feet and eight feet above grade level.

PORTABLE OR MOBILE SIGN — Any sign or sign structure, other than a window sign, that is not permanently affixed to a building, structure or the ground, but not including advertising on motor vehicles.

PROJECTING SIGN — Any sign that projects from the exterior of any building.

ROOF SIGN — A sign erected on the roof of a building or structure.

SIGN — Any material, symbol, emblem, structure or device, or part thereof, composed of lettered or pictorial matter or upon which lettered

or pictorial matter is placed when used or located out-of-doors or outside or on the exterior of any building, including exterior and interior window surfaces, for display of an advertisement, announcement, notice, directional matter or name, and includes sign frames, billboards, signboards, painted wall signs, hanging signs, illuminated signs, pennants, inflatable or fluttering devices, projecting signs or grounds signs, and shall also include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interests of any person or business when the same is placed in view of the general public. The term "sign" includes signs related and unrelated to a business or profession or to a commodity or service sold or offered upon the premises where such sign is located. For the purposes of this chapter, the term "sign" does not include signs erected and maintained pursuant to and in discharge of any governmental function or required by any law, ordinance or governmental regulation, nor does it include flags, emblems or symbols of a nation, governmental body or school, nor memorial tablets or historical markers.

SIGN AREA — The surface area of a sign that is within view of a public right-of-way, visible from any one point of view. For measurement purposes, the sign surface area shall be calculated as follows:

- (1) For rectangular wall signs: that area of the smallest rectangle that can be placed over the entire sign, including its lettering, pictorial matter or devices, frame and decorative moldings along its edges and background, if of a different color from the predominant color surrounding the sign.
- (2) For irregular wall signs: that area defined by the edges of the sign, including all lettering, pictorial matter or devices, frame and decorative moldings and background, if of a different color from the predominant color surrounding the sign.
- (3) For letters, pictorial matter or devices not attached to frames or freestanding: that area defined by the smallest rectangle or rectangles that can be placed over any series of letters, pictorial matter or devices which can be considered as a unit. In the event that both uppercase and lowercase letters are used, the area shall be defined by the smallest rectangles that can be placed over the series of lowercase letters, plus the area of the smallest rectangles that can be placed over the individual uppercase letters. In the event that a letter or letters or other pictorial matter is placed as a separate unit on background boards, the sign area shall be calculated as the sum of the areas of the background boards.
- (4) For freestanding double-faced signs: the area of one entire side of the sign calculated as above.
- (5) For multiple-sided signs: the maximum area visible from any one point of view.

- (6) For signs on other than flat surfaces: the maximum actual surface area visible from any one point of view.

TEMPORARY SIGN — Any sign constructed of cloth, paper, canvas, plastic or light fabric, wallboard or other light, impermanent or inflatable material with or without frames intended to be displayed for a limited period of time only.

WALL SIGN — A sign fastened, painted or otherwise erected on the wall of a building so that the wall becomes the sign's supporting structure and wholly or partially forms its background.

WINDOW SIGN — A permanent sign affixed to a window surface or in front of or behind a window in such a manner that the window acts as its frame or background.

- D. Signs permitted in any district. Off-premises commercial signs, billboards and roof signs are not permitted in any district. The following signs are permitted in any district:

- (1) Home occupation signs not exceeding four square feet, located not closer than five feet to any property line.
- (2) Any sign authorized in this chapter may contain a noncommercial message constituting a form of expression in lieu of other copy.
- (3) Signs necessary for public safety or welfare.
- (4) Temporary signs not exceeding four square feet in the R and A-R Districts nor 16 square feet in the I, IP or C District, providing the following:
 - (a) Such signs shall be removed within 10 days after the event, project completion, primary race and/or election date, whichever is applicable.
 - (b) The names and/or addresses of the sponsor or the person responsible for removal of such signs are identified upon each sign.
 - (c) Commercial uses shall be limited to one temporary sign connected to the business not exceeding 16 square feet for a period of 10 days. Such limitations on commercial uses do not apply to temporary signs not connected to the business.

- E. Nonconforming signs.

- (1) Nonconforming signs shall be removed at the expense of the owner when any use of the property on which the sign is located is discontinued.
- (2) Nonconforming signs may not be enlarged, extended, relocated or altered in any way, except to make them conform to provisions of this chapter. This provision shall not restrict routine maintenance

of nonconforming signs, for example, replacement of electrical parts and repainting.

- F. Signs permitted in the Residential (R), Hamlet (H) and Agriculture-Residential (A-R) Districts.
- (1) One on-premises sign identifying a church, public building or other permitted noncommercial use located no closer than five feet from the property line with a maximum size of 10 square feet in area per side. Two off-premises (noncommercial) directional signs located no closer than five feet from the property line with a maximum size of four square feet per side.
 - (2) One on-premises sign for uses which have a valid special use permit or approved site plan to operate. Such sign may either be wall mounted with a maximum size of eight square feet, or freestanding with a maximum size of eight square feet per side. Freestanding signs shall be limited in height to 15 feet and not be located within 10 feet of a property line. The final location/ placement of all signs for uses allowed by special use permits in the R, H, and A-R Districts shall be determined by the Board (Town or Planning) acting on said special use permit.
- G. Signs permitted in Commercial (C) and Industrial (I) and Industrial Park (IP) Districts.
- (1) Two on-premises signs, one of which may be freestanding, shall be allowed for each permitted use. If attached, such signs shall not exceed an area equal to 10% of the building face. No sign shall project more than one foot from the building face.
 - (2) Freestanding signs shall be permitted. Such signs shall conform to the following provisions relating to their number and size:
 - (a) Each commercial or industrial use may have one freestanding sign. Such freestanding sign shall have an area of not more than 25 square feet nor be more than 25 feet in height, located not less than 10 feet from the property lines.
 - (b) In a shopping center or industrial park there may be one directory sign at any location thereon which shall not exceed five square feet in area for each acre of land in the shopping center or industrial park, provided that no such sign shall exceed 30 square feet in area. No individual freestanding sign shall be allowed in a shopping center.
 - (3) Off-premises direction signs not exceeding four square feet in size and limited to two signs per use shall be permitted.
- H. Signs prohibited. The following types of signs are prohibited and shall not be permitted, erected, or maintained in any zoning district, and the owner thereof shall upon written notice of the Zoning Enforcement

Officer forthwith, in the case of immediate danger and in any case within not more than 10 days, make such sign conform with the provisions of this section or shall remove it. If within 10 days the order is not complied with, the Zoning Enforcement Officer may cause said sign to be removed at the expense of the owner.

- (1) Any sign which by reason of its size, location, content, coloring or manner of illumination constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstruction or detracting from the visibility of any traffic control device on public streets and roads.
- (2) Any sign which obstructs free ingress to or egress from a required door, window, fire escape or other required exit way.
- (3) Signs which make use of words such as "stop," "look," "danger" and other words, phrases, symbols or character in such a manner as to interfere with, mislead or confuse traffic.
- (4) Any sign which has any visible moving part, for example visible revolving parts or visible mechanical movement of any description (except time and temperature revolving signs as allowed), or other apparent visible movement achieved by electrical, electronic or kinetic means, including intermittent electrical pulsations or by action of normal wind currents.
- (5) It shall be unlawful for any person to display upon a sign or other exterior advertising structure any obscene, indecent or immoral matter if it interferes with the proper or normal movement of vehicular traffic.

§ 182-32. Entrances and exits onto highways.

