

ARTICLE 9 SUPPLEMENTARY REGULATIONS

Section 9.1 Application

In addition to all other requirements set forth in this law, the following supplementary regulations shall apply, except as herein specified, in all zoning districts created by this law and all amendments hereto.

Section 9.2 Performance Requirements

No land or building in any district shall be used or occupied in any manner so as to create any dangerous, injurious, noxious or otherwise objectionable element or condition, and a zoning permit shall not be issued therefor unless the following performance requirements are met. Failure to continue to conform to these performance standards may result in the revocation of the zoning permit.

- (A) **Air Pollution.** No pollution of air by flyash, dust vapors or other substance shall be permitted which is harmful to health, animals, vegetation or other property, or which can cause excessive soiling.
- (B) **Water Pollution.** No pollution of water by chemicals or other substances shall be permitted which is unhealthful to animal or plant life as determined by the Cattaraugus County Health Department.
- (C) **Fire Hazards.** Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate fire fighting and suppression equipment and by such other safety devices as are normally used in the handling of such materials.
- (D) **Radioactivity or Electrical Disturbance.** No activity shall emit dangerous radioactivity or electrical disturbance at any point where it may adversely affect other land uses in the Town.
- (E) **Erosion.** No erosion by either wind or water shall be permitted which will carry objectionable substances onto neighboring properties. Conservation measures constructed shall require approval of the Cattaraugus County Soil and Water Conservation District.

Section 9.3 Adult Uses

(A) Purpose

It is recognized that there are some uses, which due to their very nature, have serious objectionable operational characteristics particularly when located in close proximity to

residential neighborhoods and other sensitive land uses. The objectionable characteristics of these uses are further heightened by their concentration in any one area. It has been acknowledged by communities across the nation that state and local governments have a special concern in regulating the operation of such businesses under their jurisdiction to ensure that these adverse secondary effects will not contribute to the blighting or downgrading of adjacent neighborhoods nor endanger the well-being of youth in the community. The special regulations deemed necessary to control the undesirable secondary effects arising from these enterprises are set forth below.

The primary purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods and important natural and human resources of the Town, to deter the spread of blight and to protect minors from objectionable characteristics of these adult uses by restricting their proximity to churches, schools, parks, historic and scenic resources, civic and cultural facilities and residential areas.

(B) Regulations

Where permitted in Article 7 of this local law by special use permit, an adult use shall conform to the following standards, which shall be considered the minimum standards:

- (1) All adult uses shall be operated in a manner that is consistent with the New York State Penal Law relating to exposure, obscenity or lewdness.
- (2) No adult use shall be established or operated within one thousand feet of:
 - a. a public or private elementary or secondary school, nursery school or day care facility, or use of a similar nature
 - b. a church, synagogue or other place of worship
 - c. a public park, municipal building, community center, civic facility or cultural facility
 - d. an historic or scenic resource
- (3) No adult use shall be established or operated within one hundred fifty feet of an existing residential use. Where an adult use abuts a pre-existing residential use, the lot on which the adult use is located shall be screened by an opaque fence a minimum of eight feet high.
- (4) No more than one adult use shall be located in the same building or upon the same lot or parcel of land.
- (5) No adult use shall be located within one thousand (1,000) feet of another adult use.
- (6) No adult use shall be located in any building which is used in whole or in part for residential purposes. No residential use shall be established in any building which contains an approved adult use.

- (7) All building openings, entries, windows, and doors associated with an adult use shall be located, covered, or screened in such a manner as to prevent a view into the interior of the building from any public right-of-way or adjacent property. Such screening shall be done in an aesthetically appropriate manner.
- (8) All adult uses shall be conducted in an enclosed building. Sound within the building shall not be audible to a person passing by outside the building.
- (9) Adequate landscaping shall be provided to minimize the visual impact on adjacent sites of any structure containing an adult use.
- (10) Additional Sign Requirements:

In addition to the sign requirements of Section 9.8, the following provisions shall apply to signs erected or maintained in connection with an adult use:

- a. No off-site signs shall be permitted.
- b. Advertisements, displays or promotional materials shall not be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways or from other areas public or semipublic, and such displays shall be considered to be signs.
- c. No more than one wall sign shall be permitted for an adult use. Such sign shall be permitted only on the front facade and shall not exceed twenty-four (24) square feet in area.
- d. Sign messages shall be generic in nature and shall not contain material classified as advertising. No exterior sign associated with an adult use shall contain any photographic or artistic representation of the human body.

Section 9.4 Manufactured Home Parks and Individual Manufactured or Mobile Homes

(A) Manufactured Home Parks

Where permitted in Article 7 of this law, a manufactured home park shall conform to the following requirements:

- (1) An application for a manufactured home park shall be filed with the Town Board. The Town Board may approve a special use permit for a manufactured home park pursuant to the provisions of Article 11 of this zoning law.

The application shall be in writing, signed by the applicant, and shall include the following:

- a. Name and address of applicant.
- b. Location and legal description of the park.
- c. A complete site plan of the park.
- d. Any other information deemed necessary by the Town Board.

(2) All manufactured home parks shall conform to the following requirements:

- a. The park shall be located on a well drained site, properly graded to insure rapid drainage.
- b. The park shall contain a minimum of four (4) acres.
- c. No more than five (5) manufactured home spaces shall be permitted per gross acre.
- d. No more than one manufactured home may be placed on a manufactured home space. All manufactured homes or mobile homes placed in a manufactured home park shall contain a minimum of eight hundred (800) square feet of interior floor area.
- e. Manufactured home spaces shall consist of a minimum of 6,000 square feet for each space, with a minimum width of 50 feet. Manufactured home spaces shall be clearly defined.
- f. There shall be at least a 30 foot separation between individual manufactured homes, and between manufactured homes and any permanent structure in the park.
- g. All manufactured homes shall front on an approved interior street that shall be either a public street or a private street that meets all the Town's requirements for a public street. A sidewalk, constructed to Town standards, shall be installed on one side of each street in a manufactured home park. Sidewalks shall be constructed of concrete and shall be a minimum of five feet in width.
- h. Each manufactured home shall be set back a minimum of twenty-five (25) feet from the street line of any internal street within the manufactured home park.
- i. No manufactured home shall be located closer than 40 feet to any property line or to any exterior street right-of-way line. A landscaped buffer shall be planted and maintained within this required setback area. A landscape plan for the buffer area shall be approved by the Town Board. Plantings in the buffer may include evergreen trees, deciduous trees, hedges, etc. Any such plantings shall be arranged around entrances and exits so as not to interfere with site distance and vehicular safety.
- j. All exposed ground surfaces in any manufactured home park shall be paved, surfaced with crushed stone or similar material, or protected with grass or other ground cover capable of preventing erosion and of eliminating objectionable dust and mud.

- k. A hard-surfaced parking pad, which can accommodate two personal vehicles, shall be provided on each manufactured home space.
 - l. At least one (1) shade tree of not less than two (2) inches in diameter, measured one (1) foot above ground level, shall be planted on each manufactured home space.
 - m. No outdoor storage of personal property shall be permitted, except within an accessory storage shed not exceeding one hundred sixty (160) square feet in size. All storage buildings shall be placed on a firm foundation. A maximum of one (1) storage shed per manufactured home space shall be permitted.
 - n. All manufactured homes or mobile homes shall be completely skirted in an attractive manner. Materials used for skirting shall provide a finished exterior appearance and shall be similar in character to the material used in the manufactured home or mobile home. If feasible, the tongue shall be removed. Skirting shall be completed within thirty (30) days of the date the manufactured home or mobile home was placed on the site.
 - o. All utility lines shall be placed underground.
 - p. An adequate and tested supply of pure water for drinking and domestic purposes shall be supplied to all manufactured home spaces within the park. The water supply system shall be approved, in writing, by the Cattaraugus County Department of Health.
 - q. A combined sewage treatment and disposal system shall be provided as recommended and approved by the Cattaraugus County Health Department.
 - r. Adequate garbage disposal facilities, as approved by the Cattaraugus County Health Department, shall be provided.
 - s. Every park shall have a fire protection plan approved by the Fire Department having local jurisdiction.
- (3) The Town Board may revoke any permit to maintain and operate a manufactured home park when the licensee has been found guilty by a court of competent jurisdiction of violating any provision of this law.
- (4) Annual Inspection
- a. An annual inspection shall be conducted by the Code Enforcement Officer to insure that all aspects of the conditions of approval of the Special Use permit are still in compliance. The Code Enforcement Officer shall report his/her findings to the Town Board.
 - b. If, upon inspection, it is found that the permit holder has violated any provisions of the grant of Special Use permit, or any other provisions of this law, the Town Board shall have the authority to suspend such permit and to order the manufactured home park closed, after notice has been given to the permit holder and after said permit holder has had the opportunity to appear

at a public hearing to be held in accordance with the public hearing requirements in Article 11 of this law.

(B) Manufactured or Mobile Homes Placed on Individual Lots

Where permitted in Article 7 of this law, a mobile home or manufactured home installed on a single residential lot shall conform to the following requirements:

- (1) The manufactured or mobile home shall be the principal use on a lot in any zoning district where residential uses are otherwise allowed. The minimum lot size shall conform to the minimum lot size of the district in which the mobile home or manufactured home is located.
- (2) The mobile home or manufactured home shall contain a minimum floor area of 800 square feet.
- (3) Plans shall be submitted to the Cattaraugus County Health Department for approval, showing water supply, sewage disposal, drainage, and refuse disposal. Approval by the County Health Department shall be in writing.
- (4) Setbacks for the mobile home/ manufactured home shall conform to the setbacks for single family homes in the district in which it is located.
- (5) The mobile home/ manufactured home shall be installed on a permanent foundation and the wheels shall be removed. At a minimum, the home shall be installed in accordance with the Manufacturer's Installation Manual or to the standards of ANSI A225.1 (1994), Manufactured Home Minimum Installation Standards.
- (6) Skirting or solid material screening the space between the mobile home/ manufactured home floor and the ground shall be installed within 30 days of the installation of the manufactured/mobile home on the lot. All manufactured homes or mobile homes shall be completely skirted in an attractive manner. Materials used for skirting shall provide a finished exterior appearance and shall be similar in character to the material used in the manufactured home or mobile home.
- (7) The roof must be pitched so that there is at least a four-inch vertical rise for each 12 inches of horizontal run. The roof shall consist of shingles or other material customarily used for conventional dwelling roofing.
- (8) Recreation or vacation trailers may be located and used in the Town for 30 days, subject to obtaining a permit from the Code Enforcement Officer. Said permit

may be renewed by the Code Enforcement Officer for a total consecutive period up to ninety (90) days.

- (9) Individual recreation or vacation trailers owned by residents of the Town may be stored on the property of the owner for an unlimited period, provided that no residence is taken therein or business conducted therewith.
- (10) No more than one (1) manufactured home or mobile home may be located on one single family lot, unless a permit has been granted by the Town Board for a Manufactured Home Park.

Section 9.5 Junkyards

(A) Purpose

The Town of Olean declares its intent to regulate and control the storage or keeping of junk and to regulate junkyards whether operated for commercial profit or otherwise. The Town Board hereby declares that a clean, wholesome and attractive environment is of vital importance to the continued general welfare of its citizens, and that junk and junkyards can constitute a hazard to property and persons and can be a public nuisance. Such materials may be highly flammable and sometimes explosive. Junk and particularly junked vehicles can constitute attractive nuisances to children and certain adults. The presence of junk and junkyards is unsightly and tends to detract from the value of surrounding properties unless properly screened from view.

(B) Junkyard Permit Required

- (1) No person shall establish or maintain a junkyard within the Town of Olean unless a junkyard permit has first been issued for such use by the Olean Town Board pursuant to the provisions of this law.
- (2) No person owning, having any right to, or any interest in any real property within the Town of Olean shall license, rent, lease or otherwise permit the use of such real property or any part thereof for a junkyard unless a junkyard permit has first been issued by the Olean Town Board.
- (3) All junkyard permits shall be issued for a period of one year, after which time a renewal shall be required.
- (4) Junkyards shall only be located in areas where such use is permitted in Article 7 of this law.
- (5) Approval of a junkyard permit shall be personal to the applicant and not assignable.

(C) Temporary Permit for Prior Existing Junkyard

Any person maintaining a junkyard lawfully established within the Town of Olean prior to the effective date of this law shall apply for a permit within sixty (60) days of the adoption of this local law. The application shall include payment of the junkyard license fee. If the junk storage area does not meet the requirement of Section E herein, a temporary permit shall be granted for a period not to exceed one (1) year, during which time the junk storage area shall be arranged to comply with said requirements. If at the end of such period the junk storage area has not been arranged to comply with said requirements, such person shall cease and desist from maintaining a junkyard and all junk shall be removed from the premises.

