



# TOWN OF ELLERY

## ZONING LAW

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# **ARTICLE I**

**TITLE, ENACTING CLAUSE & PURPOSE**

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**SECTION 101 – TITLE**

This Local Law shall be known and may be cited as the “Town of Ellery Zoning Law.”

**SECTION 102 – SCOPE**

This local law regulates the location, design, construction, alteration, occupancy, and use of structures, and the use of land in The Town of Ellery, outside the incorporated Village of Bemus Point, dividing the Town into land use districts.

**SECTION 103 - ENACTING CLAUSE**

This Local Law is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Article 2, Section 10 and the Consolidated Laws of the State of New York, Chapter 62, Article 16. This Local Law is enacted in accordance with a well-considered comprehensive plan for the community in order to protect and promote public health, general welfare, safety, comfort, convenience, economy, ecological and natural resources, aesthetic, agricultural, and cultural resources.

**SECTION 104 - PURPOSE AND OBJECTIVES**

**A. COMPREHENSIVE PLAN** - The zoning regulations and districts set forth, and the districts as outlined upon the zoning map, are made in accordance with a comprehensive plan for the municipality. The enactment of the Zoning Law brings benefits to the community, which may not be highly or immediately visible; however, the resulting conditions will enhance and preserve the quality of living, health, and safety for the municipality.

**B. GENERAL** – *General benefits derived from zoning laws include the following:*

1. Promotes health, convenience, economics, and general welfare of the community;
2. Balances the rights of the public-at-large, private landowners, and other various interest groups;
3. Encourages the positive shaping of the future and the long range benefits associated with zoning laws;
4. Allows for the maintenance of an equitable assessment role;
5. Imposes some reasonable restraints on opportunity; and
6. Zoning is controlled locally, may be amended to meet changing needs, and has built-in flexibilities for unique situations.

**C. SAFETY** – *From a safety viewpoint, zoning laws can assist in the following:*

1. Promotes fire safety by controlling buildings heights, separation of structures, etc.;
2. Promotes traffic safety by protecting the traffic carrying capabilities of highways through setbacks, etc.;
3. Insures that floodplains are reasonably controlled with respect to types of uses, densities, etc.; and
4. Protects residents from other conditions which could cause injury or death.

**D. QUALITY** – *Zoning laws perpetuate the highest possible quality of life by:*

1. Maintaining a rural atmosphere in selected areas;
  2. Promoting the retention of an aesthetically pleasing community by minimizing nuisances and visually unattractive developments;
  3. Insures adequate light, air, and open space;
  4. Maintaining the character of residential neighborhoods by providing appropriate locations for living and raising a family through types of uses encouraged in a district;
  5. Protect and enhance Chautauqua Lake, the Lake's Watershed, and the natural environment in the Town of Ellery.
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**E. ECONOMICS – *Zoning laws also positively affect a community's economic structure by:***

1. Optimizing the use of existing infrastructure;
2. Utilizing existing roadways optimally while discouraging the creation of new roads, except as needed;
3. Encouraging the retention of prime agricultural, commercial, and industrial properties for those uses for which they are best suited; and
4. Encouraging the largest tax base possible through controlled development.

**F. STABILITY – *Zoning laws also contribute a great deal to neighborhood stability by:***

1. Keeping rural municipalities clean and attractive to attract new residents;
2. Protecting property values and individual investments by encouraging proper development for each type of district;
3. Maintaining the character of neighborhood by providing a stable and orderly living environment;
4. Keeping nuisances to a minimum, especially in residential oriented neighborhoods; and
5. Allowing for the creation of a fair tax base by keeping informed of both new construction and demolition.

**G. HEALTH – *Lastly, zoning laws protect public health through establishment of standards which address these issues. A zoning law:***

1. Insures that appropriate amounts of light, air and open space are available for all residents;
2. Reinforces health standards, particularly with respect to sewage and water-related problems;
3. Keeps unhealthy situations from arising which could cause disease or injury.

**SECTION 105 – APPLICATION OF REGULATIONS**

**A. COMPLIANCE RESPONSIBILITY** - It shall be the responsibility of all property owners, developers, lessors, or others involved with the temporary or permanent use of land or structures to comply with the regulations of this zoning law. No building shall be erected or altered which will substantially limit the usefulness or depreciate the value of the surrounding properties.

**B. REGULATION APPLICABILITY** - The requirements of this Law shall apply and shall require a zoning/building permit (unless specifically exempted from such requirements by this Law) for the following situations:

1. To occupy a structure or land;
2. To erect, alter, enlarge, move or demolish a structure; and
3. To change one use to another use to include the increasing of families utilizing land or structures.