- A. Written permission required. If otherwise required by applicable law, rule or regulation, no person, firm or corporation shall, after the effective date of this chapter, cut, construct or locate any driveway entrance into or exit from a highway in the Town of Stafford without having first received written permission to do so from the appropriate highway department, namely the NYS Department of Transportation, Genesee County Highway Department or Town of Stafford Highway Department. Three copies of such written permission shall be submitted, one to each of the following: Town of Stafford Highway Superintendent, Town Zoning Enforcement Officer, and Town Clerk. If the proposed driveway is in a designated wetland, then the appropriate DEC permits shall also be required and three copies provided as above.
- B. Standard driveway entrance and exit requirements for Town highway. The standards set forth herein below are considered the minimum acceptable for installation of a new driveway on a Town highway. The Highway Superintendent of the Town of Stafford may impose any special requirements which the particular situation at the location

where such driveway is sought to be located requires in his judgment under the circumstances.

- (1) The applicant shall furnish all material and bear all costs of construction within the Town highway right-of-way, pay the cost of all work done and materials furnished as required to meet the conditions of any permit issued by the Town Highway Superintendent.
- (2) No alteration or addition shall be made to any driveway or be relocated without first securing a new permit from the Town Highway Superintendent.
- (3) No more than two driveways to a single commercial establishment entering on one highway shall be permitted.
- (4) The maximum width for a single combined entrance to exit shall be no more than 50 feet for commercial use and not more than 30 feet for residential use. The maximum width for each driveway when two or more are permitted shall not be more than 50 feet.
- (5) The angle of the driveway with respect to the pavement shall not be less than 45°.
- (6) No driveway will be permitted where sight distance at pavement edge is less than 350 feet in each direction.
- (7) No driveway shall be permitted within 50 feet of any public highway intersection boundary line.
- (8) A fully dimensioned plan of the proposed driveway shall be attached to each application for a permit required hereunder.
- (9) Any culvert pipe required to be installed at such driveway entrance or exit shall be of corrugated metal pipe or equal no smaller than 12 inches in diameter and no shorter than 20 feet in length.
- (10) No head walls above surface of driveway shall be permitted.
- (11) No concrete surface closer to the traveled highway than the edge of the highway property lines.
- (12) Asphalt concrete may connect with traveled road bed under strict directions of the Highway Superintendent.
- (13) A culvert pipe shall be placed so as to allow it to run full without spilling out onto the highway either on the high or low side of the pipe.

§ 182-33. Stabling of farm animals.

There shall be no stabling of farm animals or bulk storage of manure, fertilizer, or similar odor or dust producing substance outside of a NYS Certified Agricultural District within a Residential (R) District, or Hamlet

(H) District. Such stabling or storage shall be permitted in any Zoning District within a NYS Certified Agricultural District and/or within the A-R, C, IP, or I Districts, provided the following restrictions are observed:

- A. No such stabling or storage shall take place within 500 feet of an R or H District.
- B. No such stabling or storage shall take place within 100 feet of a lot containing a residential use.
- C. Disposal of bedding, manure or other animal waste shall be in conformance with guidelines established by the Natural Resources Conservation Service (NRCS) and/or Genesee County Soil and Water Conservation District. The Zoning Enforcement Officer may require an individual who stables farm animals to provide the Town with an animal waste disposal plan approved by one of the aforementioned agencies.

§ 182-34. Adult uses.

- A. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

ADULT BOOKSTORE — An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, films for sale or viewing on premises, by use of motion picture devices or any other coin-operated means and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section devoted to the sale or display of such material.

ADULT ENTERTAINMENT CABARET — A public or private establishment which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers.

ADULT MINI-MOTION-PICTURE THEATER — An enclosed building with a capacity of less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT MOTION-PICTURE THEATER — An enclosed building with a capacity of 50 or more persons used regularly and routinely for presenting material having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas for observation by patrons therein.

PERSON — Any person, firm, partnership, corporation, association, or legal representative, acting individually or jointly.

SPECIFIED ANATOMICAL AREAS —

- (1) Less than completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES —

- (1) Human genitals in a state of sexual stimulation or arousal.
 - (2) Acts of human masturbation, sexual intercourse or sodomy.
 - (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
- B. Restrictions. Adult uses, including, but not limited to, adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, and adult entertainment cabaret shall be permitted upon the issuance of a special use permit subject to the following restrictions:
- (1) No such adult uses shall be allowed within 500 feet of another existing adult use.
 - (2) No such adult use shall be located within 25 feet of the boundaries of any zoning district which is zoned for residential use (A-R or R).
 - (3) No such adult use shall be located within 1,000 feet of a preexisting school or place of worship or children's playground.
 - (4) No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This subsection shall apply to any display, decoration, sign, show window or other opening.

§ 182-35. Junkyards.

- A. Establishment. No person shall establish, operate, or maintain a junkyard until he has obtained a special use permit in compliance with § 182-50.
- B. Location.
- (1) Said use shall not be located within 200 feet from any highway right-of-way; 100 feet from any body of water or property line; or 500 feet from any existing dwelling (excluding a dwelling on the lot), church, school, hospital, public building, or place of public assembly.

- (2) In reviewing this special use application, the Town Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

C. Aesthetic considerations.

- (1) The Town Board shall also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the Planning Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barrier protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability or other suitable sites for the junkyard.
- (2) Required yards shall be moved as needed and shall be kept free of unsightly growth. The planting of trees and shrubs to naturally screen the junkyard shall be encouraged.

D. Fencing.

- (1) Before use, a new junkyard shall be completely surrounded with a fence at least eight feet in height which substantially screens said area and shall have a suitable gate which shall be closed and locked except during the working hours of said use. Such fence shall not be erected nearer than 200 feet from the right-of-way of a public highway, nor closer than 100 feet to any other property line. All materials stored or deposited at the site shall be kept within the enclosure of the fence and below the top of the fence, except during transportation of same in the reasonable course of business. All storage, wrecking, or other work shall be accomplished within the area enclosed by the fence.
- (2) Where the topography, land forms, natural growth of trees or other considerations accomplish the purpose of this section in whole or in part, the fencing requirements hereunder may be reduced by the Board; provided, however, that such natural barrier conforms with the purpose of this section.

E. Existing junkyards. All junkyards existing at the time of adoption of this chapter shall be limited to the size, area, and scale of the present use and operation unless a permit is authorized in accordance with these regulations.

- F. Annual review. Pursuant to § 182-50, the Zoning Enforcement Officer shall inspect at least annually the operation of a junkyard to make sure it complies with the provisions of this chapter and any and all conditions prescribed by the Town Board when issuing the special use permit.

§ 182-36. Commercial excavation.

- A. Except when incidental to the construction of a building on the same lot or the construction of a farm pond, the excavation, processing or sale of sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation, hereafter, shall require a special use permit from the Planning Board.

(1) Major excavation.

- (a) State permit. In order to obtain said special use permit, the applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23, of the Environmental Conservation Law when applicable.
- (b) Reclamation. The applicant shall further be required to comply with the reclamation standards established by the New York State Department of Environmental Conservation while carrying out such use.

(2) Minor excavation.

- (a) As part of the application process for a special use permit, the applicant's plan shall be presented to the Genesee County Soil and Water Conservation District for its review and comments. Also, before issuing a special use permit, the Planning Board must find that such excavation will not endanger the stability of adjacent land or structures or the quality or quantity of groundwater and that it does not constitute a detriment to public health, safety or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition.
- (b) In granting said special use permit, the Planning Board shall specify any reasonable requirement, including the following:
- [1] Minimum lot area. The minimum lot area shall be 10 acres.
- [2] Minimum setback requirements. All buildings shall be located not less than 100 feet from any street or property line. The top of the slope of all excavation operations shall be located or shall occur not less than 100 feet from any street or property line. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one public notice sign identifying the use of the property, fencing, berms, buffers, access roads and parking.