(D) Junk Regulations

No junk shall be located so as to be visible from public streets and roads.

(E) Junkyard Regulations**(1) Operations**

- a. The permittee must personally manage or be responsible for the management of the activity or business for which the permit is granted.
- b. The permittee must maintain an office and a sufficient number of employees on the premises to assure the proper and safe conduct of such activity or business, to minimize the fire hazard therefrom and to prevent improper trespass thereon by children and others.
- c. No materials shall be burned in a junkyard except in compliance with the New York State Solid Waste Disposal Law (See NYCRR Part 215).
- d. No materials shall be buried in a junkyard except in compliance with the New York State Solid Waste Disposal Law (See NYCRR Part 360).
- e. The Town Police, the Town Clerk, or the Town Board or any of its representatives shall be granted access to the area of the activity or business of the permittee at all reasonable hours to inspect the same for compliance herewith.
- f. The motor vehicles, parts and materials dealt in by the permittee shall be disassembled or dismantled by means other than by burning. They shall be piled less than seven feet high and arranged in neat rows so as to permit easy, clear passage through the area.

- g. There shall be maintained at each such place of activity or business for which a permit is issued at least two (2) fire extinguishers of approved design and capacity for each 40,000 square feet of area. Each such fire extinguisher shall be hung or mounted in a conspicuous place, clearly marked and available.
- h. All activities of the permittee relating to the junkyard permit such as dismantling, accumulation or storage and buying or selling shall be conducted only from the property described in the special use permit.
- i. No junkyard items shall be stored in any junk storage area other than those items specified on a junkyard permit approved by the Town Board pursuant to this law.

(2) Fencing and Screening

- a. The permittee must erect and maintain in good condition an eight (8) foot high, solid fence enclosing the entire junkyard and a locking gate, adequate to prohibit the entrance of children and others into the area of the activity or business. All the materials dealt with by the operator of the junkyard shall be contained within such fence at all times.
- b. Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence, provided in Section (2) a, above, shall be of wood or other materials sufficient to totally screen the junkyard from view. Such screening may be accomplished by adequate planting of evergreen trees or shrubbery, as determined by the Town Board.
- c. When the area is not supervised by the permittee or his employees, the fence shall be locked at a secure gate in a secure manner.
- d. The fence shall be set back at least fifty (50) feet from any public street or highway and from the boundary line of any residential area.
- e. Where the topography, existing evergreen trees or other considerations accomplish the purposes of screening and fencing, the fencing requirements may be reduced by the Town Board.
- f. The Town Board shall approve the materials and color of the fence.

(3) Location

No junk storage area shall be located within:

- a. Five hundred (500) feet of a church, school or other educational facility, hospital or nursing home, public park, public building or place of public assembly.
- b. Forty (40) feet of any adjoining property line and/or any zoning district boundary line.
- c. Forty (40) feet of any stream, lake, pond, wetland or other body of water
- d. Fifty (50) feet from the right-of-way of any public highway.

(F) Application Procedure

- (1) An application for a junkyard permit shall be made in writing and shall contain the following materials:
 - a. A certificate from the Code Enforcement Officer stating that the proposed location is not within an established district restricted against such uses or otherwise contrary to the prohibitions of such zoning law.
 - b. A site plan drawn to scale and indicating the following:
 - i. all existing and proposed structures, including fences
 - ii. all property lines including the names of owners of adjacent property
 - iii. all streams, lakes, wetlands, floodplains, and other water bodies
 - iv. all wells and sanitary facilities
 - v. all roads and easements
 - vi. all existing and proposed junk storage area
 - vii. all existing and proposed accessways, and parking and loading areas.
 - c. A completed full Environmental Assessment Form (EAF) pursuant to the provisions of the State Environmental Quality Review Act, 6 NYCRR Part 617. If the EAF indicates that the proposed activity may have a significant environmental impact, the Town Board may require that a Draft Environmental Impact Statement (DEIS) be submitted by the applicant. The application shall not be considered complete until the DEIS has been accepted by the Town Board.
 - d. The application fee, which shall include the license fee plus costs associated with advertising the public hearing and other incidental costs.

(2) Public hearing

- a. The Town Board shall fix a time for a public hearing on the application for a junkyard permit within 45 days of the date a complete application is received by the Town Board. The complete application shall contain all the material itemized in F (1) above.
- b. At the public hearing the Town Board shall hear the applicant and all other persons wishing to be heard on the application.

(3) Notice of public hearing

- a. Notice of the hearing shall be given to the applicant by certified mail to the address given in the application
- b. Notice of the hearing shall be published once in a newspaper of general circulation in the Town at least seven days before the date of the hearing.
- c. Notice of the hearing shall be sent by certified mail to property owners within 500 feet of the lot lines of the parcel on which the junkyard is proposed.

(4) Town Board Considerations

In making a decision on the application for junkyard permit, the Town Board shall take into account the following issues:

- a. The suitability of the applicant with regard to his ability to comply with the fencing requirements and other reasonable regulations concerning the proposed junk yard, with regard to any record of convictions for any type of larceny or receiving of stolen goods and with regard to any other matter within the purposes of this section.
- b. The nature and development of surrounding property, such as the proximity of churches, schools or other educational facilities, hospitals or nursing homes, public parks, public buildings or other places of public gathering.
- c. 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.
- d. The clean, wholesome and attractive environment which is of vital importance to the continued general welfare of the citizens of the Town of Olean 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 the type of road serving the junk yard or from which the junk yard can be seen, the natural or artificial barriers protecting the junk yard from view, the proximity of the proposed junk yard to established residential and recreational areas or main access routes hereto, as well as the reasonable availability of other suitable sites for the junk yard.

- e. Whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, odors or smoke, or of other causes.
- f. The proximity of streams, lakes, wetlands, flood plains, groundwater supplies, and public water supplies.
- g. Local drainage patterns.
- h. Long range comprehensive plans for the Town.
- i. Whether the application meets the requirements of Section E.

(5) Town Board Decision

- a. After the completion of the public hearing, the town board shall render a decision on the application for a junkyard permit within forty-five days. The forty-five day period may be extended by mutual consent of the applicant and the Town Board.
- b. All findings of the Town Board shall be entered into the official minutes of the Town. The decision of the Board shall immediately be filed in the office of the Town Clerk. The applicant shall be notified of the decision and the reasons for such decision in writing by certified mail sent to the address given in the application within five (5) days of the decision of the Board.
- c. Upon approval of the site plan and application, and payment of the fees and reimbursable costs due the town, the Board shall endorse its approval upon a copy of the site plan and application.

(6) Issuance of Junkyard Permit

If the application is approved by the Town Board, a Junkyard Permit shall be issued by the Town Clerk. The junkyard permit shall be valid for a period of one year.

(7) Renewal of Junkyard Permit

Junkyard permits shall be renewed annually upon payment of the permit fee, provided that all provisions of this law are complied with, the junkyard does not become a public nuisance under the common law, and the applicant is not convicted of any type of larceny or the receiving of stolen goods.

Prior to renewal of the junkyard permit, the code enforcement officer shall inspect the property to ensure that all conditions of approval and all requirements of this law and any other applicable laws have been met and continue to be complied with. The code enforcement officer shall report his findings in writing to the Town Board and the Town Clerk, prior to renewal of the Junkyard Permit.

(G) Enforcement

- (1) The code enforcement officer shall, upon request of the Town Board, make inspections of the premises of any junkyard for which application for a permit has been made, or any other existing junkyard within the Town, and shall report to the Board on the conditions of such junkyard.
- (2) The code enforcement officer shall make periodic inspections of the Town to ensure that all existing junkyards have permits and that the requirements of this section are met. Any observed violations shall be reported to the Town Board.
- (3) The code enforcement officer shall not enter the premises of any private property without the consent of the owner. It shall be the responsibility of the applicant to arrange for all required inspections of the premises prior to permit issuance or renewal.

(H) Revocation of Permit

The Town Board may revoke a Junkyard Permit upon a reasonable cause should the applicant fail to comply with any provision of this law. Before a permit may be revoked, a public hearing shall be held by the Board. Notice of the hearing shall be made in the official newspaper of the Town at least five (5) days prior to the date thereof. The permit holder shall be notified of the hearing by certified mail at least five (5) days prior to the hearing. Property owners within 500 feet of the property lines of the parcel that contains the junkyard shall also be notified by certified mail. At the hearing the Board shall hear the permit holder and all other persons wishing to be heard on the revocation of the Junkyard Permit. Should the Board decide to revoke a permit, the reasons for such revocation shall be stated in the Board minutes. The permit holder shall be notified of the revocation by certified mail within five (5) business days of the decision.

Section 9.6 Control of Excavation

Where permitted in Article 7 of this law, all mining, quarrying and sand and gravel extraction and stripping of topsoil shall conform to the following requirements:

- (A) The permittee must personally manage or be responsible for the management of the activity or business for which the permit is granted.
- (B) The permittee must submit to the Town of Olean Zoning Board of Appeals a plan of operation and a final grading, seeding and restoration plan for the excavation site. A Mining and Reclamation Plan submitted to the New York State Department of Environmental Conservation may be submitted to fulfill the latter requirement.

The Zoning Board shall approve or modify the plan of operation and shall approve the site restoration plan before the applicant may receive a zoning permit. Modifications may include, among other factors, setting limits on hours of operation and location of access.

- (C) No excavation shall take place within 1000 feet of any inhabited dwelling, except upon the written consent of the owners and residents of such dwelling. Excavation or stockpiling of materials shall be set back five hundred (500) feet from any abutting property line.
- (D) No excavation shall be performed to such a depth as to diminish, pollute or impede the water available to any such person drawing water from a private well located within 2000 feet of such excavation.
- (E) During any such excavation for sand, gravel or soil, the permittee shall be responsible for protection of the excavation by the use of fences or natural barriers.
- (F) No gravel mine shall be designed in such a way as to cause excessive dust, noise, traffic or other conditions inappropriate for the neighborhood in which it is located, or so as to endanger the stability of adjacent land or structures.
- (G) Within 30 days of termination of excavation operations, the owner shall commence restoration of the site pursuant to the approved restoration plan. The owner shall be required to reclaim all affected areas within one (1) year of termination of the excavation or of the expiration of the permit.
- (H) Before the issuance of a permit, the applicant shall execute and file with the Town Clerk a performance bond, cash deposit or other security acceptable to the Town Board, in an amount to be fixed by the Zoning Board of Appeals. Said bond shall remain in full force and effect until a certificate of completion of restoration has been issued by the Zoning Board of Appeals. In the event the applicant has obtained a

New York State Department of Environmental Conservation Mining Permit, the Town's bonding requirements shall be waived.

Section 9.7 Sanitation

Any new or modified facilities for the treatment storage or disposal of sewage, including excreta, bath, sink and laundry wastes or trade wastes, shall be provided and installed in accordance with the rules, regulations and standards of the New York State and Cattaraugus County Department of Health. Careful consideration shall be given to the location and construction of private water supplies to assure adequate protection of such supplies. Approval in writing from the Cattaraugus County Department of Health shall be submitted prior to the issuance of a building permit.

Dumping of garbage or rubbish is prohibited.

Section 9.8 Signs

(A) Purpose

The purpose of these sign regulations is to encourage the effective use of signs as a means of communication in the Town, to maintain and enhance the aesthetic environment, to maintain and enhance the Town's ability to attract sources of economic development and growth, to improve pedestrian and traffic safety, and to minimize the possible adverse effect of signs on nearby public and private property.

(B) General Standards

- (1) Except as hereinafter provided, no person shall erect, alter, construct, relocate or cause to be erected, altered, constructed or relocated any sign without first having obtained a Sign Permit issued by the Code Enforcement Officer in conformance with the requirements of this law.
- (2) A sign, except signs erected by a governmental entity for a public purpose, shall not be attached directly or indirectly to any light standard, traffic control structure, utility pole, or tree.
- (3) All site plans approved by the Planning Board shall include a coordinated plan for the location and size of all signs for the entire project area.
- (4) No sign shall be placed in or project into the public right-of-way.

(C) Exempt Signs

The following signs shall be allowed in all districts without first obtaining a sign permit.