**C. OTHER RELATED REGULATIONS** - The following regulations shall, as applicable, be complied with prior to occupancy or where specifically stated prior to issuance of a zoning permit:

**1. Subdivision Laws** - State and existing local subdivision laws must be complied with in addition to this Zoning Law.

**2. National Flood Insurance Program** - It shall be the responsibility of the applicant for a zoning/building permit to insure that the National Flood Insurance Regulations in addition to Zoning Regulations shall be complied with for those parcels located within the flood plain as shown on official Flood Insurance Administration maps.

**3. State Environmental Quality Review Act** - Any development requiring a permit, as well as amendments to this Law, shall be subject to an Environmental Assessment in accordance with State Law.

**4. Health Department Regulations** - In areas not served by municipal sewer or water systems, the regulations of the State and County and local health departments, with respect to water supply and sewage disposal facilities, will apply. The applicant for a building or zoning permit must obtain a copy of the required health department permits for attachment of his application, before the issuance of local approval.

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**5. Fire and Building Codes** - No structure shall be erected, altered or used unless it also complies, where applicable, with the New York State Uniform Fire and Building Code.

**6. Wetland** – Development taking place within 100 feet of State designated wetlands require a DEC permit.

**7. Right-of-way Crossing** – The appropriate Highway Superintendent should be contacted prior to constructing a driveway or any other activity involving a highway right-of-way.

**8. Excavation and Utility Lines** – Any contractor or person excavating shall notify the Municipal Clerk to obtain a current list of operators of underground facilities in accordance with Part 53, Title 12, Rules and Regulations of the State of New York. All contractors shall then notify all “operators” 2 to 10 days prior to commencing excavation.

#### **SECTION 106 – INTERPRETEATION**

The provisions of this Local Law, in their interpretation and application, shall be considered the minimum requirements for the promotion of the public health, safety, convenience, comfort and general welfare.

#### **SECTION 107 – CONFLICT**

This Local Law is not intended to interfere with, abrogate, or annul any other law, rule or regulation statute or provision of law. Where any of the provisions of these regulations impose restrictions different from any other law, rule or regulation or other provision of law, whichever provisions are more restrictive or impose higher standards shall control, unless this Local Law specifically states otherwise. This Local Law, however, shall repeal and replace in its entirety the existing Town of Ellery Zoning Law.

#### **SECTION 108 – SEPERABILITY**

If any part or provision of these regulations is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which 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. The Town hereby declares that it would have enacted the remainder of these regulations even without such part or provision or application.





# **ARTICLE II**

## **DEFINITIONS & INTERPRETATIONS**

## SECTION 200 - LISTING OF DEFINITION TERMS

ABANDONED MOTOR VEHICLE	DEVELOPMENT	HOUSEHOLD SALE
ACCESSORY BUILDING OR USE	DOMESTIC ANIMAL	HOUSING, ELDERLY
ACCESSORY APARTMENT	DRIVE-IN	INDUSTRY, GENERAL
AGRICULTURAL COMMERCE	DRY HYDRANT	JUNK MOTOR VEHICLE
AGRICULTURAL PRODUCTS	DUPLEX	JUNK YARD
AGRICULTURAL PRODUCTS, ENHANCED	DWELLING, MANUFACTURED HOME	LARGE GROUP GATHERING
AGRICULTURAL STRUCTURE	DWELLING, MODULAR UNIT	LIMITED BUSINESS/INDUSTRY
AGRICULTURAL TOURISM	DWELLING UNIT	LOADING
AGRICULTURE, COMMUNITY SUPPORTED	EATING AND DRINKING ESTABLISHMENTS	LOT, COVERAGE
AGRICULTURE, LIMITED	ELECTRONIC MESSAGING SIGN (DIGITAL)	LOT
AGRICULTURE-RELATED PRODUCTS	ENFORCEMENT OFFICER	LOT LINE
AIRPORT	ESSENTIAL SERVICES	LOT WIDTH
ALL-WEATHER SURFACE	FAMILY	MANUFACTURED HOME
ALTERATION	FARM	MARINA, COMMERCIAL OR CLUB-TYPE
ANIMAL, FARM	FARM, ACTIVELY PRODUCING	MARINA, PRIVATE
APARTMENT HOUSE	FARM BREWERY	MOBILE DWELLING UNIT
AREA OF SPECIAL FLOOD HAZARD	FARM MARKET	MOBILE
ARTISAN SHOP	FARM WINERY	MOBILE HOME PARK
ARTISANS SHOP (3 - 6 ARTISANS)	FARMERS MARKET	MODULAR DWELLING UNIT
AUTOMOTIVE SPECIALTY SHOP	FENCE	MOTOR HOMES
BASE FLOOD	FENCE, BARRIER	MOTOR VEHICLE
BED AND BREAKFAST INN	FENCE, FARM	MOTOR VEHICLE SERVICE
BOARDING HOUSE	FENCE, NONBARRIER	MULTIPLE DWELLING
BUFFER	FIRE RESISTANT FLAMMABLE	MUNICIPALITY
BUILDING	FLOATING DISTRICT	MUSIC STUDIO
BUILDING AREA	FLOOR SPACE	NONCONFORMING
BUILDING LINE	FUNNELING	NONCONFORMING USE
BUILDING PERMIT	GARAGES, PRIVATE	NUISANCE
BUILDING SETBACK LINE	GARAGES, PUBLIC	NURSING HOME
BUSINESS/ INDUSTRY, LIMITED	GAS COMPRESSOR	NURSERY
BY RIGHT	GAS STATION	OPEN SPACE
CAMP (PRIVATE)	GENERAL REPAIR BUSINESS	OUTDOOR RECREATION/ SPORTS FACILITY PLAYING FIELD
CAMP or RECREATION GROUND (COMMERCIAL)	GENERAL SERVICE BUSINESS	PANELIZED
CAMPING TRAILER	GENERAL WHOLESALE BUSINESS	PARKING, COMMERCIAL OFF-STREET
CLUB	GLARE	PARKING, OFF-STREET
CLUSTER DEVELOPMENT	GRAVEL PIT / QUARRY/ SAND PIT	PARKING LOT
COMPOSTING	HANDCRAFTED ITEM	PARKING SPACE
CONVENTIONAL DWELLING	HEAVY VEHICLES	PASTURE
DAY CARE CENTER	HEIGHT	"PICK-YOUR-OWN" ENTERPRISE
DECK	HOME FOR AGED	PLANNING BOARD
DESIGN/ARCHITECTURAL STANDARDS	HOME OCCUPATION	PORCH
	HOME PROFESSIONAL OFFICE	PORTABLE STORAGE UNIT
	HORTICULTURE, PRIVATE	PRECUT
		PREFABRICATED DWELLING UNIT