- [3] Slope. During mining, the banks of all excavations shall be maintained at a slope not to exceed the normal angle of repose of such material.
- [4] Drainage. All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc., from flowing onto public roads, adjacent property or into any stream. Excavation areas shall be planned and graded to avoid spasmodic collection of stagnant water.
- [5] Dust. All storage areas, yards, service roads or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust or other wind-blown air pollutants.
- [6] Roadside landscape. Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented in the entire area of the roadside setback for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back the over burden around the perimeter of the excavation site to create a berm for the purpose of screening and noise reduction. No berm shall be constructed within 25 feet of any right-of-way line or other property boundaries.
- [7] Fencing. Fencing may be required depending upon the existence of an earthen berm, the nature of the operations, distance from developed area, distance from property lines, depth of pit water and slope of pit walls.
- [8] Topsoil. All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the reclamation plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams or adjacent property. This subsection shall be applied to all operations except that of topsoil removal.
- [9] Erosion. The applicant shall include a plan for the control of soil erosion.
- [10] Hours of operation. All operations shall be conducted between the hours of 7:00 in the morning (7:00 a.m.) and 6:00 in the evening (6:00 p.m.) with no Sunday or holiday operations, except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.

[11]Blasting and/or processing. Operations involving blasting and on-site processing of mineral deposits shall not be allowed.

[12]Reclamation plan. The applicant shall submit a reclamation plan. "Reclamation plan" means the applicant's proposal for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation. Where feasible, reclamation shall be a continuing operation. Grading, topsoil replacement and replanting of the area designated for restoration shall continue during the permit period. All reclamation work shall be complete within one year after the termination of operations, at the expense of the operator.

[13]Performance bond. A performance bond or some other financial guarantee may be required to assure that the conditions stipulated in the approval of the special use permit are carried out.

(3) Duration of special use permit.

- (a) The special use permit for a minor excavation shall be issued for a period of one year, subject to a subsequent annual review and recertification by the Planning Board based on a written request for such continuance, which request shall be submitted to the Town Zoning Enforcement Officer at least 60 days prior to the expiration of each such one-year period. A public hearing shall not be required for such annual recertification, except upon motion of the Planning Board or Town Board.
 - (b) The special use permit for a major excavation shall continue as long as its New York State Department of Environmental Conservation permit remains in effect, it complies with the terms therein, and it meets the reclamation standards established by the New York State Department of Environmental Conservation.
 - (c) If on-site mining or processing operations are not carried out continuously for one year for a major or minor excavation, the site shall be considered abandoned, and, prior to any further excavation or processing, a new permit shall be required.
- B. Except when incidental to the construction of a building on the same lot, or the construction of a farm pond, the excavation, processing or sale of topsoil, earth, sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation, hereafter, may be permitted as a special permit use in the Agricultural and Residential

District upon the approval of a special use permit by the Planning Board.

- C. In its consideration of an application for a special use permit, the Planning Board shall find that such excavation will not endanger the stability of adjacent land or structures or constitute a detriment to public health, safety, convenience or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition. In granting a permit the Planning Board shall specify any reasonable requirements for those commercial excavations not directly regulated by the NYS Department of Environmental Conservation pursuant to Title 27, Article 23, of the Environmental Conservation Law. Commercial excavations regulated directly by NYSDEC shall comply with the requirements set forth by DEC together with any Town requirements which may be applied to similar industrial types of uses. Planning Board specifications for commercial excavations not directly regulated by DEC shall include such conditions as may be necessary to protect the public health, safety, convenience and welfare.

§ 182-37. Animal waste storage facilities.

All proposals for installation and/or modification of animal waste storage facilities shall be permitted only on property where the stabling of farm animals is permitted pursuant to § 182-33 above and shall be submitted to the Genesee County Soil and Water Conservation District (GCSWCD) for their review and determination as to acceptability. If a proposal is acceptable to GCSWCD, then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action. The Planning Board may grant or deny the permit, may set conditions relating thereto and may expand or modify the recommendations of the GCSWCD.

§ 182-38. Contractor's yard.

- A. Establishment. No person shall establish, operate or maintain a contractor's yard until they have obtained a special use permit issued by the Planning Board in accordance with all applicable provisions of this chapter.
- B. Location requirements. Said use shall not be located within the required front yard setback; 100 feet from any body of water or side property line; or 500 feet from any existing dwelling (excluding a dwelling on the lot), church, school, hospital, public building or place of public assembly. In reviewing this special use application the Planning Board shall take into account the nature and development of surrounding property, such as the proximity of surrounding residences.
- C. Aesthetic considerations. The Planning Board shall also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed

location can be reasonably protected from having an unfavorable effect thereon. In this connection the Planning Board may consider collectively the type of road servicing the contractor's yard or from which the contractor's yard may be seen, the natural or artificial barrier protecting the contractor's yard from view, the proximity of the proposed contractor's yard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for contractor's yards. Required yards shall be mowed as needed and shall be kept free of unsightly growth. The planting of trees and shrubs to naturally screen the contractor's yard shall be encouraged.

- D. Fencing. Before use, the equipment and materials storage area of a new contractor's yard shall be completely surrounded with a fence at least eight feet in height which substantially screens said area and shall have a suitable gate which shall be closed and locked except during the working hours of said use. Such fence shall be erected in a manner acceptable to the Planning Board. All materials stored or deposited at the site shall be kept within the enclosure of the fence except during transportation of same in the reasonable course of business. Where the topography, land forms, natural growth of trees or other considerations accomplish the purpose of this section in whole or in part, the fencing requirements hereunder may be reduced by the Planning Board; provided, however, that such natural barrier conforms with the purpose of this section.
- E. Annual review. Pursuant to § 182-50, the Zoning Enforcement Officer shall inspect at least annually the operation of a contractor's yard to make sure it complies with the provisions of this chapter and any and all conditions prescribed by the Planning Board when issuing the special use permit.

§ 182-39. Commercial communication tower.

No commercial communication tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

- A. Shared use of existing towers and/or structure.
- (1) At all times, shared use of an existing tower and/or structure (i.e., another commercial communications tower, water tower, building, etc.) shall be preferred to the construction of a new commercial communication tower. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower. The installation of a commercial communications antenna(s) on an existing structure located within the A-R, C, IP and I Districts shall

be considered a permitted accessory use not subject to site plan review, provided the following criteria are met:

- (a) The existing structure is not increased in height more than 25 feet above its original height, provided no structure shall be increased to a height in excess of 195 feet. Such increase in height shall be limited to once per structure and shall not otherwise significantly alter the visual appearance of the structure;
 - (b) The antenna(s) do not extend above such structure more than 10 feet; and
 - (c) The applicant provides the necessary documentation to the Zoning Enforcement Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code.
- (2) An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.
- B. New or altered towers and/or structures.
- (1) The Planning Board may, in its sole discretion, consider a new or altered (including tower or structure which are modified, reconstructed, or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.
 - (2) The applicant shall be required to submit a site plan in accordance with § 182-27 for all commercial communication towers that are proposed to be erected, moved, reconstructed, changed or altered. Site plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this section. In addition to § 182-27, the site plan shall show all existing and proposed structures and improvements, including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.
- C. Supporting documentation. The Planning Board shall require that the site plan include a completed visual environmental assessment form (visual EAF — SEQ) and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that

location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Planning Board may require submittal of a more detailed visual analysis based on the results of the visual EAF in addressing this subsection and Subsections J and K of this section.