- (1) Any sign posted by duly constituted public authorities in the performance of their public duties are exempt from regulation under this Section.
- (2) Temporary "For Sale" or "For Lease" signs relating to the premises on which they are posted. The sign shall contain only the name, address and telephone number of the owner or his authorized agent, or both. The sign shall not exceed 6 square feet in area. Only one such sign shall be permitted for each street frontage and it may not be illuminated.
- (3) Temporary signs in a commercial district that advertise any special sale. The sign shall not be erected more than 4 days prior to the sale and must be removed within 3 days after the sale.
- (4) New business enterprises, which are waiting erection of permanent signs, may install temporary signs, not exceeding 25 square feet in area, for a period not to exceed 30 days.
- (5) For a residence, one sign indicating the name and address of the occupant of the premises, not to exceed one square foot in area. Such sign shall not project above a roof line. It may be mounted on the building wall or pole mounted. An address sign shall not be permitted if the premises contains a sign for a home based business.
- (6) A major home based business may install one sign as permitted in section 9.16.
- (7) For new construction or renovation, one sign indicating the project name and the names of the architect, engineer, contractor and participating public and governmental agencies, placed on the site where construction is in progress. Such sign shall not exceed 25 square feet in area and 10 feet in height. The sign shall be removed within 30 days of the completion of the construction, repair or renovation work.
- (8) Political Signs: Signs advertising a candidate for political office, or signs advertising any other ballot issue, may be posted 30 days prior to the election and shall be removed within seven (7) days after the election.
- (9) Christmas holiday decorations, including lighting, are exempt from the provisions of this local law and may be displayed in any district without a permit for the period from one week before Thanksgiving until the end of January of the following year.

(C) Signs Requiring Sign Permits**(1) Signs in a Business or Industrial District:**

- a. In any business district, each business establishment shall be permitted to erect one wall sign or one projecting sign or one awning sign for the purpose of permanent advertising. The area of such sign for any single business enterprise shall be limited according to the frontage width of the building or the frontage width of the part of the building occupied by such enterprise. In computing the maximum size, each business enterprise may have a permanent sign of an area equivalent to one and one-half square feet of sign area for each lineal foot of frontage width occupied, but in no case shall the sign exceed a maximum area of 100 square feet.
- b. In addition to the wall sign, projecting sign, or awning sign, a business establishment may also erect one freestanding sign that conforms to the requirements of Section 9.8 (D) (2).

(2) Signs in a Residential District:

In a residential district, any commercial or industrial use may erect one wall sign or one projecting sign or one awning sign. The maximum allowable area for such sign shall be calculated following the formula in Section 9.8 (C) (1) (a).

(3) Miscellaneous Signs

- a. Subdivision Signs: One permanent identification sign may be allowed at the entrance to a permitted subdivision, provided that the sign does not exceed thirty-two (32) square feet in area and four (4) feet in height. Such sign shall indicate only the name and address of the subdivision.
- b. Bulletin boards and signs for a church, place of worship, libraries, museums, social clubs or societies, school, community or other public building may be permitted provided that the area of such sign does not exceed 15 square feet in area and such signs are set back a minimum of 15 feet from the street right-of-way line. Such signs must be erected on the same lot as the structure.
- c. For apartment buildings, one sign, not to exceed thirty-two (32) square feet in area, may be used to indicate the name of the development. In addition, temporary signs advertising the availability of apartments may be posted.
- d. Signs necessary for the identification, operation or production of a public utility, not exceeding thirty-two (32) square feet in area, may be erected on the premises of such public utility.

(D) Specific Regulations for Sign Types**(1) Projecting Signs**

- a. No part of a projecting sign shall extend into vehicular traffic areas. Any part of a projecting sign that extends over pedestrian traffic areas shall have a minimum clearance of seven (7) feet, six (6) inches.
- b. Projecting signs shall not extend above the level of the second floor of the buildings to which they are attached, or in any case, be higher than twelve (12) feet from the ground.
- c. For a building located at a street intersection, any projecting sign shall be located a minimum of fifteen (15) feet from the corner.

(2) Freestanding Signs

- a. Freestanding signs may not exceed twenty (20) feet in height. The height of the sign shall be measured from the finished grade at the location of the sign or at the main entrance to the building, whichever is lower.
- b. The area of a freestanding sign shall not exceed fifty (50) square feet on each side.
- c. No part of a freestanding sign shall project into or over any public right-of-way or over any property line.
- d. Freestanding signs under which a pedestrian walkway or vehicular driveway passes shall have a fourteen (14) foot vertical clearance.
- e. Freestanding signs shall be located a minimum of five (5) feet from any property line. In the event that a business use abuts a residential district, the freestanding sign shall be located a minimum of forty (40) feet from the residential property.
- f. Only one freestanding sign per parcel shall be permitted. If more than one commercial establishment is located on a lot, they shall share the advertising area on one freestanding sign.
- g. Masonry wall-type signs shall not exceed four (4) feet in height and shall be placed so as not to impair visibility for motorists.

(3) Awning Signs

- a. No sign shall project from an awning.
- b. Graphics (lettering and images) may be painted or permanently affixed to the surface of the front or sides of the awning.

(4) Portable Signs

- a. Portable signs may be allowed on a temporary basis to advertise an event or activity of limited duration. Such portable signs may be posted up to ten (10) days prior to an event and must be removed within five (5) days of the end of the event.
- b. Portable signs may be used by a new business establishment while awaiting installation of a permanent business sign. In no case shall such portable sign be in use for more than thirty (30) days.

(E) Prohibited Signs

- (1) All signs not expressly permitted under this Law or expressly exempt from regulation hereunder in accordance with the previous sections are prohibited. Such signs include, but are not limited to:
 - a. off-premises signs
 - b. Roof signs
 - c. Inflatable signs and tethered balloons
- (2) No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights except to show time and temperature.
- (3) No sign shall contain strobe lights.
- (4) No sign shall be designed or illuminated in such a way that it affects traffic safety or is a nuisance to residential properties.

Section 9.9 Off-street parking, Loading areas, and Drive-through Windows

(A) Off-Street Parking Requirements

In all districts in connection with every residential, commercial, industrial, institutional or other use, at any time any building or structure is erected, enlarged or increased in capacity off-street parking spaces for automobiles shall be provided in accordance with the following requirements:

- (1) A parking space shall be a minimum of 10 feet by 20 feet, exclusive of parking aisles and driveways, shall be a visibly designated and marked space, and shall be of usable shape and surface.
- (2) Adequate access shall be provided to all parking spaces. Any area containing one or more parking spaces shall have direct access to a public street or alley or to a private street.
- (3) The number of off-street parking spaces to be provided shall not be less than the following:

Use	Parking Spaces Required
Single Family Dwelling	2 spaces per unit
Two-family Dwelling	2 spaces per unit
Multiple Family Dwellings	1.5 spaces per one-bedroom unit 2 spaces per two-bedroom unit 2.5 spaces per three-bedroom unit or greater
Hotel/Motel	1 space per guest room, plus 1 space for every three employees
Churches, Places of Worship, Theaters, Places of Assembly,	1 space for every four seats
Restaurants, Bars, Clubs	1 space for each 4 persons allowed under the maximum occupancy load
Golf course	4 for each hole
Bowling alley	2 spaces for each lane
Nursery School/Day Care Center	1 space per employee, plus 2 additional spaces
Retail Uses, Repair Shops, Personal Service Establishments	1 space per 300 square feet of gross floor area
Offices	1 space per 300 square feet of gross floor area
Industrial Uses	1 space per 1,000 square feet of gross floor area, or 1 space for every two

	employees on the largest working shift, whichever is greater.
Warehouses	1 space per 2,000 square feet of gross floor area
Convalescent Center or Nursing Home	1 space for every three beds plus one for each two employees on the maximum working shift
Mortuary or Funeral Home	1 space for each 75 sq. ft. of parlor or chapel area, or 1 space for every 4 fixed seats, whichever is the greater

(B) Calculation of Required Parking Spaces

In the case of combination of uses, the total requirements for off-street parking spaces shall be the sum of the requirements for the various uses, unless it can be proven that staggered hours of use would permit joint use of parking areas or other modifications.

Whenever a major fraction of a space is required, a full space shall be provided.

(C) General Requirements for Parking Areas

- (1) All areas devoted to off-street parking shall be so designed that no automobile is required to back into a street to obtain egress. This provision does not apply to the parking areas serving single-family and two family dwellings.
- (2) Any lighting that illuminates off-street parking areas and driveways shall be located and arranged so that all direct rays of light fall upon the parking area only and not onto any adjoining properties.
- (3) If a parking area abuts a residential district, adequate shielding shall be provided to ensure that the adjacent residential uses are protected from glare from lighting and from car headlights. In addition, the parking area shall be set back a minimum of 6 feet from the residential lot line, and this setback shall be landscaped.
- (4) For any parking areas providing spaces for more than five automobiles, a minimum four (4) foot wide landscaped buffer strip shall be provided between any adjacent sidewalk or public right-of-way and the parking area.

(D) Driveway Regulations for Parking Areas

- (1) Driveways used for ingress and egress to parking areas shall be clearly visible. Driveways that cross sidewalks shall be constructed at a 90 degree angle to the street in order to protect pedestrian safety.

- (2) Driveways shall not be located closer than 20 feet to an intersection of two public rights-of-way.
- (3) The minimum width of a non-residential driveway that provides both ingress and egress shall be 20 feet. The maximum width of such driveway shall not exceed 35 feet.
- (4) No more than two driveways entering on one street from a single commercial or industrial establishment shall be permitted.
- (5) Shared driveways for abutting commercial and/or industrial establishments shall be encouraged.

(E) Off-Street Loading and unloading

Every building having a gross floor area of 10,000 square feet or more and requiring the loading or unloading of trucks, shall provide at least one off-street loading space or dock. An additional loading space or dock shall be required for each additional 100,000 square feet of gross floor area. Each loading space shall be not less than 12 feet in width, 25 feet in length and 14 feet in height, or shall be of a size adequate to accommodate the expected size of the trucks.

Loading docks or spaces shall be located in such a way as not to unreasonably interfere with the movement of people and vehicles on public rights-of-way. Loading spaces or docks shall not be permitted at the front of a building.

(F) Drive-through windows

Where permitted in Article 7, a drive-through window may be permitted by the Zoning Board of Appeals as a special permitted use according to the procedures outlined in Article 11 of this law. If, in the opinion of the Zoning Board, there is insufficient space on the lot to provide safe operation of a drive-through window, or the location would pose a traffic and safety hazard, the Zoning Board may deny the application.

Stacking space for a minimum of three vehicles shall be provided in the case of a bank. Stacking space for a minimum of six vehicles shall be provided for a fast-food restaurant. Such spaces shall be designed so as not to impede pedestrian or vehicular circulation on the site or on any abutting street. Each stacking space shall be a minimum of 20 feet long.

(G) Waiver of parking requirements

The Zoning Board of Appeals may waive the requirements for off-street parking, if the applicant can show that adequate on-street parking exists to serve the facility or if the applicant has entered into a legal agreement with a nearby facility to use the parking lot of

that facility, and if, in the opinion of the Zoning Board, the existing parking area is adequate to serve both facilities. Joint use of parking areas for facilities that have different hours of operation is encouraged.

Section 9.10 Seasonal Residences

A seasonal residence may be permitted in any residential district. Such seasonal residence in the Town of Olean shall be provided with adequate water supply and sewage disposal facilities constructed to the standards of the Cattaraugus County Department of Health. Approval in writing from the Cattaraugus County Department of Health shall be submitted prior to the issuance of a building permit.

Minimum floor area requirements shall comply with the standards contained in Article 7 of this law.

Section 9.11 Temporary Buildings

Temporary buildings or trailers, other than buildings or trailers for living purposes, to be used in connection with construction work as a tool house or field office or similar use, may be permitted in any district during the period that the construction work is in progress, but such temporary buildings shall be removed within thirty (30) days of the completion of such work. Permits for temporary, non-residential buildings shall be issued by the Zoning Board of Appeals for a period of one year.

Temporary buildings or trailers, for residential purposes, may be permitted in any district in which residential uses are allowed during the period that construction of a permanent residence is in progress. Such temporary buildings shall be removed within thirty (30) days of the completion of such work. All temporary residential buildings or trailers shall have approved sanitary facilities and approved water supply systems, constructed to the standards of the Cattaraugus County Department of Health. Approval, in writing from the Cattaraugus County Department of Health shall be submitted prior to the issuance of a permit for a temporary building or trailer. Permits for temporary residential buildings shall be issued by the Zoning Board of Appeals. All permits for temporary residential buildings shall be issued for a period of one year. Prior to the issuance of a permit for a temporary residential building or trailers, the applicant shall demonstrate to the Zoning Board of Appeals that he/she has been issued a valid building permit for the construction of the permanent residence.