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PRINCIPAL USE	SPECIAL EVENT
PREEXISTING USE	SPECIAL FLOOD HAZARD AREA
PRIVATE CAMP	SPECIAL USE PERMIT
PROFESSIONAL	STABLE, RIDING/BOARDING
PUBLIC	STORAGE, MINI-WAREHOUSING ESTABLISHMENT ( <i>COMMERCIAL</i> )
RECREATION, COMMERCIAL	STORAGE STRUCTURE
RECREATIONAL VEHICLE	STORAGE STRUCTURE, RESIDENTIAL
REGULAR FLOOD INSURANCE OR REGULAR PROGRAM	STORAGE YARD ( <i>PRIVATE RESIDENCE</i> )
RESIDENCE, SINGLE-FAMILY DETACHED	STOREFRONT AREA
RESIDENCE, TWO-FAMILY	STORY
RESIDENCE, MULTI-FAMILY	STORY, HALF
RESIDENTIAL CONVERSIONS	STRUCTURE
REST HOME	SUBSTANTIAL IMPROVEMENT
RETAIL BUSINESS, GENERAL	SWIMMING POOL
RETAIL SALES	TEMPORARY DWELLING UNIT
RETAIL SALES ESTABLISHMENT	TEMPORARY USE
RIDING ACADEMY	TOWER
ROADSIDE STAND	TOWN HOUSE
ROOMING HOUSE	TRACT
SAWMILL	TRASH
SCALE	TRAVEL TRAILER
SCRAP YARD	TRAVEL TRAILER/CAMPER
SEASONAL BUSINESS USE	TRAVEL TRAILER CAMP/COMMERCIAL CAMPGROUND
SEASONAL SIGN	TRIPLEX
SECTION	UNLICENSED MOTOR VEHICLE
SELF-STORAGE FACILITY	USE
SELF-STORAGE/MINI	VARIANCE
SEMI-PUBLIC	VEGETATIVE SCREEN
SETBACK	VEHICLE DISMANTLING YARD
SERVICE BUSINESS, GENERAL	VEHICLE, JUNK OR SALVAGE
SHOOTING RANGE ( <i>COMMERCIAL</i> )	VEHICLE REPAIR SHOP
SHOPPING CENTER	WHOLESALE
SIGN	WHOLESALE BUSINESS, GENERAL
SIGN, AREA	WHOLESALE, LIMITED
SIGN, ADVERTISING	YARD, FRONT
SIGN, BILLBOARD	YARD, REAR
SIGN, BUSINESS	YARD, SIDE
SIGN, DIRECTIONAL	ZONING BOARD OF APPEALS
SIGN, IDENTIFICATION	ZONING PERMIT
SIGN, INSTRUCTIONAL	
SIGN, NAMEPLATE	
SIGN, PUBLIC	
SIGN, TEMPORARY	
SOLAR STRUCTURE	