- D. Shared usage of site with new tower. Where shared usage of an existing tower or other structure is found to be impractical, as determined in the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower or other structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection B of this section. Any new commercial communication tower approved for a site with an existing tower or other structure site shall be subject to the standards of Subsections F through N of this section.
- E. New tower at a new location. The Planning Board may consider a new commercial communication tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the Planning Board, and submits a report as described in Subsection B of this section.
- F. Future shared usage of new towers. The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived, provided that the applicant demonstrates, in the sole discretion of the Planning Board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden based upon:
 - (1) The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
 - (2) The kind of tower site and structure proposed;
 - (3) The number of existing and potential licenses without tower spaces;
 - (4) Available spaces on existing and approved towers; and
 - (5) Potential adverse visual impact by a tower designed for shared usage.
- G. Setbacks for new towers. All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

- (1) All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height plus 35 feet, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater.
 - (2) Accessory structures must comply with the minimum setback requirements in the underlying district.
- H. Visual impact assessment. The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to those guidelines and criteria listed below that the Planning Board, in its sole discretion, deems appropriate at the presubmission conference:
- (1) Assessment of before and after views from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, from other public lands; from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of residents, visitors or travelers.
 - (2) Assessment of alternative tower designs and color schemes, as described in Subsection I below.
 - (3) Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
- I. New tower design. Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:
- (1) The minimum required lot size for construction of a commercial communication tower shall be five acres.
 - (2) The maximum height of any new commercial communication tower shall be 195 feet.

- (3) Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.³
 - (4) Any new tower and its foundation shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional providers).
 - (5) The Planning Board may request a review of the application by the Town Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.
 - (6) Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
 - (7) No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.
 - (8) The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.
 - (9) Space on communication towers shall be made available for public safety purposes (i.e., Genesee County Public Safety Radio System) at no cost to public safety agencies.
- J. Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to approval of the special use permit. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
- K. Screening. Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

- L. Access. Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- M. Parking. Parking shall be provided in accordance with § 182-30. No parking space shall be located in any required yard.
- N. Fencing. Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight feet in height from finished grade, unless the applicant demonstrates, to the sole discretion of the Planning Board, that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.
- O. Maintenance and/or performance. Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.
- P. Removal of obsolete/unused facilities. Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within 12 months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

§ 182-40. Ponds.

The purpose of this section is to provide for the construction of ponds that are adequately designed and located so as to not pose adverse impacts upon surrounding land uses. Stormwater/erosion control ponds that are part of an approved stormwater management system with stamped drawings by an engineer licensed in the State of New York shall not be subject to the

provision under this section and are allowed per right in all zoning districts. Farm water supply, conservancy and fire protection or other ponds may be located within the A-R, C, IP and I Districts upon issuance of a special use permit, provided the following criteria are met:

- A. The proposed pond is located not less than 100 feet from any property line. This setback distance shall be measured from the edge of the surface of the water at its highest level.
- B. The proposed pond design is considered acceptable by the Genesee County Soil and Water Conservation District (GCSWCD) or another entity deemed acceptable to the Planning Board.
- C. The pond is constructed in conformance with the design specifications in Subsection B of this section, including any reseeding or revegetation requirements.
- D. Any soil excavated in the construction of a pond shall not be removed from the affected parcel without the specific authorization of the Planning Board in issuing the special use permit.

§ 182-41. Wind energy systems.

- A. Purpose. The purpose of this section is to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system and to allow for the orderly development of land, protect property values, and aesthetic conditions. This section does not repeal, annul, impair, or interfere with any existing ordinance or local law.
- B. Authority. The Town Board of the Town of Stafford enacts this section under the authority granted by:
 - (1) Article IX of the New York State Constitution § 2(c)(6) and (10).
 - (2) New York Statute of Local Governments § 10, Subdivisions 1 and 7.
 - (3) New York Municipal Home Rule Law § 10, Subdivisions 1(i) and (ii) and 1a(6), (11), (12), and (14).
 - (4) New York Town Law § 130, Subdivision 1 (Building Code), Subdivision 3 (Electrical Code), Subdivision 5 (Fire Prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of Driveways), Subdivision 11 (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated Lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).
 - (5) The supersession authority of New York Municipal Home Rule Law § 10, Subdivision 2(d)(3) specifically as it relates to determining which body shall have the power to grant variances under this section to the extent such grant of power is different than under Town law § 267.

- (6) New York Town Law § 64, Subdivision 17-a (protection of aesthetic interests) and Subdivision 23 (General powers).
 - (7) The State Environmental Quality Review Act ("SEQRA").
- C. Findings. The Town of Stafford used a citizens committee to collect relevant unbiased information on wind turbines. Based on this investigation the committee, by majority, voted that commercial wind turbines are not suitable for the Town of Stafford. The siting of wind turbines is typically restricted by the potential adverse impacts they may have on established features of the nearby areas, most commonly roadways and residences. Many potential adverse impacts are mitigated by establishing suitable setbacks or distances between wind turbines and roadways or residential property. Where applicable, minimum restrictions are to be from property lines. Restrictions should follow wind energy system size and should take into account tower height and rotor diameter. Restrictions for different adverse impacts will overlap. A conservative approach is to use combined restrictions which mitigate all adverse impacts.
- D. Definitions. As used in this section, the following terms shall have the meanings indicated:

COMMERCIAL WIND ENERGY SYSTEM — A wind energy system that is operated primarily (51% or more) to put energy into the electric grid, and/or has a nameplate capacity of more than 50 kilowatts (kW), and/or a total height of more than 175 feet, and/or a blade length of more than 30 feet.

ELECTROMAGNETIC INTERFERENCE (EMI) — The interference to communication systems created by the scattering of electromagnetic signals.

METEOROLOGICAL TOWERS (MET TOWERS) — Towers or poles that are used to continuously record wind speed and direction data. Other parameters such as air temperature and pressure may also be collected. MET towers shall be considered parts of a wind energy system and are subject to all applicable provisions of this section, including height restrictions.

NONCOMMERCIAL WIND ENERGY SYSTEM — A wind energy system that is operated primarily (51% or more) for on-site (may be for more than one parcel) consumption, and has a nameplate capacity of 50 kilowatts (kW) or less, and a total height of 175 feet or less, and a blade length of 30 feet or less. These are also defined as wind energy conversion systems (WECS) or small wind energy production facilities.

ROTOR DIAMETER — The largest diameter formed by the blades when assembled and mounted on the wind energy system.

SHADOW FLICKER — The alternating pattern of sun and shade caused by wind tower blades casting a shadow.

STRAY CURRENT — The inappropriate application of current to the ground or earth. For the purpose of this section, it is the measurable addition of current to ground resulting from improper installation or deterioration of the electrical portion of a wind energy system. The National Electrical Safety Code set the conditions that grounding connection points shall be so arranged that under normal circumstances there will be no objectionable flow of current over the grounding conductor. The National Electrical Safety Code set the conditions that earth (ground) should not be part of a supply circuit for both safety and service reasons. The most current revision of the National Electrical Safety Code shall apply.

TOTAL HEIGHT — The vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point.

WIND ENERGY SYSTEM — Equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities, or any other components used in the system. A wind energy system can consist of one or more wind towers. Wind energy systems do not include small lawn decoration, pond aerators, or remaining portions of mechanical water pumping windmills.

WIND TOWER — The monopole, freestanding, or guyed structure that supports a wind turbine generator.

- E. Compliance. It is unlawful for any person to construct, install, maintain, modify, or operate a wind energy system that is not in compliance with this section or with any condition contained in a special use or zoning permit issued pursuant to this chapter.
- F. Commercial wind energy systems prohibited. Commercial wind energy systems shall not be allowed in any area or zone within the Town of Stafford.
- G. Permit requirements.
 - (1) Special use permit. A special use permit is required for noncommercial wind energy systems and for any wind energy system or a component thereof, except for noncommercial wind energy systems located in county-adopted, state-certified Agricultural Districts for primary on-farm use.
 - (2) Zoning permit. A zoning permit and site plan review are required for the installation of any wind tower that is part of a wind energy system.
 - (3) Ownership. In cases where the owner of the property is not the applicant/owner of the wind energy conversion system a clear order of liability will be established. A signed and notarized legal document from the owner of record of the property on which a wind energy system will be located recognizing liability for compliance

to all requirements of this law if the applicant/owner of the wind energy system is unable to comply.