Section 9.12 No More than one Single-Family Residence per Lot

In all districts where single family dwellings are permitted, a lot may be developed for such use in accordance with the requirements of this zoning law, provided that there shall be no

more than one single family dwelling unit on each lot. If two or more single family dwelling units are proposed to be located on the same lot, the lot shall be subdivided prior to the construction of the new dwellings, and each new lot shall meet all the requirements of this law.

Where two-family and multiple family dwelling units are allowed in Article 7, more than one dwelling unit may be allowed on each lot, pursuant to the provisions of this law.

For non-residential land uses, more than one permitted principal use may be allowed on a single lot, subject to obtaining a special use permit from the Zoning Board of Appeals, pursuant to the procedures in Article 11. In order for the Zoning Board to grant such a special use permit, the Board must find that the yard, area and other requirements of this law can be met for each individual structure as if they were on individual lots, in addition to the general standards contained in Article 11.

Section 9.13 Stormwater Management and Erosion Control

(A) Purpose

The intent and purpose of this section is to protect, maintain and enhance both the immediate and long-term health, safety and welfare of the residents of the Town of Olean. In order to achieve these goals, this section has the following objectives: (1) prevent increases in the magnitude and frequency of stormwater runoff, so as to prevent an increase in flood flows and in the hazards and costs associated with flooding; (2) maintain the integrity of stream geometry so as to sustain the hydrologic functions of streams; and (3) control erosion and sedimentation so as to prevent its deposition in streams and other receiving bodies.

(B) Applicability

Any new development, except an individual single-family home, shall prepare a Stormwater Management and Erosion Control Plan as part of its application for a building permit. However, any new development, or changes to an existing development, which would result in an impervious surface of less than 10,000 square feet shall not be required to prepare a Stormwater Management and Erosion Control Plan.

(C) Contents of the Stormwater Management and Erosion Control Plan

Such plan shall include provisions for stormwater detention which shall limit and control the rate of runoff. The design shall assure that the runoff after development does not exceed that existing at the time of the plan submission. Calculations demonstrating that this condition is met for both a 10 year and a 25 year frequency storm shall be submitted.

The plan shall also include provisions for siltation and erosion control, both during and after construction. The siltation and erosion control plan for use during construction shall be shown on the construction drawings for the development. To the maximum extent feasible, construction plans shall be drawn such that the least amount of existing vegetation, especially mature trees, is disturbed. Vegetation shall be established on all disturbed surfaces as soon as possible upon completion of the work. Siltation control measures shall be maintained in continuous use until adequate vegetation is established.

Section 9.14 Accessory Apartments

Where permitted in Article 7, an accessory apartment may be permitted, subject to obtaining a Special Use Permit from the Zoning Board of Appeals. Prior to granting the Special Use Permit the Zoning Board shall determine that the following conditions are met, in addition to the conditions contained in Article 11.

- (A) There shall be no more than one (1) accessory apartment per lot.
- (B) The applicant shall demonstrate that the existing sewage disposal system and water supply are adequate to support the accessory apartment.
- (C) The applicant must show that there is adequate off-street parking for the occupants of the accessory apartment, in addition to the parking required for the primary residence.
- (D) If an accessory apartment is located in the principal dwelling unit, the entry to such unit and its design shall be such that, to the maximum degree feasible, the appearance of the building will remain that of a single family dwelling.
- (E) The minimum gross floor area for an accessory apartment shall be three hundred (300) square feet.
- (F) Where the accessory apartment is located in the principal dwelling, the gross floor area shall not exceed twenty-five percent (25%) of the original area of the principal dwelling unit, unless, in the opinion of the Zoning Board, a greater floor area is warranted by the specific circumstances of the particular building.
- (G) Mobile homes and/or manufactured homes shall not be allowed as accessory apartments.

Section 9.15 Telecommunications Facilities

(A) Purpose

The purpose of these supplemental regulations governing telecommunications facilities is to promote the health, safety and general welfare of the residents of the Town of Olean; to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations; to minimize the total number of telecommunication towers in the community by encouraging shared use of existing and future facilities, 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) Special Use Permit Required

No telecommunications facility may be constructed and no existing structure shall be modified to serve as a telecommunications facility without first obtaining a Special Use Permit from the Zoning Board of Appeals. In granting a Special Use Permit the Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed use.

All telecommunications facilities shall conform to the standards contained in this section and in other sections of the Town of Olean Local Zoning law. These standards shall be considered minimum requirements.

No Special Use Permit for a telecommunications facility, or renewal or modification of such permit, shall be granted by the Zoning Board of Appeals unless it finds that such 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 maximum extent practical.
- (4) Complies with all other requirements of this Ordinance, unless they are expressly superseded herein.
- (5) Is the most appropriate site among those available within the technically feasible area for the location of a Telecommunications Tower.

- (6) In the case of construction of a new Telecommunications Tower, such facility is designed to accommodate future shared use by at least one (1) other telecommunication service provider.

(C) Exceptions

Notwithstanding the forgoing, the following uses are not considered to be telecommunications facilities for the purposes of this Local Zoning Ordinance:

- (1) Antennas and satellite antennas used solely for the residential reception of household television and radio reception.
- (2) Antennas used for private citizen's band radio, amateur (ham) radio and other similar communications.

(D) Application Materials for new Telecommunications Facilities

All applicants for a Special Use Permit for the construction of a telecommunications facility shall submit the following documents and information.

- (1) A report from a professional engineer, licensed to practice in the State of New York, which shall:
 - a. Describe the facility and the technical, economic and other reasons for the facility and tower design, including a cell search area analysis, demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target area.
 - b. Describe how many and what kinds of antennas are proposed.
 - c. Describe how many and what kind of antennas are possible on the tower
 - d. Demonstrate that the site can contain on-site substantially all ice-fall or debris from tower failure
 - e. Describe the fall zone of the proposed tower
- (2) A copy of the applicant's Federal Communications Commission (FCC) license, including any requirements from the Federal Aviation Administration (FAA).
- (3) A letter of intent committing the facility owner to negotiate in good faith for shared use by third parties in the future. This letter shall be filed with the Code Enforcement Officer prior to the issuance of a building permit (assuming the telecommunications tower is approved). Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit.

This letter shall commit the facility owner and his or her successors in interest to:

- a. Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.
 - b. Negotiate in good faith for shared use by third parties.
 - c. Allow shared use if an applicant agrees in writing to pay charges.
 - d. Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include, but is not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- (4) The reports and evaluations required in Section 9.15 (F), Shared Use and Section 9.15 (G), Use of Existing Buildings.
- (5) A Full Environmental Assessment Form (EAF) and the Visual Addendum to the EAF. The Board of Appeals may require submittal of a more detailed visual analysis based on the results of the Visual Addendum.
- (6) A site plan, showing all existing and proposed structures and improvements on the site, including towers, antennas, roads, buildings, guy wires and anchors, parking and landscaping. The height and type of tower shall be indicated. Materials and colors of the tower and other buildings shall be shown. The site plan shall include grading plans for new facilities and roads. Any landscaping and other proposed screening methods shall be detailed. Information on proposed lighting of the tower and the site shall be included.
- Site Plans for all Telecommunications Facilities must bear the seal of a professional engineer licensed to practice in the State of New York.
- (7) Any other material that the Board of Appeals deems necessary to evaluate the application.

The Town of Olean, at the expense of the applicant, shall employ its own consultant to review the findings and conclusions of safety analysis, visual analysis, or structural inspection provided by the applicant.

Any permit granted under this section shall be valid only for the number and type of antennas in the approval. Any increase in number or change in type of antennas on any existing tower must be approved by the Board of Appeals.

Any new facility which is approved under this section shall be designed to accommodate future shared use by other telecommunications providers.

(E) Application Materials for Applicants Proposing to Use an Existing Tall Structure or an Existing Telecommunications Tower

All applications for a Special Use Permit for a telecommunications facility that will be placed on an existing structure or that will use an existing telecommunications tower shall submit the following application materials to the Zoning Board of Appeals:

- (1) A completed application for a Special Use Permit.
- (2) Documentation of intent from the owner of the existing facility to allow the shared use.
- (3) A report from a professional engineer licensed to practice in the State of New York certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure or existing telecommunications tower, and explaining what modifications, if any, will be required in order to certify to the above.
- (4) A completed short Environmental Assessment Form (EAF) and a completed Visual Addendum to the EAF. The Board of Appeals may require a more detailed visual analysis, based on the results of the Visual Addendum.
- (5) A copy of the applicant's Federal Communications Commission (FCC) license, including any requirements from the Federal Aviation Administration (FAA).
- (6) A site plan showing the information described in Section 9.15 (D) (6).
- (7) Any other information deemed necessary by the Zoning Board of Appeals.

Any permit granted under this section shall be valid only for the number and type of antennas in the approval. Any increase in number or change in type of antennas on any existing tower must be approved by the Board of Appeals.

(F) Shared Use of Telecommunications Facilities

- (1) At all times, shared use of existing telecommunications towers shall be preferred to the construction of new towers.
- (2) An applicant shall be required to present an adequate report inventorying existing towers, and approved, but unbuilt towers, within a reasonable distance of the proposed site. This distance shall be determined by the Board of Appeals in consultation with the applicant. If an appropriate communications tower or towers is available, the applicant shall submit a written evaluation of the

feasibility of sharing such tower. The evaluation shall analyze, but is not limited to, the following factors:

- a. Structural capacity of the tower or towers
- b. Radio frequency interference
- c. Geographic service area requirements
- d. Mechanical or electrical incompatibilities
- e. Inability or ability to locate equipment on the tower or towers
- f. Cost, if fees and costs for sharing would exceed the cost of a new communication tower over a 25-year period, and
- g. Any restriction or limitations of the Federal Communications Commission that would preclude the shared use of the tower.

A telecommunications tower that is determined to be inappropriate for sharing shall be assumed to be inappropriate for sharing the same types of facilities in the future. Such towers will not need to be evaluated in the future regarding sharing with the same type of facility for which it has been determined to be inappropriate. The Town Clerk shall maintain a list of such towers, and shall provide such list to all applicants or potential applicants for a Special Use Permit for a telecommunications tower.

- (3) An applicant shall not be required to share use of an existing telecommunications tower if the cost is unreasonable. Those costs include, but are not limited to, structural reinforcement of the existing tower, preventing transmission or receiver interference, additional site screening, and other charges including real property acquisition of a lease required to accommodate shared use. Costs associated with this subsection shall be considered unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a 25 year period.
- (4) The applicant shall be required to submit a report demonstrating a good-faith efforts to secure shared use of an appropriate existing communication tower. Written requests and responses for shared use shall be provided.

(G) Use of Existing Buildings

- (1) The use of suitable existing buildings and structures, such as church steeples, silos, or water towers, shall be encouraged over the construction of new towers, wherever feasible.
- (2) The applicant shall prepare an inventory of those buildings and structures in the cell search area which exceed seventy-five (75%) of the height of the proposed tower, to determine if any may be suitable to accommodate the antenna(s). If suitable structures are located, the applicant shall enter into good faith

negotiations with the building owner to secure rights to place one or more antennae on such structures.

- (3) The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of the existing building or structure. Written requests and responses shall be provided.
- (4) An applicant shall not be required to use an existing, suitable building or structure if the cost is unreasonable. Costs associated with this subsection shall be considered to be unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a 25 year period.

(H) Visual Impact Assessment

The Board of Appeals may require the applicant to undertake a visual impact assessment which may include:

- (1) A map showing locations from which the facility may be seen.
- (2) Pictorial representation of "before and after" views from key viewpoints both inside and outside of the town, including but not limited to: state highways and other major roads, state and local parks, other public lands, 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. The Board of Appeals shall determine the appropriate sites in consultation with the applicant.
- (3) Assessment of alternative tower designs and color schemes.
- (4) Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

(I) Visibility

- (1) All towers and accessory facilities shall be sited to have the least practical adverse effect on the environment.
- (2) Placement of the antenna(s) on a suitable existing structure, such as a church steeple, water tower, or silo is encouraged, whenever feasible.
- (3) Towers shall not be artificially lighted, except as required by the Federal Aviation Administration (FAA). However, the Zoning Board of Appeals may require lighting of the tower for public safety considerations.
- (4) Towers shall be finished or painted in colors that minimize their visibility, unless other standards are required by the FAA. Towers should be designed and sited

so as to avoid, whenever possible, application of FAA lighting and painting requirements.