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## SECTION 201 - LANGUAGE AND INTERPRETATIONS

Except where specifically defined herein, all words used in this Local Law shall carry their customary meanings. Words used in the present tense shall include the future. Words used in the singular include the plural, and words used in the plural include the singular, unless the context clearly indicates the contrary. The word "shall" is always mandatory. The word "may" is permissive. Building or structure includes any part thereof. The word "lot" includes the word "plot" or "parcel." The word "person" includes an individual person, a firm, a corporation, or a partnership. The word "he" shall include she or they. The phrase "used for" or "occupied for" as applied to any land or building shall be construed to include the phrases "arranged for, designed for, intended for, maintained for, and occupied for."

## SECTION 202 - DEFINITIONS

Certain words and terms used in this Local Law are defined as follows:

**ABANDONED MOTOR VEHICLE** – Any motor vehicle which the owner thereof, as established by the surrounding circumstances, does not intend to recover possession of, or any motor vehicle the owner of which cannot be found after due and reasonable inquiry.

**ACCESSORY BUILDING OR USE** – An accessory building or use is one which is subordinate to, detached, and serves a principal building or principal use; is subordinate in area, extent, or purpose to the principal building or principal use served; contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use served; and is located on the same lot as the principal building or principle use served (added November 14, 1991).

**ACCESSORY APARTMENT** – A secondary apartment developed in an existing single family dwelling which meets the following conditions. No more than 1 unit shall be created per dwelling unit in districts where multiple units are allowed, the apartment shall be between 600 and 800 square feet in floor space with the resultant primary dwelling meeting all area requirements such as minimum floor space, sufficient off-street parking shall be provided, no visible signs of an apartment shall be present and finally, accessory dwellings may be utilized.

**ACTIVELY PRODUCING FARM** - Pursuant to Section 301, Subsection 4 of the Agriculture and Markets Law, the farm must have a minimum of 7 acres in production with \$10,000 in sales, or \$50,000 in sales if under 7 acres of land are in production. In addition, a predominance of the agricultural products being sold at the farm be New York State produced. This would be on an annual basis and would be determined by volume of product.

**AGRICULTURAL COMMERCE** - Additional enterprises permitted at farm markets to attract customers and promote the sale of agricultural products. These include, but are not limited to gift shops, on-farm brewery, Community Supported Agriculture, bakery, florist shop, garden center, nursery, ice cream shop, food processing where the predominant ingredient is grown by the market operator, cider mills, on-site artisty and pick-your-own operations.

**AGRICULTURAL PRODUCTS** - Pursuant to Section 301, Sub. 2 of the Agriculture and Markets Law: Crops, livestock and livestock products, including, but not limited to the following:

- a) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
- b) Fruits, including apples, peaches, grapes, cherries and berries.
- c) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
- d) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
- e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur-bearing animals, milk, eggs, and furs.
- f) Maple sap
- g) Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
- h) Aquaculture products, including fish, fish products, water plants and shellfish.
- i) Woody biomass, which means short rotation woody crops which are raised for bioenergy, and shall not include farm woodland.



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**AGRICULTURAL PRODUCTS, ENHANCED** - An agricultural product that has been altered or processed in a way that increases its value to the consumers and that will increase the profitability of the product to the farmer.

**AGRICULTURAL STRUCTURE** – Any structure used primarily and directly for agricultural activities including but not limited to barns, silos, storage sheds, corn cribs, milk houses, and similar structures.

**AGRICULTURAL TOURISM** - Agricultural related tours, events and activities, as well as nonagricultural related activities used to attract people and promote the sales of farm produce and agricultural products. These tours, events and activities include, but are not limited to petting zoos, school tours, outdoor trails, corn mazes, hayrides, pony rides, group picnics, on- and offsite food catering services, musical events, craft shows, outdoor recreation, and farm vacations. (A “farm vacation” is defined as a temporary residency on the premises by paying transient guests for the purpose of observing or participating in the ongoing activities of an agricultural operation and learning about agricultural life.) To be a permitted use, the farm must be actively producing agricultural products for sale. Farm markets where the seller is not actively producing agricultural products for retail sales will require a special use permit for agricultural tourism activities.

**AGRICULTURE, COMMUNITY SUPPORTED** - The retail sale of agricultural products to customers through a subscription paid in cash or labor, or a combination thereof.

**AGRICULTURE, LIMITED** – The production of crops, plants, vines, and trees, provided no substantial odor or dust is produced within 100 feet of any building on adjacent property.