- (4) Expiration. A permit issued pursuant to this chapter expires if:
 - (a) The wind energy system is not installed and functioning within two years from the date the permit is issued; or
 - (b) The wind energy system is out of service or otherwise unused for a continuous twelve-month period.
- (5) Fees.
 - (a) The application for a special use permit for a noncommercial wind energy system, except for noncommercial wind energy systems located in county-adopted, state-certified Agricultural Districts must be accompanied by the fee required for a special use permit.
 - (b) The application for a zoning permit for each tower in a noncommercial wind energy system must be accompanied by the fee required for a zoning permit.

H. Restoration requirement (see also restoration section under agricultural mitigation).

- (1) A wind energy system that is out of service for a continuous twelve-month period or any wind energy system found to be unsafe by the Building Code Enforcement Officer and not repaired by the owner to meet federal, state and local safety standards within six months will be deemed to have been abandoned. The Zoning Enforcement Officer may issue a notice of abandonment in form of a letter to the owner of a wind energy system that is deemed to have been abandoned. The Zoning Enforcement Officer will withdraw the notice of abandonment if the owner provides information within 30 days from the date of the notice that causes the Zoning Enforcement Officer to determine that the wind energy system has not been abandoned.
- (2) The owner of a wind energy system must provide the Zoning Enforcement Officer with a written notice of termination of operations if the operation of a wind energy system is terminated.
- (3) Within three months of receipt of notice of abandonment or within six months of providing notice of termination of operations, the owner of a wind energy system must:
 - (a) Remove all wind turbines, aboveground improvements, and outdoor storage;
 - (b) Remove all foundations, pads, and underground electrical wires to a depth of four feet below the surface of the ground;

- (c) Remove all hazardous material as defined by NYSDEC from the property and dispose of the hazardous material in accordance with federal and state law; and
 - (d) All disturbed areas will be decompacted and the topsoil will be replaced to original depth reestablishing original contours where possible.
- I. Special use permit or zoning permit requirements. In addition to those criteria set forth under other sections of this chapter, the Planning Board shall consider the following factors when setting conditions upon special use permits or site plans issued for all wind energy systems and may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense:
 - (1) Proposed ingress and egress.
 - (2) Proximity to transmission lines to link the system to the electric power grid.
 - (3) Number of wind towers and their location.
 - (4) Nature of land use on adjacent and nearby properties.
 - (5) Location of other wind energy systems in the surrounding area.
 - (6) Surrounding topography.
 - (7) Proximity to residential structures, residential zoning districts, or areas identified for future residential use.
 - (8) Design characteristics that may reduce or eliminate visual obtrusiveness.
 - (9) Possible adverse effects on migratory birds, and other animals and wildlife.
 - (10) Possible adverse effects of stray voltage, interference with broadcast signals, shadow flicker, and noise.
 - (11) Impact on the orderly development, property values, and aesthetic conditions.
 - (12) Possible adverse effects on groundwater quality or quantity.
 - (13) Recommendations of the County Planning Board.
 - (14) Any other factors that are relevant to the proposed system.
- J. Standards.
 - (1) Location. A wind energy system may only be located in areas that are zoned Agricultural-Residential (A-R).

- (2) Setbacks. Each wind tower in a wind energy system must be set back twice the height of each wind tower or ten-rotor diameters, whichever is longer, as measured from the center of the base of the tower from the following:
 - (a) From any state forest, public park, or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a state, federal or local government.
 - (b) From important bird areas.
 - (c) From the property line of the parcel on which the wind tower is located.
 - (d) Of any public access building that is on any parcel.
 - (e) From the right-of-way of any public road.
 - (f) From any residence or building that is on any parcel.
- K. Spacing and density. A wind tower must be separated from any other wind tower by a minimum distance equal to twice the height of the wind tower and by a sufficient distance so that the wind tower does not interfere with the other wind tower.
- L. Structure. A wind tower must be of monopole construction to the extent practicable. If monopole construction is not practicable, a wind tower must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a wind tower may be guyed.
- M. Height. The total height of a wind energy system shall not exceed 175 feet. Other maximum building/structure height restrictions within other sections of this chapter are not applicable.
- N. Clearance. The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least 30 feet.
- O. Access and safety.
 - (1) Security. A wind tower, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence shall be required, which shall be a minimum of eight feet high.
 - (2) Climbing aids. Monopole wind towers shall have all climbing aids and any platforms locked and wholly inside the tower.
 - (3) Operational safety. Wind towers shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

- (4) Lightning. All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.
 - (5) Access roads. All wind energy systems shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.
- P. Electrical wires.
- (1) Location. All electrical wires associated with a wind energy system must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices (see also construction section under agricultural mitigation).
 - (2) Transmission lines. All wind energy systems shall combine transmission lines and points of connection to local distribution lines.
 - (3) Substations. All wind energy systems shall connect the facility to existing substations, or if new substations are needed, minimize the number of new substations.
 - (4) Stray current. Properly installed wind energy systems will not generate this form of electrical pollution often referred to as stray or ground current. A measurement of before and after installation to insure no gain in existing electrical pollution is required for all wind energy systems over 10kw. Wind energy systems of any size may be measured on an on/off basis to resolve any complaint of electrical pollution. Mitigation must be immediate with the wind energy system shut down until complete. Compliance with the National Electric Safety Code for both installation and testing protocol is required.
- Q. Lighting. A wind tower and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e., Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town Planning Board reserves the right to choose the least obtrusive lighting option available.
- R. Buildings and outdoor storage. Any ancillary buildings and any outside storage associated with a wind energy system must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment (i.e., in an agricultural setting accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from roads and adjacent residences.

S. Aesthetics.

- (1) Appearance, color, and finish. The exterior surface of any visible components of a wind energy system must be a nonreflective, neutral color.
- (2) Visual impact assessment. The applicant shall complete a visual environmental assessment form (visual EAF — SEQR), as well as a visual impact assessment of any, proposed wind energy systems or any proposed modifications to existing wind energy systems. The visual impact assessment shall include assessment of visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the wind energy system identified by the Town or County Planning Board or Town Board.

T. Signs. No wind tower, turbine, building, or other structure associated with a wind energy system may be used to advertise or promote any product or service. A weather-resistant sign plate no greater than two square feet in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other word or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a wind energy system so as to be visible from any public road.

U. Agricultural mitigation. The following shall apply to construction areas for wind energy systems located in county-adopted, state-certified agricultural districts. The applicant is required to coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. When required by the Town, the applicant shall hire an environmental monitor to oversee the construction and restoration in agricultural fields. The person or company hired as an environmental monitor shall be approved by the Town and paid by the applicant.

(1) Siting.

- (a) Minimize impacts to normal farming operations by locating structures along field edges where possible.
- (b) Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
- (c) Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.

- (d) All existing drainage and erosion control structures, such as diversions, ditches, and tile lines, shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

(2) Construction.

- (a) The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
- (b) Where necessary, culverts and waterbars shall be installed to maintain natural drainage patterns.
- (c) All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas, such as tower sites and laydown areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the environmental monitor.
- (d) Topsoil from work areas (tower sites, parking areas, open-cut electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along open-cut electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designated in the field and on the on-site working set of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.
- (e) In cropland, hayland and improved pasture a minimum depth of 48 inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of 36 inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to 48 inches, the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.
- (f) All excess subsoil and rock shall be removed from the site. On-site disposal of such material may be allowed if approved by the landowner and, when applicable, the environmental monitor, with appropriate consideration given to any possible agricultural or environmental impacts. (NOTE: Any permits necessary for disposal under local, state and/or federal laws

and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)

- (g) In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.
 - (h) All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil. (NOTE: Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)
 - (i) Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.
 - (j) Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas. (NOTE: Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)
- (3) Restoration.
- (a) Restoration scheduling will be consistent with the seasonal limitations identified by Ag and Markets and will be incorporated into the project's agricultural district notice of intent (if applicable) as well as the stormwater management plan (general permit).
 - (b) Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with Ag and Markets. All parties involved should be cognizant that areas restored after October 1 may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.