- (5) Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding six (6) inches in diameter, measured at a height of four and one-half feet above the ground (breast height), shall take place prior to approval of the Special Use Permit.
- (6) No portion of any tower may be used for signs or advertising purposes, including the company name, banners, streamers, etc.
- (7) The applicant shall demonstrate that the proposed height for the tower and antenna(s) is the minimum necessary to function satisfactorily. No tower or antenna(s) that is taller than this minimum height shall be approved.
- (8) An accessory structure or building, if any, shall be designed using materials, colors and textures that are compatible with their natural surroundings or with the structures in the neighborhood in which they are located.

(J) Setbacks

Telecommunications facilities shall comply with all existing setbacks within the zoning district in which they are sited. Additional setbacks may be required by the Board of Appeals to contain on-site substantially all ice-fall or debris from tower failure and/or to preserve the privacy of adjoining residential and public property. Setbacks shall apply to all tower parts, including guy wire anchors, and to any accessory facilities.

A lot leased or purchased for the construction of a telecommunications facility shall not result in the creation of a non-conforming lot.

(K) Screening and Landscaping

- (1) The Board of Appeals may require fencing around the telecommunications facility.
- (2) Landscaping shall be planted on the outside of the fencing. The landscaping may be installed on the inside of the fencing, subject to the approval of the Board of Appeals, if the survivability or utility of landscaping on the exterior of the fencing is questionable.
- (3) The Board of Appeals may require evergreen hedges or other planting strips as necessary to screen portions of the facility. Installation of new plantings will not be required in those places where the presence of existing vegetation or structures is sufficient to screen the tower and accessory buildings, or in cases where the proposed landscaping would not be visible.

(L) Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, whether public or private, shall be made. Road construction, where necessary, shall minimize ground disturbance and vegetation cutting. Roads grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

(M) Parking

Parking shall be provided on site to assure adequate emergency and service access. The Board of Appeals shall determine the number of required spaces based upon information to be provided by the applicant.

(N) Site Remediation

After construction, the site shall be regraded, reseeded and relandscaped pursuant to plans approved by the Zoning Board of Appeals. If any off-site disturbance to the landscape has occurred as a result of construction or site preparation of a telecommunications facility, that off-site area shall also be regraded and reseeded or other site remediation work performed to the satisfaction of the Zoning Board of Appeals.

The Zoning Board of Appeals shall require a bond to be posted by the applicant to insure that this work is performed. Upon completion of the work to the satisfaction of the Zoning Board of Appeals, the bond will be returned to the applicant; however, all or a portion of the bond may be held for a growing season to insure that any landscaping survives and thrives.

(O) Engineering and Maintenance

- (1) Every telecommunications 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 the owner's expense, at least every two years for structural integrity by an engineer, specializing in structural engineering, who is licensed to practice in the State of New York. A copy of the inspection report shall be promptly submitted to the Building Inspector.

The structural inspection report shall describe the structural integrity of the Facility, maintenance issues and repairs needed or made, if any. In the event that the structural inspections indicates structural deficiencies, then the deficiencies must be remedied within the time reasonably set by the Building Inspector. Failure to make the repairs may result in revocation of the Special Use Permit.

(P) Removal of Obsolete Facilities

- (1) All obsolete and unused telecommunication towers shall be removed within twelve (12) months of cessation of use.
- (2) The owner of the telecommunication facility shall annually file a declaration with the Zoning Board of Appeals as to the continuing operation of every facility installed subject to this Ordinance.
- (3) The Board of Appeals shall require, as a condition of approval of the Special Use Permit, that the applicant post a bond with the Town, sufficient to allow the Town to have the unused tower removed, if the owner fails to do so within the prescribed time period.

(Q) Expiration of Special Use Permit

The grant of Special Use permit shall expire upon:

- (1) The failure to commence active operation of the telecommunications facility within twelve (12) months of the approval of the Special Use permit by the Zoning Board of Appeals. This time limit may be extended by the Board of Appeals, upon written application of the applicant. Such application shall state the cause of delay in commencing operation.
- (2) The discontinuance of the active and continuous operation of the telecommunications facility for a continuous period of twelve (12) months, regardless of any reservation of an intent not to abandon or discontinue the use or of an intent to resume active operations.

Section 9.16 Home Based Businesses**(A) Minor Home Based Businesses**

- (1) Minor Home Based Businesses are permitted in any zoning district that allows residential dwellings, provided that they meet the following conditions:
 - a. A home based business shall be accessory and incidental to the use of a dwelling for residential purposes.
 - b. No one other than the residents of the dwelling unit shall be engaged in the home based business.

- c. No more than twenty-five percent of the gross floor area of the dwelling shall be devoted to the home based business. However, the home based business may be conducted in a standard accessory building, such as a garage.
 - d. There is no outdoor storage or display of material or equipment.
 - e. The peace, quiet, and enjoyment of the neighborhood shall not be disturbed by electrical interference, dust, noise, smell, smoke or traffic generated by the home based business.
 - f. No equipment is used other than that normally used in household, domestic, or general office use.
 - g. There shall be no exterior evidence of the conduct of a minor home based business, except that one sign, not to exceed two square feet in size may be displayed.
 - h. No alteration of the residential appearance of the dwelling shall be allowed. Creation of a separate entrance to the dwelling exclusively for the use of the home based business is prohibited.
 - i. There are no retail sales of goods. However, orders previously made at a sales party may be filled on the premises.
 - j. A minor home based business shall not create greater vehicular or pedestrian traffic than is normal for the district in which it is located.
- (2) Permitted minor home occupations include, but are not necessarily limited to, the following, provided they meet the criteria contained herein:
- a. Offices for authors and composers.
 - b. Office facility of a salesman, sales representative, or manufacturer's representative, provided that no transactions are made in person on the premises.
 - c. Tutoring of not more than one student at a time.
 - d. Instruction in a musical instrument for not more than one student at a time
 - e. Direct sale product distribution (Amway, Avon, Tupperware, etc.)
 - f. Typing; word processing services; data processing

- g. Architectural services, drafting and graphic services, engineering office
- h. Art and crafts studios
- i. Consulting services

(B) Major Home Based Businesses

- (1) Major Home Based Businesses are permitted, by grant of Special Use Permit, in any zoning district that allows residential dwellings, provided that they meet the following conditions. Before the Zoning Board of Appeals may grant a special use permit, it shall determine that the proposed home based business meets the following criteria:
- a. A home based business shall be accessory and incidental to the use of a dwelling unit primarily for residential purposes.
 - b. No more than one employee, or full time equivalent of one employee, in addition to the resident or residents of the dwelling, may be engaged in the major home based business.
 - c. No more than twenty-five percent of the gross floor area of the dwelling shall be devoted to the home based business. However, the home based business may be conducted in a standard accessory building, such as a garage.
 - d. No alteration of the residential appearance of the dwelling shall be allowed. Creation of a separate entrance to the dwelling or utilization of an existing entrance exclusively for the use of the home occupation is prohibited.
 - e. The Zoning Board shall find that the proposed use is compatible with residential uses and does not pose a safety hazard, and that the peace, quiet, and enjoyment of the neighborhood shall not be disturbed by electrical interference, dust, noise, smell, smoke or traffic generated by the home based business.
 - f. No retail sales shall be allowed on the premises, except that incidental retail sales may be made in connection with other permitted home occupations. For example, a beauty parlor may be allowed to sell combs, hair spray and other miscellaneous items to customers.
 - g. There shall be no exterior storage of materials to be used in conjunction with a home based business.

- h. A home based business shall produce no offensive noise, vibration, smoke, electrical interference, dust, odors, or heat.
 - i. A home based business shall be completely enclosed in the principal dwelling or an accessory building.
 - j. All parking necessary for the home occupation shall be provided on-site, not on the street, and shall not be allowed in the required front yard.
 - k. One unilluminated sign, not to exceed six (6) square feet in area, may be permitted.
- (2): Permitted Major Home based businesses include, but are not necessarily limited to, the following, provided they meet the criteria contained herein:
- a. Offices for accountants and tax preparers
 - b. Hairdressing establishments
 - c. Dressmaking, sewing and tailoring, provided that the dressmaker does only custom work for specific clients, and does not sell clothes to the general public at the residence.
 - d. Small appliance repair
 - e. Upholstering

(C) Uses Prohibited as Home Based Businesses

The following uses, by nature of the scale and intensity of the activity, are more suited to a commercial or industrial district and shall not be permitted as home occupations, either major or minor:

- (1) Automobile body repair work, including painting of automobiles; repair of automobile or other vehicular engines.
- (2) Medical and dental offices
- (3) Funeral Homes
- (4) Welding or machine shops
- (5) Veterinary services or boarding of animals

Section 9.17 Yard Sales

(A) Yard sales are permitted provided that the following conditions are met:

- (1) No items may be offered for sale that have not been owned and used by the occupant of the premises. Multiple family sales are permitted if they are held on the premises of one of the participants.
- (2) No more than three yard sales shall be conducted on any one lot in any one calendar year. Yard sales shall not be conducted for longer than two consecutive days.
- (3) Yard sales shall be conducted during daylight hours only.

(B) Rummage sales, white elephant sales and similar occasional fund-raising activities held by churches and other religious organizations, by clubs or by eleemosynary, educational or service organizations shall not be construed to be yard sales.

Section 9.18 Landscaping Regulations

(A) General Standards

These standards shall apply to any project that is subject to site plan review, special use permit procedure, variances, or other special approvals required by this zoning law.

- (1) All exterior areas of any site not required for parking, accessory structures, or utility structures shall be landscaped. To meet this requirement, existing vegetation may be retained. In order to ensure the survival of trees and other plantings, each landscaping area shall be a minimum of 100 square feet, unless otherwise approved by the appropriate Board.
- (2) Landscaping may be located around the perimeter of and/or in the interior of parking lots, in the front yard setback, in buffer yards, and elsewhere on the lot, as required by the appropriate Board. Foundation plantings may also be required along buildings walls.
- (3) Landscaping may include deciduous trees, evergreens, shrubs, ground cover, perennial and annual plants. Landscaping may also include the use of berms, fencing, and raised or terraced planting beds.
- (4) The Town encourages the innovative use of planting design and materials. Use of plant materials that provide continual seasonal interest and/or use of native species is encouraged.

- (5) No plastic or artificial plants shall be used to meet any requirement of this zoning law.
- (6) Species of trees shall not be planted if the roots may cause damage to public water and sewer lines, if the branches are subject to a high incidence of breakage, or if the fruit is considered a nuisance or high maintenance, as determined by the appropriate Board.

(B) Plant size and spacing at time of planting

- (1) Deciduous trees shall have a minimum caliper of two (2) inches, measured six inches above the ground.
- (2) All evergreen trees shall have a minimum height of five feet.
- (3) Hedges shall be a minimum of 24 inches in height at the time of planting. Spacing of the planting shall depend upon the species. Hedges shall form a solid continuous visual screen at least three feet in height within 2 years of planting.

(C) Ground Treatment

- (1) The ground area within required landscaping areas which is not dedicated to trees or preservation of existing vegetation shall receive appropriate landscape treatment and shall present a finished appearance and complete coverage upon completion. Sand or pavement shall not be considered appropriate landscape treatment.
- (2) Ground cover may be planted in lieu of grass in conjunction with planting of trees, shrubs, or hedges. Ground cover shall provide a minimum of 50 percent coverage immediately upon planting and 100 percent coverage within two years after planting.
- (3) Grass areas shall be planted with species suitable as permanent lawns. Grass areas shall be regularly maintained.

(D) Maintenance

- (1) All landscaping shall be maintained in a healthy condition throughout the year. Landscaped areas are to be kept neat and free of litter and weeds.
- (2) The applicant and all succeeding owners are required to maintain the landscaping in perpetuity. If trees on the landscaping plan, including those retained at the time of the initial construction, die, they shall be replaced within six (6) months. Shrubbery or other plantings which die shall also be replaced in kind within six (6) months.

- (3) The appropriate Board may require the applicant to post a performance bond for a term of up to three years following completion of construction to ensure that replacement of trees and other vegetation occurs. This time period is the most critical for the health of transplanted trees and shrubbery.
- (4) The applicant and all succeeding owners are required to maintain the landscaping in good and sightly condition. If not, the Board which approves the landscaping plan has the authority to revoke the entire project's approval and occupancy permit.