**AGRICULTURE-RELATED PRODUCTS** - Items sold at a farm market to attract customers and promote the sale of agricultural products. Such items include, but are not limited to all agricultural and horticultural products, animal feed, baked goods, ice cream and ice cream based desserts and beverages, clothing and other items promoting the farm enterprise operating the farm market and agriculture in New York, value-added agricultural products, Christmas trees and related products and on-farm wineries.

**AIRPORT** – Any land or water space frequently used for the landing and takeoff of any aircraft including helicopters. All airports must comply with federal and state regulations and be approved by the commissioner of transportation for New York State.

**ALL-WEATHER SURFACE** - Any roadway, driveway, alley or parking lot surface paved with crushed stone, asphalt, concrete or other pervious or impervious material in a manner that will support the weight of anticipated vehicular traffic in all weather conditions and minimize the potential for ruts, potholes or pooling of water.

**ALTERATION** – As applied to a building or structure, a change or rearrangement in the structural parts, or in the exit facilities, or an enlargement, whether by extending on a side or increasing in height, or moving from 1 location or position to another; the term “alter” in its various modes and tenses and its particular form, refers to the making of an alteration.

**ANIMAL, FARM** – Any animal which customarily is raised for profits on farms and has the potential of causing a nuisance if not properly maintained.

**APARTMENT HOUSE** - A building arrangement intended or designed to be occupied by 4 or more families living independently of each other. Condominiums and townhouses shall be considered to be apartments.

**AREA OF SPECIAL FLOOD HAZARD** - Means the land in the flood plain within a community subject to a 1% or greater chance of flooding in any given year.

**ARTISAN SHOP** - A building or appropriate space where a skilled manual craft worker makes items that may be functional or strictly decorative, such as furniture, sculpture, clothing, jewelry, household items, tools, musical instruments, or similar handcrafted items. An artisan is a person engaged in or occupied by the practice of a craft, who may through experience and talent reach the expressive levels of an artist using their hands, mind and heart in their work and the items they create.

**ARTISANS SHOP (3 - 6 artisans)** - A building or portion thereof used for the creation of original handmade works of art or craft items by at least three but not more than six artists or artisans, as either a principal or accessory use.

**AUTOMOTIVE SPECIALTY SHOP** - A use which provides one or more specialized repair sales and/or maintenance functions such as the sale, replacement, installation or repair of tires, mufflers, batteries, brakes and master cylinders, shock absorbers, instruments (such as speedometers and tachometers), radios and sound systems or upholstery for passenger cars, vans, and light trucks only.

No use authorized herein shall permit any private or commercial activity which involves auto/truck leasing, painting, repair or alteration of the auto body, nor shall any repair, replacement, modification, adjustment, or servicing of the power plant or drive-train or cooling system be permitted, except that minor tune-up involving the changing of spark plugs, points or condenser, including engine block oil changes, are permitted.

**BASE FLOOD** - Means the flood having a 1% chance of being equaled or exceeded in any given year.

**BED AND BREAKFAST INN** - A residence in which the frequency and volume of visitors are incidental to the primary use as a private residence and where guest rooms are made available for visitors for fewer than 30 consecutive days. Breakfast is the only meal served and is included in the charge for the room.

**BOARDING HOUSE** - Any single-family dwelling unit lived in by a family where, for compensation, guestroom lodging is provided with or without meals for up to 2 individuals. The term "Boarding Home-" shall include, "Rooming House", "Lodging House" and other similar terms.

**BUFFER** - A strip of land, fence or border of trees, etc., between 1 use and another, which may or may not have trees and shrubs planted for screening purposes, designed to set apart 1 use area from another. An appropriate buffer may vary depending on uses, districts, size, etc., and shall be determined by the Permitting Board.

**BUILDING** - Any structure having a roof supported by columns or by 4 independent, nonparty walls, and intended for the shelter, housing, or enclosure of persons, animals, or chattel.

**BUILDING AREA** - The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces, and steps. All dimensions shall be measured between the exterior faces of walls.

**BUILDING LINE** - A line formed by the intersection of a horizontal plane of average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

**BUILDING PERMIT** - See [Zoning Permit](#).

**BUILDING SETBACK LINE** - An established line within a property defining the minimum required distance between the face of any structure to be erected and the edge of the road of an adjacent highway.

**BUSINESS/ INDUSTRY, LIMITED** - A commercial venture which is the primary or major occupant of a structure and possesses the following characteristics: utilizes a maximum of 500 square feet of floor space, employs less than 5 employees, does not generate over 100 vehicles of business per 24-hour period, does not have a substantial effect on the character of the neighborhood, and generates no nuisances (smoke, odor, noise, etc.).