- (c) All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage patterns incorporated into the design.
 - (d) All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.
 - (e) All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.
 - (f) Following restoration, all construction debris will be removed from the site.
- (4) Two-year monitoring and remediation.
- (a) The applicant will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two-year period allows for the effects of climatic cycles, such as frost action, precipitation and growing seasons, to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration. The applicant will provide to the Town all testing, data and reports necessary to document compliance with Subsection U(4)(a) through (e) herein.
 - (b) General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on-site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and Ag and Markets.
 - (c) Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.
 - (d) When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation

may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the applicant's responsibility to fully redress all project impacts.

- (e) Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.
- V. Noise. Audible noise due to the operation of any part of a wind energy system shall not exceed 45 decibels (dB) for any period of time, when measured at any residence, school, hospital, church, public park, public library or place of public assembly. Audible noise due to the operation of any part of a wind energy system shall not exceed 30 decibels (dB) when measured inside any residence.
- W. Electromagnetic interference (EMI). No individual tower facility shall be installed in any location where proximity with existing broadcast, retransmission or reception antenna (including residential antenna) for radio, television, wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. Alternatively, wind energy systems shall be properly filtered or shielded in order to avoid electromagnetic interference and shall comply with rules and regulations of the Federal Communication Commission contained in 47 CFR Parts 15 and 18.
- X. Insurance. Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Town Board in consultation with the Town's insurer and Attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility. If the insured is not the owner of the property, the applicant must show that the owner of the property is a coinsured or named as an additional insured, and must allow for the property owner to continue coverage if the applicant is unable to continue coverage.
- Y. Tax exemption. The Town hereby exercises its right to opt out of tax exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by Subdivision 8 of that Law.

- Z. Inspections. Town Code Enforcement Officer or designated representative shall have the right at any reasonable time to enter the premises on which a wind energy system has been placed to inspect any and all parts of said installation. After conducting said inspection the Code Enforcement Officer may order the owner of the wind energy system to render it inoperative for reasons related to safety, noise, electrical pollution or electromagnetic interference. If unable to contact the owner the Code Enforcement Officer may execute an emergency shut down procedure which has been provided in advance by the owner/applicant in the form of a clear and concise check sheet as part of the permit process. All liability for the execution of an emergency shutdown shall be with the owner of the wind energy system.
- AA. Penalties. Any person, firm corporation or entity which may violate any provision of this section shall be guilty of a violation and, upon conviction thereof, shall be subject to the penalties set forth in § 182-46 of this chapter. Any person, firm corporation or entity which may violate any provision of this section shall become liable to the Town for any actual expense or loss or damage occasioned by the Town by reason of such violation, in addition to any actual losses or damages sustained by the Town, such expense shall also include but not be limited to statutory costs, disbursements and reasonable attorney fees in the event legal action is commenced to enforce this section. The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceedings to prevent a violation of this section or to restrain or enjoin the use or occupancy of premises or any part thereof in violation of this section.

ARTICLE VII

Enforcement, Administration and Amendments**§ 182-42. Zoning Enforcement Officer.**

A. Enforcement.

- (1) No board, agency, officer or employee of the Town shall issue, grant, or approve any permit, license, certificate, or other authorization for any construction, reconstruction, alteration, enlargement, or moving of any building or structure or for any use of land or building that would not be in full compliance with the provision of this chapter, except as permitted under § 182-49. Any such permit, license, certificate, or other authorization issued, granted or approved in violation of the provisions of this chapter shall be null and void and of no effect without the necessity of any proceedings or revocation or nullification thereof.
- (2) Unless otherwise provided, the Zoning Enforcement Officer and any other person designated by the Town Board for the purpose shall enforce the provisions of this chapter, and any rules and regulations made or as may be made in furtherance thereof. For such purposes he, or other designated person, may, from time to time and at reasonable hours, enter and inspect such building, structure or premises, and may perform any other act or duty necessary for the proper enforcement thereof, including issuance of notice of violations and orders to remedy, stop-work orders, and appearance tickets.

B. Records and reports.

- (1) The Zoning Enforcement Officer shall keep a permanent record, including all pertinent maps and plans, of all applications for zoning permits, certificates of compliance, and all relevant correspondence.
- (2) The Zoning Enforcement Officer shall also keep a permanent record of all violations of this chapter whether reported by private citizens or by any board, agency, officer or employee of the Town, and such record shall show the disposition of all such violations.
- (3) The Zoning Enforcement Officer shall make a report to the Town Board and Town Assessor, in writing, at least once each year or more often as the Town Board may order, reporting the number and type of zoning permits and certificates of compliance issued, and listing all reported or continuing violations of this chapter, and disposition of pending action of such violations.

§ 182-43. Fees for permits, amendments, variances and special use permits.

Fees may be charged for permits issued, and processing of applications for amendments, variances, and special use permits. The fee shall be set by resolution of the Town Board and may be changed from time to time in the same manner.

§ 182-44. Zoning permit.

- A. No building, structure and/or use shall be constructed, altered, enlarged or moved or excavation made therefor, or work begun thereon, until a permit therefor has been issued.
- B. Applications for zoning permits shall be accompanied by a layout sketch, drawn to approximate scale, showing the shape and dimensions of the lot to be built upon, the size and location of all buildings or structures proposed, as well as those that shall remain, the intended use of each building or structure, and any such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this chapter. When conditions warrant (i.e., new construction, expansion, etc.), a statement from the Genesee County Health Department shall be provided by the applicant certifying that the existing and/or proposed water supply and wastewater treatment systems are adequate to serve the applicant's proposed project. Application, together with a layout sketch, shall be submitted in triplicate. When the zoning permit is issued or denied, the issuance or denial shall be noted on the application in triplicate by the person issuing or denying said permit and one copy returned to the applicant, one copy filed with the Town Clerk and one copy kept with the Zoning Enforcement Officer's records.
- C. The Zoning Enforcement Officer shall issue a zoning permit only after the site plan, if required, has been approved by the Planning Board and all required variances and special use permits have been obtained, except that no site plan approval shall be required in the case of individual one- or two-family dwellings or for permitted accessory uses.
- D. The Zoning Enforcement Officer shall be notified that the site is prepared for installation of the foundation of a structure, and shall inspect the site to check the location of the structure.
- E. If a zoning permit is not obtained by the applicant within one year after final approval, such approval shall be void.
- F. A zoning permit shall be void if construction is not substantially completed within a period of one year from the date of said permit. The Zoning Enforcement Officer may issue a six-month extension of a permit for good cause shown. Two such extensions of a permit will be allowed. Any additional extensions after two shall require the approval of the Zoning Board of Appeals.

- G. The zoning permit shall be located in a place readily visible to the public.

§ 182-45. Certificate of compliance.

No land shall be used or occupied and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of compliance has been issued by the Zoning Enforcement Officer in accordance with the provision of this chapter.

§ 182-46. Penalties for offenses.