ARTICLE 10 SITE PLAN REVIEW

Section 10.1 Purpose

The purpose of this article is to ensure that any new development or substantial redevelopment in the Town of Olean is in harmony with the character of the Town and that such development meets the guidelines established in the Town's *Comprehensive Master Plan and Rural Development Policies*. An additional purpose is to minimize conflicts between future development and neighboring existing uses and natural features of the site; this will minimize any potential adverse effects to the health, safety, and general welfare of the residents of the Town of Olean.

Section 10.2 Authorization to Review Site Plans

- (A) The power to approve, approve with conditions, or disapprove site plans is hereby vested in the Planning Board of the Town of Olean. When considering a site plan application, the Planning Board shall consider the plan elements contained in Section 10.7: Criteria for Approving Site Plans.
- (B) When approving a site plan, the Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed site plan. Such conditions may include, but are not limited to, limiting the hours of operation; controlling the number and location of driveways; requiring fencing, screening, and/or landscaping to protect adjacent properties; requiring landscaping on site; limiting the number, size, and location of signs; and conditions affecting any of the other plan elements listed in Section 10.7: Criteria for Approving Site Plans.
- (C) Where applicable, site plan approval must be obtained, and all conditions of approval must be met by the applicant, prior to the issuance of a Zoning Permit or Certificate of Compliance. The Planning Board shall determine when the conditions must be met.
- (D) Where a variance would normally be required under the provisions of this law, the Planning Board shall not have the authority to vary those provisions under site plan review. Application must be made to the Zoning Board of Appeals for a variance and the Zoning Board of Appeals shall act on the application for a variance prior to final Planning Board action on the application for site plan approval.

Section 10.3 Applicability and Exceptions

All new development and land use activities, and any change in use, shall require site plan review and approval prior to the issuance of a building permit, except the following:

- (A) All agricultural activities, including construction of buildings and structures that are normally accessory to agricultural activities.
- (B) The sale of agricultural produce and temporary structures related to the sale of agricultural produce.
- (C) Construction of new one-family or two-family dwellings, including ordinary accessory structures and related land use activities. Additions, of any size, to existing one-family and two-family dwellings are also exempt from site plan review.
- (D) Signs, except for signs that are included in projects that would otherwise require site plan review.
- (E) Ordinary repair or maintenance to existing structures or uses.
- (F) Interior structural alterations within any existing building.
- (G) Exterior alterations or additions to existing structures which would not increase the square footage of the existing structure by more than fifty (50) percent.
- (H) Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this law.
- (I) Logging and timber cutting.
- (J) Home based businesses.
- (K) Accessory structures, including fences, unless the fence or other accessory structure is part of a larger project which is subject to site plan review.

Section 10.4 Application Procedure

- (A) An applicant for Site Plan approval shall submit a completed application to the Zoning Inspector, who shall forward it to the Planning Board.

(B) The application shall contain the following information and materials:

- (1) An application for a Zoning Permit
- (2) An area map showing:
 - a. The applicant's entire holdings
 - b. All adjacent properties
 - c. Adjacent streets, roadways and sidewalks
- (3) A plot plan, drawn to scale and having a north arrow and date, that shows:
 - a. The location, dimensions, and use of all proposed buildings
 - b. Means of access and egress
 - c. All parking facilities and loading areas
 - d. Location, design, and size of all signs
 - e. Physical features intended to protect adjacent land uses, including screening, fencing and landscaping
 - f. Existing natural features, such as wetlands, water bodies, watercourses, floodplain areas, and wooded areas.
 - g. Internal streets and sidewalks
- (4) Floor plans and elevations showing all architectural features, including materials to be used.
- (5) A description of the sewage disposal and water supply systems to be used. Their location shall be shown on the plot plan.
- (6) Grading plan showing existing and finished contours and grades, the location of any slopes of five (5) percent or greater, and proposed erosion control measures
- (7) If the proposed project is in or near a floodplain, the applicant shall show that the project would not increase the base flood elevation. This proof shall be prepared by a registered professional engineer.
- (8) Landscaping plan and planting schedule
- (9) Location and design of outdoor lighting facilities
- (10) Description of the nature and intensity of the proposed operation and its compatibility with surrounding development.
- (11) Any additional information the Planning Board deems is necessary for an adequate assessment of a particular application.
- (12) All required fees

The Planning Board may, at its discretion, waive any application requirement that it deems is not relevant to a particular application.

Section 10.5 Pre-Application Conference

A conference may be held between the Planning Board and the applicant prior to the preparation and submission of a formal site plan. The purpose of the pre-application conference is to enable the applicant to inform the Board of the proposal prior to the preparation of a detailed site plan application. The Planning Board shall review the basic site design concept and advise the applicant as to potential problems and concerns and generally determine the information to be required for the site plan application.

Section 10.6 Action on the Site Plan

(A) Public Hearing

- (1) The Planning Board shall hold a public hearing on the application within sixty-two (62) days from the date that the complete application is received by the Zoning Inspector.
- (2) Public notice of the hearing shall be printed in a newspaper of general circulation in the Town at least five (5) days prior to the date thereof.
- (3) The Planning Board shall mail notice of the hearing to the applicant at least ten (10) days before said hearing.
- (4) The Planning Board shall mail notice of such hearing to every owner of a parcel that is within five hundred (500) feet of the parcel that is the subject of the application. Such notices shall be mailed at least ten (10) days prior to the public hearing.
- (5) In addition, the Planning Board shall mail notice of such hearing to the Cattaraugus County Planning Board for all applications that meet the requirements contained in Article 15 of this Law (and in Section 239m of New York State General Municipal Law). Such notice shall be mailed at least ten (10) days prior to the public hearing, and shall be accompanied by a full statement of the application.

(B) Decision

The Planning Board shall decide on the application within sixty-two (62) days after the date of the public hearing. The time within which the Board must reach its decision may be extended by mutual consent of the applicant and the Board.

(C) Filing of Decision

The decision of the Planning Board shall be filed in the office of the Town Clerk within five business days after such decision, and a copy thereof mailed to the applicant.

Section 10.7 Criteria for Approving Site Plans

When making a decision to approve, approve with conditions, or disapprove a Site Plan, the Planning Board shall consider the following:

- (A) The proposed project is in harmony with the goals and objectives established in the Town's *Comprehensive Master Plan and Rural Development Policies*.

- (B) Compatibility of the proposed project with the general purposes and intent of this zoning law.
- (C) Compatibility of the proposed development with the natural features of the site.
- (D) Compatibility of the proposed development, including the nature and intensity of use, with the existing uses and character of the neighborhood.
- (E) Adequacy of on-site parking arrangements, both in terms of number of spaces and their arrangement on the lot.
- (F) Adequacy of the means of access and egress to and from the site, for both pedestrians and vehicles, and adequacy of the internal circulation of the site.
- (G) Location, arrangement, appearance and sufficiency of off-street loading facilities.
- (H) Adequacy, type, and arrangement of trees, shrubs, walls, fencing and other features proposed to provide screening between the site and adjacent land uses.
- (I) Adequacy of trees, shrubs, and other landscaping proposed for the site.
- (J) Size, design, number, placement and arrangement of signs.
- (K) Location, size, arrangement, and design of the proposed buildings and other structures, including the compatibility of the proposed architectural features, colors and materials with the existing surrounding area and with established community guidelines.
- (L) Adequacy, location and design of lighting.
- (M) Adequacy of storm water and sanitary waste disposal.
- (N) Adequacy of the water supply system.
- (O) Compliance with the Americans with Disabilities Act (ADA)
- (P) When considering an application containing residential units, the adequacy of land for park, playground or other recreational purposes, if appropriate.
- (Q) Protection of solar access on adjacent or neighboring properties containing solar facilities.
- (R) The requirements of Article 9, Supplementary Regulations, that apply.

- (S) Any other elements as may reasonably be related to the health, safety, and general welfare of the community.

Section 10.8 Expiration of Site Plan Approval

Approval of the site plan shall expire one (1) year from the date of approval, if the applicant has not commenced construction on the project within that time. Extension of the approval may be granted only by the Planning Board, upon written application by the applicant.

Section 10.9 State Environmental Quality Review Act

Prior to taking final action on an application for Site Plan review, the Planning Board shall comply with the provisions of the State Environmental Quality Review Act (SEQRA).

ARTICLE 11 SPECIAL USE PERMITS

Section 11.1 Purpose

The purpose and intent of Special Use approval is to allow the proper integration into the community of uses which may be suitable only under certain conditions and at appropriate locations. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, special uses require careful consideration so that they may be properly located and conditioned in order to minimize their effect on nearby properties and to meet the objectives of this zoning law.

Section 11.2 Authorization to Grant Special Use Permits

- (A) The Zoning Board of Appeals of the Town of Olean shall hear all applications for Special Use Permits for uses that are so listed in Article 7 and elsewhere in this law. After evaluating the application using the criteria established in Section 11.4 and considering the intent and purpose of this law, the Zoning Board of Appeals may approve or deny the application for Special Use Permit.
- (B) If the application is approved, the Zoning Board of Appeals may impose any reasonable conditions that it feels are necessary to mitigate potential impacts to the neighborhood, to the Town as a whole, or to the environment. These conditions may include, but are not limited to, the following:
 - (1) Limiting the hours of operation
 - (2) Requiring fencing, screening, and landscaping to protect adjacent or nearby property
 - (3) Limiting the number, size and location of signs
 - (4) Controlling the number and location of driveway entrances
- (C) The Zoning Board of Appeals may issue a temporary Special Use permit subject to adequate guarantees that the use covered will be terminated at the end of the period specified or such extension thereof as may be granted by said Board, provided that any such renewal or extension shall be subject to the same procedure as specified herein for the original issuance of the special use permit involved.
- (D) If conditions are imposed by the Zoning Board of Appeals, those conditions must be satisfied before the Zoning Inspector can issue a Zoning Permit or a Certificate of Compliance. The Zoning Board shall determine when the condition must be met.
- (E) Where a variance would normally be required under the provisions of this law, the Zoning Board shall not have the authority to vary those provisions under the Special Use Permit application procedure. Application must be made for a variance and the Zoning Board of Appeals shall act on the application for a variance prior to final action on the application for the Special Use permit.

Section 11.3 Application Procedure

- (A) An applicant for a Special Use Permit shall submit a completed application to the Zoning Inspector, who shall forward it to the Zoning Board of Appeals.
- (B) The application shall contain the following information and materials:
 - (1) An application for a Zoning Permit
 - (2) A plot plan, showing the size and location of the lot, the location of all buildings on the lot, driveway entrances, parking areas and any other proposed features.
 - (3) Floor plans and elevations
 - (4) All required fees
 - (5) Any other information that the Zoning Board of Appeals determines is necessary to consider the application.

The Zoning Board of Appeals may, at its discretion, waive any application requirement that it deems is not relevant to a particular application.

Section 11.4 Action on the Special Use Permit Application

(A) Public Hearing

- (1) The Zoning Board of Appeals shall hold a public hearing on the application within sixty-two (62) days from the date the complete application is received by the Zoning Inspector.
- (2) Public notice of the hearing shall be printed in a newspaper of general circulation in the Town at least five (5) days prior to the date thereof.
- (3) The Zoning Board of Appeals shall send notice of such hearing to every owner of a parcel that is within five hundred (500) feet of the parcel that is the subject of the application. Such notices shall be mailed at least ten (10) days prior to the public hearing.
- (4) The Zoning Board of Appeals shall mail notice of such hearing to the Cattaraugus County Planning Board for all applications that meet the requirements contained in Article 15 of this Law (and in Section 239m of New York State General Municipal Law). Such notice shall be mailed at least ten (10) days prior to the public hearing, and shall be accompanied by a full statement of the application.

(B) Decision

The Zoning Board of Appeals shall decide on the application within sixty-two (62) days after the date of the public hearing. The time within which the Zoning Board must reach its decision may be extended by mutual consent of the applicant and the Board.

(C) Filing of Decision

The Zoning Board of Appeals shall file a copy of its decision on the application with the Town Clerk within five (5) business days of the date of the decision. A copy of the decision shall be mailed to the applicant at the same time.