**BY RIGHT** - Refers to uses requiring a permit but with no public hearing required.

**CAMP (Private)** - Any area of land and/or water on which is located a cabin, tent, travel trailer, motor home, or other type of shelter suitable and intended for use in a temporary seasonal manner. For the purposes of this law, no minimum floor space shall be required for a camp structure.

**CAMP or RECREATION GROUND (Commercial)** - An area or premises operated as a commercial enterprise, generally providing space for seasonal accommodations for transient occupancy or use by tourists occupying camping trailers, self-propelled campers, tents and/or lodges. With such accommodations are normally to be found facilities for picnicking, boating, fishing, swimming, outdoor games and other sports and activities, but not including miniature golf courses, golf ranges or any mechanical amusement device. A camp ground shall be designed for seasonal occupancy, as opposed to permanent year-round occupancy, and shall not be construed to mean a [Mobile Home Park](#) as defined herein.



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**CAMPING TRAILER** - A vehicular portable structure mounted on wheels constructed with collapsible, partial side walls of fabric, plastic or other pliable materials for folding compactly while being transported.

**CLUB** - An organization catering exclusively to members and their guests including premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising, or commercial activities except as required generally for the convenience of the membership and purposes of such club.

**CLUSTER DEVELOPMENT** - A development of five acres or more where a developer may elect, after Board approval, to cluster or group his development in return for the permanent creation of common areas. Overall, the density of the development remains approximately the same as required by the district t area requirements.

**COMMUNITY SUPPORTED AGRICULTURE** - The retail sale of agricultural products to customers through a subscription paid in cash or labor, or a combination thereof.

**COMPOSTING** - A processing operation for the treatment of vegetative matter into humus-like material that can be recycled as a soil fertilizer amendment such as trees, leaves and plant material. The following types of wastes or similar materials are **NOT** included: such as organic animal waste, food, municipal sludge, solid waste, and other non-farm or vegetative type wastes.

**CONVENTIONAL DWELLING UNIT** - See [Dwelling Unit](#).

**DAY CARE CENTER** - A structure, together with its lot operated on a regular basis, for the purpose of providing daytime care for 5 or more children or adults. Similar uses going under names such as Day Nurseries; shall for the purpose of this Law be considered to be Day Care Centers.

**DECK** - An unroofed open structure projecting from an outside wall of a structure without any form of enclosure.

**DESIGN/ARCHITECTURAL STANDARDS** - Standards approved by the Municipal Board for use in guiding the design of new signs. A design review board, appointed by the Municipal Board, shall be responsible for the administration of the design/architectural standards.

**DEVELOPMENT** - Means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredged, filling, paving, excavation, or drilling operations.

**DOMESTIC ANIMAL** - For the purposes of this Law a domestic animal shall include dogs and cats only.

**DRIVE-IN** - A business designed to either wholly or partially provide services or products to customers while in their automobiles parked on the premises. Examples include but are not limited to: film shops, drive-in theaters, and fast food restaurants.

**DRY HYDRANT** - A pipeline capable of transporting water on a year-round basis from a pond, lake, or other water source to a hydrant. The water is not under pressure and thus to be utilized for firefighting purposes must be properly engineered such that a pumper truck can successfully draw sufficient water volume from the hydrant.

**DUPLEX** - A dwelling arranged, intended, or designed to be occupied by 2 families living independently of each other.

**DWELLING, MANUFACTURED HOME** - A structure subject to federal regulation, which is transportable in one or more sections; is 8 body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. For the purpose of this Ordinance, [Manufactured Homes](#) shall be deemed to include a [Mobile Home](#).

**DWELLING, MODULAR UNIT** - A factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure that will be a finished building in a fixed location on a permanent foundation. The term is intended to apply to major assemblies, and does not include prefabricated panels, trusses, plumbing trees, and other prefabricated sub-elements incorporated into a structure at the site. For the purpose of this Ordinance, a modular unit shall be deemed a *single family dwelling* and shall not be deemed a Mobile Home.

**DWELLING UNIT** - One or more rooms providing living facilities, including equipment and provisions for cooking, for a single household including 1 or more persons living as a family. Dwelling units shall be categorized by 4 construction types:

- A. **Conventional** - A permanent single or multiple-family dwelling unit which is built on site using conventional "stick" construction techniques among others. Included in this category are precut homes which refers to a conventional dwelling unit built on site utilizing wood framing members that are precut in a factory to the correct lengths but delivered to the building site unassembled. For the purpose of this law, a precut dwelling unit shall be considered to be the same as a conventional dwelling unit and shall not be considered to be a mobile home.
- B. **Modular** - A permanent single or multiple-family dwelling unit which is brought to the building site as 2 or more units on a transport trailer. Modular dwelling units have no support frames as found on mobile homes but instead are placed on a separate foundation. Modular dwelling units contain the same utility systems as conventional dwelling units. Modular dwelling units are not designed to be moved after they have been lifted onto a foundation. They are generally a minimum of 24' wide.
- C. **Prefabricated** - A permanent single- or multiple-family dwelling unit which is brought to the building site in large sections or panels usually 8 feet high and up to approximately 40 feet long. Often the doors and windows are factory insulated in the panels with the wall panels designed to be erected immediately after delivery. Prefabricated dwelling units are sometimes referred to as panelized units.
- D. **Mobile Home** - A transportable, fully assembled single-family dwelling unit suitable for year-round occupancy. Mobile dwelling units contain the same utility systems (water, waste, electricity) as found in conventional dwelling units. Mobile dwelling units are supported by a chassis which is an integral part of the unit. Mobile dwelling units are not designed to be lived in except when set up on a lot with proper utilities. This includes double wide mobile dwelling units, but does not include travel trailers which are self-contained. For the purpose of this Law, mobile homes are listed separately as allowed uses as are conventional (stick built/precut), modular, and prefabricated (panelized) dwelling units.

**EATING AND DRINKING ESTABLISHMENTS** - Places where food and/or beverages are prepared and/or sold for consumption on the premises or for take-out, including restaurant, tea rooms, cafeterias, bars, taverns, and lunchrooms.

**ELECTRONIC MESSAGING SIGN (DIGITAL)** - A changeable copy sign that uses a matrix of illumination elements, such as light emitting diodes (LED), liquid crystal display, plasma display, individual light bulbs, or other digital or analog electronic media to display or project copy which can be modified by electronic process. A time and/or temperature sign, and a gas price sign, shall not be considered an electronic messaging sign when used in a "Business District".

**ENFORCEMENT OFFICER** - Shall mean the Enforcement Officer of the municipality.

**ENHANCED AGRICULTURAL PRODUCTS** - An agricultural product that has been altered or processed in a way that increases its value to the consumers and that will increase the profitability of the product to the farmer.

**ESSENTIAL SERVICES** - The erection, construction, alteration, or maintenance by public utilities or municipal, or other governmental agencies, of gas electrical, steam, water, sewage, and communication systems, and facilities. Railroad trackage and facilities and bus shelters shall also be considered as providing an essential service.

**FAMILY** - One or more persons, related by birth, marriage, or other domestic bond, occupying a dwelling unit and living as a single, nonprofit housekeeping unit.

**FARM** - A parcel of land which is used for the raising of animals (including fish) on a commercial basis, such as ranching, dairy farming, piggeries, poultry farming and fish farming; a facility for the business of boarding or renting horses to the public; or a site used for the raising or harvesting of agricultural crops such as wheat, field forage and other plant crops intended for food or fiber.

**FARM, ACTIVELY PRODUCING** - Pursuant to Section 301, Subsection 4 of the Agriculture and Markets Law, the farm must have a minimum of 7 acres in production with \$10,000 in sales, or \$50,000 in sales if under 7 acres of land are in production. In addition, a predominance of the agricultural products being sold at the farm be New York State produced. This would be on an annual basis and would be determined by volume of product.



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**FARM BREWERY** - Facility for the production of malt liquors operated as a subordinate enterprise to a farm by the owner or owners of the farm on which it is located.

**FARM MARKET**- A permanent structure, operated on a seasonal or year-round basis, which allows for agricultural producers to retail their products and agriculture-related items directly to consumers and enhance income through value-added products, services and activities.

**FARMER'S MARKET** - A temporary marketplace, either indoors or outdoors, for the display and sale of produce and other agricultural products such as, but not limited to, fresh fruits, vegetables, nuts, honey, shell eggs, flowers, nursery stock, maple syrup and similar agriculturally produced items.

**FARM WINERY** - Any place or premises, located on a farm in New York State, in which wine is manufactured and sold, and is licensed by the State Liquor Authority as a farm or commercial winery.

**FENCE** - Any artificially constructed barrier or vegetation barrier, such as a hedge with the purpose or intent of preventing passage or view, thus providing privacy.

**FENCE, BARRIER** - Any fence which is located near the perimeter of the property of which it is intended to provide privacy.

**FENCE, FARM** - Any fence whether located on a farm or not which has as its primary purpose the control of non-domestic animals.

**FENCE, NONBARRIER** - Any fence located a distance from the property line which provides privacy to a portion of land such as a patio or swimming pool.

**FIRE RESISTANT** - Any materials which possess the properties, construction or assembly qualities which under fire conditions prevent or retard the passage of excessive heat, gases or flames; and thus, is not easily ignited.