- A. It shall be unlawful for any person, firm or corporation to construct, alter, move, equip, use or occupy any building or structure or portion thereof in violation of any provision of this chapter or any amendment thereto, or to fail in any manner to comply with a notice, directive, or order of the Zoning Enforcement Officer, or to construct, alter, use or occupy any building structure or part thereof in a manner not permitted by an approved zoning permit or certificate of compliance.
- B. It shall be unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.
- C. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any other person taking part or assisting in the construction, alteration or use of any building to violate any of the applicable provisions of this chapter, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.
- D. Any violation of this section and/or this chapter shall be punishable by a fine and/or imprisonment as set forth in New York State Town Law § 268. Each and every week such violation continues shall be deemed a separate and distinct violation.⁴
- E. The Zoning Enforcement Officer may, with permission of the Town Supervisor, institute court action to enforce the provisions of this chapter, or may refer the matter to the Town Board for its action.
- F. In addition to the foregoing remedies, the Town of Stafford may maintain an action for injunction to restrain, correct or abate any violation of this chapter and/or maintain an action at law for damages sustained as a result of any violation of this chapter. Damages may include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D).

§ 182-47. Complaint of violation.

Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be verified in writing, signed, and shall be filed with the Zoning Enforcement Officer who shall properly record such complaint and immediately investigate it. Where the Zoning Enforcement Officer finds such violation, he shall take appropriate action himself or refer the matter to the Town Attorney or the Town Board for their action.

§ 182-48. Planning Board.

- A. Organization. The Planning Board shall consist of seven members appointed by the Town Board as provided for in § 271 of the Town Law. The Town Board shall designate a member of said Planning Board to act as Chairperson thereof, and upon its failure to do so, the Planning Board shall elect a Chairperson from its own members. Membership and terms of office for the Planning Board shall be as set forth in Town Law. The Planning Board shall elect such other officers as necessary to conduct its business. Upon the absence by any Planning Board member from three duly scheduled regular meetings in any twelve-consecutive-month period, such member shall be subject to removal upon the completion of all proceedings and subject to all provisions as required by law.
- B. Powers and duties.
- (1) Site plan review: as set forth in § 182-27.
 - (2) Special use permits: granting of special use permits (not specifically reserved by the Town Board) as set forth in § 182-50.
 - (3) Review use variances: review use variances referred to the Planning Board as set forth in § 182-49.
 - (4) Emergency housing permits: review and act upon requests for extensions of emergency housing permits as set forth in § 182-28.
 - (5) Temporary uses and structures: grant permits for temporary uses and structures.
 - (a) The Planning Board may direct the Zoning Enforcement Officer to issue a temporary permit for a period of time not to exceed 12 months for incidental nonconforming uses and structures as follows:
 - [1] Temporary uses incidental to a construction project such as construction trailers, while active construction is underway.
 - [2] Temporary real estate sales office incidental to a subdivision.

[3] Other similar temporary incidental uses which:

[a] In no way exert a detrimental effect upon the lawful use of land and activities normally permitted in the zone in question; and

[b] Contribute materially to the welfare and well-being of the Town.

(b) Permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.

(c) Permits may be reissued a maximum of one time for an additional period of six months.

(6) Other powers and duties. The Planning Board shall have such other powers and duties as are provided by law, including this chapter or as otherwise assigned to it by the Town Board.

- C. Alternate members to the Planning Board may be appointed by resolution of the Town Board to serve a term of office of two years. All provisions of the Town Zoning Ordinance and various other rules, regulations and local laws applicable to regular members of the Planning Board (training and continuing education, attendance, conflict of interest, compensation, vacancy in office, removal, and service on other boards) shall also apply to the alternate member(s). Only two alternate member positions shall be permitted. **[Added 8-13-2012 by L.L. No. 1-2012]**
- D. The Chairperson, or Vice Chairperson in his or her absence, of the Planning Board may designate an alternate member who has been appointed by the Town Board to substitute for a regular member when such member is unable to participate for any one of the reasons set forth in Subsection C. When so designated, the alternate member shall possess all powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the meeting at which the substitution is made. **[Added 8-13-2012 by L.L. No. 1-2012]**

§ 182-49. Zoning Board of Appeals.

- A. Organization. The Town Board shall appoint a five-member Board of Appeals and shall designate the Chairperson thereof as provided for in § 267 of the Town Law. In the absence of a Chairperson, the Board of Appeals may designate a member to serve as Acting Chairperson. Membership and terms of office for the Board of Appeals shall be as set forth in Town Law. Upon the absence of any Board of Appeals member from three duly scheduled meetings in any twelve-consecutive-month period, such member shall be subject to removal upon completion of all proceedings and subject to all provisions as required by law.
- B. Meetings, minutes and records.

- (1) Minutes of the Zoning Board of Appeals shall be held at the call of the Chairperson and/or at the request of the Town Board, and/or at the request of a majority of the members of such Zoning Board of Appeals, and/or at such other times as such Zoning Board of Appeals may determine. Such Chairperson, or in his or her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.
 - (2) Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals 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. Filing requirements. Every rule, regulation, amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.
- D. Powers and duties. The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the Zoning Enforcement Officer. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer, or to grant a use or area variance. Such appeal may be taken by the person aggrieved or by an officer, department, board or bureau of the Town.
- E. Time of appeal. Such appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal, specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer or Town Clerk. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.
- F. Referral to Town and County Planning Board.
- (1) At least 30 days before the date of the public hearing described hereafter in Subsection G (unless such limit is waived by the Planning Board), the Secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing. The Planning Board shall inform the Zoning Board of Appeals, in writing, of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify a recommendation of approval of the application.

- (2) When required by the provisions of § 239-m of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.⁵
- G. Hearing on appeal.
- (1) A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal. Such public hearing shall be advertised by publication in a paper of general circulation within the Town of a notice of such hearing at least five days prior to the date thereof.
 - (2) At least 30 days before the date of a public hearing for a use variance, unless such time limit is waived by the Planning Board, the Secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing.
 - (3) The Zoning Board of Appeals shall send, by regular mail, a copy of the notice of hearing to all owners of property situated within 300 feet of the property which is the subject of the application at least 10 days before the date of the hearing. The minimum number of such mail notifications made shall be 10. In those instances when fewer than 10 mail notifications result from identification of those property owners with 300 feet, additional notifications shall be mailed to the owners of the nearest residential properties until a total of 10 notifications are made. Selection of these additional mail notifications shall be made in order of the distance measured along public highways from the front property line of the proposed use to the front property lines of these additional residential properties.
- H. Time of decision. The Zoning Board of Appeals shall decide upon an appeal within 62 days after the conduct of the public hearing.
- I. Filing of decision and notice. The decision of the Zoning Board of Appeals on an appeal shall be made in an open meeting and filed in the office of the Town Clerk within five business days after the day such decision is rendered and a copy thereof mailed to the applicant by certified mail, return receipt requested.
- J. Compliance with State Environmental Quality Review Act (SEQRA). The Zoning Board of Appeals shall comply with the provisions of SEQRA under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of NYCRR. The SEQRA process may extend the time limits set forth in this article, specifically those set forth in § 182-48.
- K. Permitted action by the Zoning Board of Appeals.
- (1) Interpretations, requirements, decisions and determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement decision, interpretation or

5. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

determination appealed from and shall make such order, requirement, decision, interpretation or determinations as in its opinion ought to have been made.

(2) Use variance.

(a) The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this chapter. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that:

- [1] Under applicable zoning regulations, the applicant cannot realize a reasonable return from the property in question, provided that lack of return is substantial as established by competent financial evidence;
- [2] That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
- [3] That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- [4] That the alleged hardship has not been self created.

(b) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(3) Area variances.