Section 11.5 Criteria for Granting Special Use Permits

The Zoning Board of Appeals shall not grant any Special Use Permit unless it finds that the proposed action is in accordance with the following criteria:

- (A) The proposed project is in harmony with the goals and objectives established in the Town's *Comprehensive Master Plan and Rural Development Policies*.
- (B) The proposed project is in harmony with the general purposes and intent of this law.
- (C) The nature and intensity of the proposed use is in harmony with the character of the adjacent neighborhood.
- (D) The proposed use is of such character, size and location that in general it will be in harmony with the orderly development of the district in which the property is situated, and will not be detrimental to the orderly development of adjacent areas.
- (E) The proposed use will not alter the essential character of the neighborhood nor be detrimental to the residents thereof. A permit for a special use in a residential area shall only be granted when it is clearly obvious that the special use will not impair the use, enjoyment and value of adjacent residential properties, and that any vehicular traffic generated will not be hazardous or otherwise detrimental to the prevailing residential character of the neighborhood.
- (F) A Special Use permit for a use in a commercial district shall only be granted when it is clearly obvious that such use will be harmonious with the area in which its location is sought and will not create undue pedestrian or vehicular traffic hazards or any display of signs, noise, fumes, smoke, dust or lights that will hinder the normal development of the area or impair the use, enjoyment and value of adjacent land and buildings.
- (G) If located near any parcel being used for an agricultural activity, the proposed use will not unduly adversely affect the pre-existing agricultural use.

- (H) The proposed project will not be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.
- (I) Essential public facilities, such as streets, police and fire protection, water and sewerage disposal systems, exist to adequately serve the proposed project or will be provided on-site by the applicant.
- (J) There is adequate on-site parking provided, and the proposed project will not unduly increase traffic in the neighborhood of the site.
- (K) The proposed project is adequately screened from adjacent properties.
- (L) The proposed project is compatible in design and materials with the prevailing architectural standards in the general neighborhood.
- (M) The proposed project will not generate excessive noise, odor, dust, smoke or vibrations.
- (N) The proposed project will not result in the destruction, loss or damage of a natural, scenic or historic feature of major significance.
- (O) The proposed project conforms to all applicable requirements contained in Article 9, Supplementary Regulations, of this law.

Section 11.6 Expiration Of Special Use Permit

A Special Use Permit shall expire if the Special Use shall cease continuously for one (1) year or more, or if construction or other use of the property in accordance with the Special Use Permit has not been commenced within one year of the date of approval. Extension may be granted only by the Zoning Board of Appeals, upon written application prior to the expiration of the Special Use approval.

Section 11.7 State Environmental Quality Review Act

Prior to final action on an application for a Special Use Permit, the Zoning Board of Appeals shall comply with all applicable provisions of the State Environmental Quality Review Act (SEQRA).

ARTICLE 12 ZONING BOARD OF APPEALS

Section 12.1 Organization

(A) Appointment

- (1) The Town Board, Town of Olean, pursuant to the provisions of the Town Law applicable thereto, shall appoint a Zoning Board of Appeals consisting of five members. The terms of office shall be five years, excepting that the five members first appointed shall serve for terms of one, two, three, four and five years. No member of the Zoning Board of Appeals shall hold other elective office in the Town government.
- (2) The Town Board shall designate the chairperson of the Zoning Board of Appeals. In the absence of a chairperson, the Board of Appeals may designate a member to serve as acting chairperson.

(B) Vacancies

If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the unexpired term.

(C) Training and Attendance Requirements

The Town Board may establish requirements for members of the Zoning Board of Appeals to complete training and/or continuing education classes on zoning and planning issues. In addition, the Town Board may establish minimum requirements for attendance at Zoning Board of Appeals meetings.

(D) Removal from Office

The Town Board shall have the power to remove, after public hearing, any member of the Zoning Board of Appeals for cause. Any Zoning Board of Appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the Town Board.

(E) Expenses

The Town Board may provide for compensation to be paid to experts, clerks and a secretary, and may provide for such other expenses as may be necessary and proper.

Section 12.2 Powers and Duties

(A) Powers

With due consideration for the purpose and intent of this Zoning Law, the Zoning Board of Appeals shall have the power and authority to:

- (1) Hear and determine appeals from and review any order, requirement, decision or determination made by the Zoning Inspector charged with the enforcement of this local law.
- (2) Hear and decide all matters referred to it, or upon which it is required to pass under this local law.
- (3) Decide any question involving the interpretation of any provision of this local law, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
- (4) Hold public hearings and approve or disapprove each application for a use or area variance, as defined in this local law.
- (5) Hold public hearings and approve or disapprove each application for a special use permit received in compliance with the provisions of this local law.
- (6) Reverse or affirm, wholly or partly, or modify any order, requirement, decision, interpretation or determination of the Zoning Inspector. The Zoning Board of Appeals shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the Zoning Inspector and to that end the Zoning Board of Appeals shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

(B) Duties of the Chairperson

All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson, and at such other times as the Zoning Board of Appeals may determine. The chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

(C) Meetings Open To The Public

Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article Seven of the Public Officers Law.

(D) Minutes And Records

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. The minutes shall include the reasons for all decisions, and any conditions of approval.

(E) Assistance to Board of Appeals

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.

Section 12.3 Variances

The Zoning Board of Appeals may issue a variance for any use of structures or lots (use variance) or for any dimensional or physical regulations (area variance) in the Town of Olean, provided such variance complies with the general standards set forth in this section and with the special requirements enumerated elsewhere herein. Each case must be determined on its own merits

(A) Use Variances

- (1) In order for the Zoning Board of Appeals to grant a use variance, the applicant shall show that the 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 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; and
 - 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; and
 - 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.
- (2) 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.

(B) Area Variances

- (1) In making its determination on an application for an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance were 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.
 - e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.
- (2) 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.

(C) Use and Area Variances in the Floodplain Overlay District

In addition to the above criteria, when considering an application for a use or area variance in the FO Floodplain Overlay District, the Zoning Board of Appeals shall consider the requirements of Local Law [date], entitled "A Local Law for Flood Damage Prevention." In particular the Zoning Board of Appeals shall consider the variance procedure contained in Section 6.0 of that law and the special criteria that must be met in order to grant an application for a variance.

(D) 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.

(E) Expiration of Grant of Variance

The grant of a use variance or an area variance shall expire one (1) year from the date of approval, if the applicant has not completed construction, or commenced operation of the use, if construction is not necessary. Extension of this time period may be granted by the Zoning Board of Appeals, upon written application. Such application for extension must be received by the Zoning Board of Appeals prior to the expiration of the original grant of variance.

In the case of a use variance, if the use for which the variance has been granted is discontinued for a period of six months, then the grant of variance shall be deemed to be expired. If an applicant wishes to restart that use, he/she must reapply to the Zoning Board of Appeals for another use variance, following the same procedure that was necessary for the original application.

Nothing in this section shall be construed to prohibit the Zoning Board of Appeals from requiring, as a condition of approval, that a grant of variance be renewed periodically.

Section 12.4 Procedures

(A) Filing of Appeals

- (1) Any party aggrieved by a decision of the Zoning Inspector shall have sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Inspector to file an appeal with the Zoning Board of Appeals and with the Zoning Inspector.
- (2) Such notice of appeal shall be in writing, on forms prescribed by the Zoning Inspector and shall specify the grounds for the appeal and the relief sought. Every appeal shall refer to the specific provision of the local law that is involved and shall exactly set forth the interpretation that is claimed or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. The appeal shall also contain the following information:
 - a. The name and address of the appellant /applicant.
 - b. The name and address of the owner of the lot to be affected by such proposed change or appeal.

- c. A brief description and the location of the lot to be affected by such proposed change or appeal.
 - d. A statement of the present zoning classification of the lot in question, the improvements thereon, and the present use.
 - e. A reasonably accurate description of the present improvements, and the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected, indicating the location and size of the lot and size of the improvements thereon and proposed to be erected thereon.
- (3) The Zoning Inspector shall transmit to the Zoning Board of Appeals copies of all the papers constituting the record of the appealed action, or in lieu thereof, certified copies of said papers.
 - (4) The Zoning Inspector may recommend to the Zoning Board of Appeals a modification or reversal of his action in cases where he believes substantial justice requires the same but where he himself did not have sufficient authority to grant the relief sought.

(B) Public Hearing

- (1) Before acting on any matter appealed to it, the Zoning Board of Appeals shall hold a public hearing. The public hearing shall be held within 62 days of the date that the notice of appeal is filed with the Zoning Inspector.
- (2) Notice of the public hearing shall be published in the following ways:
 - a. By publication in a newspaper of general circulation in the Town at least five days prior to the date of the public hearing.
 - b. By mailing a notice of the hearing to the owners of every parcel that is within five hundred (500) feet of the parcel that is the subject of the appeal. Such notices shall be mailed at least ten (10) days prior to the public hearing.
 - c. For all appeals that meet the requirements contained in Article 15 of this Law (and in Section 239m of NYS General Municipal law, the Zoning Board of Appeals shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least ten (10) days prior to the public hearing.
- (3) At the public hearing any person may appear in person, or by agent or by attorney.

- (4) Adjournment of Hearing. Upon the day for hearing any application or appeal, the Zoning Board of Appeals may adjourn the hearing for a reasonable period for the purpose of causing such further notice as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal.

(C) Referral to the Planning Board

At least thirty (30) days before the date of the hearing required by law on an application or appeal to the Board of Appeals, the secretary of said Board may transmit to the Town of Olean Planning Board a copy of said application or appeal, together with a copy of the notice of the aforesaid and may request that the Planning Board make a recommendation. If the Planning Board does not make a report within thirty (30) days of the date of the referral, the Planning Board shall be deemed to have approved the application.

(D) Decision

- (1) The concurring vote of a majority of the total membership of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Inspector or to grant a use variance or area variance.
- (2) Every decision of the Board shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. These findings and conditions of approval, if any, shall be recorded in the minutes.
- (2) The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days of the public hearing at which the matter was considered. The time within which the board must render its decision may be extended by mutual consent of the applicant and the board.

(E) Filing Of Decisions And Notice To The Applicant

- (1) Every rule, regulation, every 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.
- (2) A copy of the decision of the Zoning Board of Appeals on an individual application or appeal shall be mailed to the applicant within five (5) business days of the decision.

(F) Rehearing

Whenever the Board of Appeals, after hearing all the evidence presented upon an application or appeal, under the provisions of this local law, denies the same, the Board shall refuse to hold further hearings on the said or substantially similar application or appeal by the same applicant, his successor, or assign for a period of one (1) year, except and unless the Zoning Board of Appeals shall find and determine from the information supplied by the applicant for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare, and that a reconsideration is justified.

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard 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. A quorum of the membership of the Board of Appeals must be present when such vote is taken. Such rehearing is subject to the same notice provisions as the 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 12.5 Compliance with State Environmental Quality Review Act

The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act. (SEQRA) prior to acting upon an application for variance, an appeal, or similar action.

ARTICLE 13 ADMINISTRATION AND ENFORCEMENT

Section 13.1 General Procedure

(A) General Sequence of Steps

All persons desiring to undertake any new construction, structural alteration, or changes in the use of a building or lot shall apply to the Zoning Inspector for a Zoning Permit by filing the appropriate application form and by submitting the required fee. The Zoning Inspector will then either issue or refuse the Zoning Permit or refer the application to the Zoning Board of Appeals or the Planning Board. After the Zoning Permit has been received by the applicant, he/she may proceed to undertake the action permitted in the Zoning Permit.

(B) Zoning Permit Types. Under the terms of this law, the following classes of Zoning Permits may be issued:

- (1) **Permitted Use.** A Zoning Permit for a permitted use may be issued by the Zoning Inspector of his own authority.
- (2) **Special Use.** A Zoning Permit for a Special Use may be issued by the Zoning Inspector upon order of the Zoning Board of Appeals, after a public hearing held by the Board of Appeals for the purpose of receiving information regarding the application.
- (3) **Zoning Permit After an Appeal or a Request for a Variance.** A Zoning Permit may be issued by the Zoning Inspector upon the order of the Zoning Board of Appeals and after a public hearing held by the Board of Appeals for the purpose of receiving information regarding the application or request for a variance.
- (4) **Zoning Permit After Site Plan Review.** A Zoning Permit may be issued by the Zoning Inspector upon the order of the Planning Board and after a public hearing held by the Planning Board for the purpose of receiving information regarding the application.
- (5) **Zoning Permit for a Non-Conforming Use.** A Zoning Permit shall be required for all lawful non-conforming uses of land or buildings created by the adoption of this local law or any amendments thereto, and applications for such permits shall be filed with the Zoning Inspector within one year after the effective date of this local law. It shall be the duty of the Zoning Inspector to issue such permits free of charge, but failure to apply within the specified time or refusal of the Zoning Inspector to issue such permits shall be evidence that said non-conforming use was illegal or did not lawfully exist on the effective date of this local law.

Section 13.2 Zoning Inspector

This Local Law shall be enforced by a Zoning Inspector who shall be appointed by the Town Board. No Zoning Permit or Certificate of Occupancy shall be issued by him/her except where all the provisions of this Local Law have been complied with.

(A) Duties. The powers and duties of the Zoning Inspector shall include the following:

- (1) Examine applications pertaining to the use of land, buildings, and structures.
- (2) Receive, file and forward for appropriate action all applications for special uses, site plans, variances and amendments to this law.
- (3) Review permits for proposed development to insure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required. Review permits to assure sites are reasonably safe from flooding
- (4) Issue Zoning Permits and Certificates of Compliance, when all provisions of this law have been complied with, and keep permanent records thereof.
- (5) Conduct such inspections of buildings, structures and use of land as are necessary to determine compliance with the provisions of this zoning law.
- (6) Maintain permanent and current records of this zoning law, including all maps, amendments, special use permits issued and variances granted.
- (7) Upon request by the subject board, review applications and make recommendations to the Town Board, Planning Board and Zoning Board of Appeals. When requested by the Chair of the respective boards, attend meetings of the Planning Board, Zoning Board of Appeals, and the Town Board.
- (8) When floodproofing is utilized for a particular structure the Zoning Inspector shall obtain certification from a registered professional engineer or architect.
- (9) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (10) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (11) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.

- (12) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed.
- (13) Any other duties which may be established by the Town Board.

(B) Zoning Permits

- (1) **General.** No building or structure shall be erected, added to, or structurally altered until a permit therefor has been issued by the Zoning Inspector. Except upon written order of the Zoning Board of Appeals, no such Zoning Permit or Certificate of Occupancy shall be issued for any building where said construction, addition, or alteration of use thereof would be in violation of any of the provisions of this local law.
- (2) **Information Necessary for Application.** There shall be submitted with all applications for Zoning Permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this local law.
- (3) **Public Record.** One copy of such layout or plot plan shall be returned when approved by the Zoning Inspector together with such Permit to the applicant. The second copy of each application with accompanying plan shall become a public record after a Permit is issued or denied.
- (4) **Water Supply and Sewage Disposal.** All water supply and sewage disposal installations shall conform with the New York State Department of Health regulations and the regulations of the Cattaraugus County Department of Health. No plot plan shall be approved by the Zoning Inspector in any zone unless such conformity is certified on the plan by the Cattaraugus County Department of Health.
- (5) **Storm water Runoff.** Drainage affecting adjacent properties shall be considered by the Zoning Inspector before issuing a Zoning Permit, including possible stormwater runoff to said properties.
- (6) **Issuance of Permits.** It shall be the duty of the Zoning Inspector to issue a Zoning Permit, provided he is satisfied that all requirements of this local law are satisfied, and that all other reviews and actions, if any called for in this law, have been complied with and all necessary approval secured therefor.

All Zoning Permits shall be issued in duplicate and one copy shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, worker

or other person shall perform any building operations of any kind unless a Zoning Permit covering such operation has been displayed as required by this law, nor shall they perform building operations of any kind after notification of the revocation of said Zoning Permit.

- (7) **Denial of Permits.** When the Zoning Inspector is not satisfied that the applicant's proposed development will meet the requirements of this law, he shall refuse to issue a Zoning Permit and the applicant may appeal to the Zoning Board of Appeals for a reversal of the Zoning Inspector's decision.
- (8) **Expiration of Zoning Permit.** A Zoning Permit shall expire after one year if the applicant fails to implement his application as filed with the Zoning Inspector.
- (9) **Revocation of Permits.** If it shall appear, at any time, to the Zoning Inspector that the application or accompanying plot is in any material respect false or misleading, or that work is being done upon the premises differing materially from that called for in the application filed with him under existing laws or ordinances, he may forthwith revoke the Zoning Permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to the said Zoning Inspector. After the Zoning Permit has been revoked, the Zoning Inspector, at his discretion, before issuing the new Zoning Permit, may require the applicant to file an indemnity bond in the favor of the Town with sufficient surety conditioned for compliance with this law and all building laws and ordinances then in force and in a sum sufficient to cover the cost of removing the building if it does not so comply.

(C) Certificates of Compliance

- (1) No land shall be occupied or used and no structure hereafter erected, altered or extended and no change in use shall occur until a Certificate of Compliance shall have been issued by the Zoning Inspector.
- (2) Application for Certificate of Compliance shall be made within fifteen (15) days of completion of the structure, alteration, or other work.
- (3) Said Certificate of Compliance shall be issued by the Zoning Inspector within thirty (30) days after the application is received. The Certificate shall state that all work completed is in compliance with the provisions of this law, including any variances or other permits that may have been issued.
- (4) The Zoning Inspector shall maintain a record of all Certificates of Compliance. Copies of said certificates shall be furnished upon request to any person having a proprietary or tenancy interest in the parcel or building affected.

Section 13.3 Violations and Penalties

(A) Complaints of Violations. Whenever a violation of this zoning law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Zoning Inspector, who shall properly record such complaint and immediately investigate and report thereon to the Town Board.

(B) Procedure for Abatement of Violations

- (1) In case any building or structure is erected, constructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this law, notification of the violation will be issued in writing by the Zoning Inspector. Compliance with this zoning law must be met within the time period specified in the notice of violation.
- (2) After the specified number of days, the Town Board, or with their approval, the Zoning Inspector, or any other proper person, authority or official, may commence an action to enforce this law.

(C) Penalties

- (1) A violation of this law is an offense, punishable by a fine not exceeding \$350.00 or imprisonment for a period not to exceed six months or both for conviction of a first offense.
 - (2) Conviction of a second offense, both of which were committed within a period of five years, is punishable by a fine not less than \$350.00 nor more than \$700.00 or imprisonment for a period not to exceed six months, or both.
 - (3) Conviction for a third or subsequent offense, all of which were committed within a period of five years, is punishable by a fine of not less than \$700.00 nor more than \$1,000.00 or imprisonment for a period not to exceed six months, or both.
 - (4) Each week's continued violation shall constitute a separate additional violation.
 - (5) For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations.
- (D)** The provisions of this Article shall not limit the available procedures for enforcement and remedies provided for under the Town Law of the State of New York or any other law.

Section 13.4 Fees

A schedule of fees for all permits and applications required by this local law shall be established by the Town Board, Town of Olean. The Town Board may change the fee schedule from time to time.

Section 13.5 Article Seventy-eight Proceedings

Any person or persons, jointly or severally aggrieved by any decision of the Town Board, Zoning Board of Appeals, the Planning Board or any officer, department, board or bureau of the Town, pursuant to this Law, may apply to the supreme court for review by a proceeding under Article Seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the Town Clerk.

ARTICLE 14 AMENDMENTS

Section 14.1 Town Board May Amend

The Town Board may, from time to time, on its own motion, or on petition or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this law after public notice and hearings as provided by the Town Law.

Section 14.2 Review by Planning Board

Every such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Town of Olean Planning Board for report thereon. Referral to the Planning Board shall be made thirty (30) days before the public hearing, hereinafter provided for. If the Planning Board shall fail to submit such report within thirty (30) days of the date of referral, or within such longer time period as may be established by the Town Board, it shall be deemed that the Planning Board has approved the proposed amendment or change.

Section 14.3 Public Notice and Hearing

The Town Board by resolution adopted at a stated meeting shall fix the time and place of a public hearing on the proposed amendments, and shall cause notice to be given as follows:

(A) Public Notice

- (1) Notice of the public hearing shall be published of at least ten (10) days in advance of such hearing in a newspaper of general circulation in the Town. Such notice shall state the general nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents, and shall name the place or places where copies of the proposed amendment may be examined.
- (2) In addition, the following notices shall be given, if appropriate:
 - a. A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any State Park shall be given to the Regional State Park Commission having jurisdiction over such State facility at least ten (10) days prior to the date of such public hearing.
 - b. A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any village, town, or county, shall be given to the clerk of such municipality at least ten (10) days prior to the date of such hearing.

- c. A written notice of any proposed change or amendment affecting property within 500 feet of the property of any housing authority erecting or owning a housing project authorized under the public housing law shall be given to the executive director of such housing authority and to the chief executive officer of the municipality providing financial assistance thereto, at least ten (10) days prior to the date of such hearing.

(B) Public Hearing

The hearing shall be held at the stated time and place by the Town Board and shall include within its proceedings:

- (1) The proposed change, amendment or supplement, either in complete or summary form.
- (2) An opportunity for all interested persons to be heard in a manner prescribed by the Town Board.

Section 14.4 Adoption

- (A) Prior to final action by the Town Board on the proposed amendment, it shall be referred to the Cattaraugus County Planning Board following the provisions of Article 15 of this law.
- (B) Any such amendments may be approved by a simple majority vote of the Town Board, except that any such amendment shall require the approval of at least three-fourths of the members of the Town Board in the event such amendment is the subject of a written protest, presented to the Town Board and signed by:
 - (1) The owners of twenty (20) percent or more of the area of land included in such proposed change; or
 - (2) The owners of twenty (20) percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred (100) feet therefrom; or
 - (3) The owners of twenty (20) percent or more of the area of land directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land.

Section 14.5 Filing Requirements

- (A) Amendments made to this law, excluding any map incorporated therein, shall be entered in the minutes of the Town Board. Such minutes shall describe and refer to any map adopted in connection with the amendment.

- (B) A copy or a summary of the amendment, excluding any map incorporated therein, shall be published once in a newspaper that is published in Cattaraugus County, and has general circulation in the Town. Affidavits of the publication of the summary shall be filed with the Town Clerk.
- (C) The Town Clerk shall maintain every map adopted in connection with this zoning law and every amendment thereto. Said documents shall be made available during regular business hours for public inspection.

ARTICLE 15: MANDATORY REFERRAL

Section 15.1 Proposed Actions Subject to Referral

In accordance with the laws of New York State, the following proposed actions by the Town Board, the Planning Board or the Zoning Board of Appeals shall be referred to the Cattaraugus County Planning Board for its review and recommendation before final action is taken by the local board. These items shall be referred only if they meet the geographic requirements in Section 15.2.

1. Adoption of or amendment to the Town Comprehensive Plan.
2. Adoption of or amendment to the zoning law.
3. Issuance of special use permits.
4. Approval of site plans.
5. Granting of use or area variances.
6. Any other authorizations which a local board may issue under the provisions of this zoning law.

Section 15.2 Geographic Criteria

The proposed actions set forth in Section 15.1 shall be subject to the referral requirements of this article if they apply to a parcel or lot within five hundred (500) feet of any of the following:

1. The boundary of any city, village or town.
2. The boundary of any existing or proposed county or state park or any other recreation area.
3. The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway.
4. The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.
5. The existing or proposed boundary of any county or state owned land on which a public building or institution is situated.
6. The boundary of a farm operation located in an agricultural district, as defined by Article 25AA of the agriculture and markets law, except that applications for area variances shall not be referred.

Section 15.3 County Planning Board Review

- (A) The Cattaraugus County Planning Board shall have thirty (30) days after receipt of a full statement of the proposed action, or such longer period as may have been agreed upon by the County Planning Board and the local board, to report its recommendations to the local board. The County Planning Board's report shall include a statement of the reasons for its recommendation.

- (B) If the County Planning Board recommends modification or disapproval of a proposed action, the local board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.
- (C) If the County Planning Board fails to report back to the local board within thirty (30) days, or other such time period as may have been agreed to, the local board may take final action on the proposed action without such report. However, any report by the County Planning Board that is received two or more days prior to final action by the local board shall be subject to the provisions of Section 15.3.(B).

Section 15.4 Report of Final Action

Within thirty (30) days after its final action on the proposal, the local board shall file a report of the action it has taken with the County Planning Board. If the local board acted contrary to a recommendation of modification or disapproval, the report shall set forth the reasons for that decision.

ARTICLE 16 SEPARABILITY

If any part or provision of this law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this law or the application thereof to other persons or circumstances and the Town Board hereby declares that it would have enacted this law or the remainder thereof had the invalidity of such provision or application thereof been apparent.

ARTICLE 17 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this law is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This law does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This law shall not create liability on the part of the Town Board of Olean, or by any officer or employee thereof for any flood damages that result from reliance on this law or any administrative decision lawfully made thereunder.

ARTICLE 18 EFFECTIVE DATE

This local law shall take effect immediately upon filing in the Office of the NYS Secretary of State.