(a) The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of the chapter. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant of the variance is granted, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- [1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby

properties will be created by the granting of the area variance;

[2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

[3] Whether the requested area variance is substantial;

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

[5] Whether the alleged difficulty was self created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

(b) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(4) Imposition of conditions. The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this chapter, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

L. Alternate members to the Zoning Board of Appeals may be appointed by resolution of the Town Board to serve a term of office of two years. All provisions of the Town Zoning Ordinance and various other rules, regulations and local laws applicable to regular members of the Zoning Board of Appeals (training and continuing education, attendance, conflict of interest, compensation, vacancy in office, removal, and service on other boards) shall also apply to the alternate member(s). Only two alternate member positions shall be permitted. **[Added 8-13-2012 by L.L. No. 1-2012]**

M. The Chairperson, or Vice Chairperson in his or her absence, of the Zoning Board of Appeals may designate an alternate member who has been appointed by the Town Board to substitute for a regular member when such member is unable to participate for any one of the reasons set forth in Subsection L. When so designated, the alternate member shall possess all powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the

meeting at which the substitution is made. **[Added 8-13-2012 by L.L. No. 1-2012]**

§ 182-50. Special use permits.

- A. Special use permit authority. A special use permit may be issued for those uses identified in this chapter, within the respective zoning districts. Depending upon the specific use, review and approval, authority for special use permits rests with either the Planning Board or the Town Board (where specified). The Town Board has retained special use permit authority for the following uses: mobile home park, commercial recreation, dumps and dumping, adult uses and junkyards. The remaining special use permit uses are the responsibility of the Planning Board. The authorized Board may approve special use permits, provided such use in the proposed location is not inconsistent with the public convenience and welfare. Such use shall be subject to conditions and safeguards which may be imposed by the authorizing board to protect the use of neighboring properties. Such special use permit shall not be granted if it substantially changes the characteristics of the neighborhood in which the subject property is located. The Zoning Enforcement Officer, at least yearly, shall review the use of the property to determine compliance with any conditions which have been prescribed by the authorizing Board in issuing such special use permit.
- B. Procedure.
- (1) Applications, special use permits, shall be made in writing on the appropriate form. Four copies of each application, including site plan, shall be submitted to the Zoning Enforcement Officer, who shall review the applications for completeness prior to forwarding them to the authorizing Board, depending on the nature of the application.
 - (2) A public hearing shall be held by the authorizing Board before acting on any application for a special use permit. When necessary under § 239-m of the General Municipal Law, the authorizing Board shall forward the application to the County Planning Board for its review. The Town Clerk shall send, by regular mail, a copy of the notice of hearing to all owners of property situated within 300 feet of the property which is the subject of the application at least 10 days before the date of the hearing. The minimum number of such mail notifications made shall be 10. In those instances when fewer than 10 mail notifications result from identification of those property owners within 300 feet, additional notifications shall be mailed to the owners of the nearest residential properties until a total of 10 notifications are made. Selection of these additional mail notifications shall be made in order of the distance measured along public highways from the front property line of the proposed use to the front property lines of these additional residential properties. A legal notice of such hearing shall also be printed and published in a

newspaper of general circulation within the Town at least five days prior to the date of such hearing.⁶

- (3) Every special use permit decision shall be by resolution, which shall contain a full statement of the pertinent facts in the case, and shall be recorded in the minutes.
- C. Required plan for special use permit. Four sets of the application and site plan shall be submitted to the Zoning Enforcement Officer to portray clearly the intentions of the applicant. These documents shall become part of the record. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this chapter.
- D. Standards applicable to special use permits. The Planning Board may issue a special use permit only after it has found that all the following standards and conditions have been satisfied. The Town Board, while not bound by these same standards and conditions, may use such in reviewing and acting upon request for special use permits.
- (1) Location, size of use and structure, nature and intensity of operations involved, size of site in relation to it, and location of site with respect to roads giving access are such that it will be in harmony with the orderly development of the area.
 - (2) Location, nature and height of buildings, walls, and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.
 - (3) Off-street parking and loading facilities and the design and location of all points of ingress and egress are adequate and will not adversely affect traffic circulation.
 - (4) The use is designed, located and proposed to be operated in such a manner the public health, safety, welfare and convenience will be protected.
 - (5) Existing or proposed public services (if required) are adequate to service the use (i.e., police, fire, schools, utilities, etc.).
 - (6) Operations of any special use shall not be more objectionable to nearby properties than would be operations of any permitted use.
 - (7) All necessary area variances have been granted by the Zoning Board of Appeals.
 - (8) A special use permit shall not be issued for a use on a lot where there is an existing violation of this chapter unrelated to the use which is the subject of the requested special use permit, as determined by the Planning Board.

6. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D).

§ 182-51. Procedure for amendment.

- A. The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this chapter after official notice has been given and a public hearing has been held by the Town Board as required by law.
- B. Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner and filed in triplicate, accompanied by the required fee.
- C. Every such proposed amendment shall be referred to the Planning Board for a report prior to any public hearing.
- D. Prior to adoption by the Town Board, a proposed amendment may, in the proper case, have to be referred to the County Planning Board pursuant to law.
- E. In case of a protest against such change signed by the owners of 20% or more, either of the area of the land included in such proposed change, or of that immediately adjacent extending 100 feet therefrom or of that directly opposite thereto, extending 100 feet, from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least 3/4 of the members of the Town Board.

§ 182-52. State environmental quality review (SEQR).

- A. The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above-mentioned activities.
- B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Town is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified below:
 - (1) Zoning text amendment: Town Board.
 - (2) Zoning district amendment: Town Board.
 - (3) Special permits: Authorizing Board (Planning/Town).
 - (4) Zoning permit (if necessary): Planning Board.
 - (5) Variances: Zoning Board of Appeals.

- C. When a project involves two or more separate zoning actions, the board (agency) having final (last) approval would typically be the lead agency. Nothing in this section shall be interpreted to override the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

ARTICLE VIII
Legal Status Provisions

§ 182-53. Minimum requirements.

In their interpretation and application, the provisions of this chapter shall be considered as the minimum requirements to promote and to protect public health, safety, comfort, convenience, prosperity, and other aspects of the general welfare, and in particular:

- A. To promote the purposes set forth in the preamble to this chapter and in the statements of legislative intent for the respective districts or groups of districts.
- B. To provide a gradual remedy for existing conditions which are detrimental thereto.

§ 182-54. Conflict with other laws.

Whenever any provision of this chapter and any other provision of law, whether set forth in this chapter or in any other law, ordinance, or resolution of any kind, impose overlapping or contradictory regulations over the use of land, or over the use or bulk of buildings or other structures, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

§ 182-55. Existing zoning permits.

In all cases where a zoning permit has been lawfully issued on the basis of an application showing complete plans for the proposed construction of a new building or other structure, or for an enlargement of an existing building or other structure which requires construction of foundation, and the adoption of this chapter or for any subject amendment thereto would make the completed building or other structures nonconforming or noncomplying, construction may nevertheless be continued in accordance with the zoning permit and a certificate of compliance may be issued for such nonconforming or noncomplying building or other structure.

§ 182-56. Existing private agreements.

This chapter is not intended to abrogate or annul any easement, covenant, or any other private agreement.

§ 182-57. Severability.

It is hereby declared to be the legislative intent that if any provision or provisions of this chapter or the application thereof to any building or other structure or tract of land are declared by a court of competent jurisdiction to be invalid or ineffective in whole or in part, or to be inapplicable to any person or situation, the effect of such decision shall be limited to

the provision or provisions which are expressly stated in the decision to be invalid or ineffective, or the zoning lot, building or other structure, or tract of land immediately involved in the controversy. All other provisions of this chapter shall continue to be separately and fully effective, and the application of any such provision to other persons or situations shall not be affected.

§ 182-58. Repealer.

The ordinance entitled "The Zoning Ordinance for the Town of Stafford," adopted on October 12, 1964, together with all changes and amendments thereto, is hereby repealed and declared to be of no effect.