**FLAMMABLE** - Capable of igniting within 5 seconds when exposed to flame and continuing to burn.

**FLOATING DISTRICT** - Any zoning district for which district regulations are included in this law and yet for which no land has initially been designated on the zoning map to be included in said district. Such a district may become a reality through the amendment of the zoning map of the municipality in accordance with the amendment procedures of this law. The initiation of the creation of such a district may come from residents, the Planning Board, a developer or the municipal board, itself, while the decision whether to activate such a district shall be made based upon the need for such a district.

**FLOOR SPACE** - The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business. Said areas shall be measured between the outside face of exterior walls, or from the inner line of walls separating 2 uses. Said areas shall not include areas below the average level of the adjoining ground, garage space, or accessory building space.

**FUNNELING** – The use of a lakefront navigable waterway lot by 1 or more non lakefront or upland households who possess a contractual access to use the waterfront lot. Generally, the access allows the householders to access the lake for boating or general recreational enjoyment. Contractual arrangements generally utilized include legal contract or deed stipulation. (Added October 8, 1998)

**GARAGES, PRIVATE** - A secondary structure used in conjunction with a primary building which primarily provides for the storage of motor vehicles and in which no occupation, business, or services for profit are carried on.

**GARAGES, PUBLIC** - Any garage other than a private garage, operated for gain, available on a rental basis for the storage of motor vehicles, including the supply of gasoline and oil.

**GAS COMPRESSOR** - Any mechanical equipment utilized to cause the movement of natural gas through a transmission line system.

**GAS STATION** - The retail sale of fuel and related oil products as well as minor service repairs and routine maintenance to include oil and tire changes.

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**GENERAL REPAIR BUSINESS** - See [Retail Business](#).

**GENERAL SERVICE BUSINESS** - See [Service Business](#).

**GENERAL WHOLESALE BUSINESS** - See [Wholesale Business](#).

**GLARE** - Light emitting from a luminary with intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.

**GRAVEL PIT / QUARRY/ SAND PIT** - A lot or land or part thereof used for the purpose of extracting stone, sand, gravel or top soil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for building permit has been made.

**HANDCRAFTED ITEM** - An object that requires the use of the hands, hand tools and human craft skills in its production, and which is usually not adaptable to be made in a mass production facility.

**HEAVY VEHICLES** - Automobile wreckers, commercial trailers, semi-trailers, or any vehicle or truck with dual wheels (4 wheels mounted on the rear axle of a nonrecreational vehicle) which is subject to vehicle regulations and state inspections for use on public highways.

**HEIGHT** - The vertical distance from the highest point on a structure (excepting chimneys and other items listed in Article V, Section on "height") to the average ground level of the natural grade prior to excavation and site preparation where all *(added November 14, 1991)* the walls or other structural elements intersect the ground.

**HOME FOR AGED** - A structure principally used to house senior citizens in which a separate household is established for each family. Nursing homes are not considered to be a home for the aged.

**HOME OCCUPATION** - A use conducted within a dwelling and carried on by the inhabitants thereof, which is clearly secondary to the use of the dwelling for dwelling purposes and does not substantially change the character of the residence or neighborhood. Home occupations shall meet all conditions specified in the section on Home Occupations.

**HOME PROFESSIONAL OFFICE** - The offices, studios or occupational rooms which are located within the single family detached residence of a duly licensed or certified physician practicing human medicine, chiropractor, osteopath, physical therapist or massage therapist, duly licensed practitioner of behavioral sciences, attorney, civil or professional engineer, accountant, architect, real estate appraiser or broker, insurance agent, or similar professional person.

**HORTICULTURE, PRIVATE** - The growing of fruits, vegetables, flowers, or ornamental plants for one's own pleasure and use. Also referred to as a private garden.

**HOUSEHOLD SALE** - Household sale for the purpose of this Law shall include lawn sales, patio sales, garage sales, basement sales, flea markets, bazaar, or other similar types of sales. A household sale shall be distinguished from a business in that it involves the infrequent sale of used merchandise which, for private sales, was NOT obtained from outside the household. Nonprofit or fraternal organizations on the other hand may obtain their sale items from donations received from members or other sources.

**HOUSING, ELDERLY** - Apartments containing eating, sleeping, and living space and designed with elderly fully independent residents in mind. Generally, these apartments contain smaller than normal floor space, require less parking and less active recreational area. Additionally, common eating areas are sometimes provided.

**INDUSTRY, GENERAL** - The manufacture, preparation, processing, milling, or repair of any article, substance or commodity, and which involves no dangerous or toxic product or emissions. Additionally, noise, odors, or other nuisances' incidental to productions and processing shall be limited to a level which does not affect the use or enjoyment of property outside of the Industrial District.

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**JUNK MOTOR VEHICLE** – A motor vehicle (excluding farm vehicle) which is not intended for or in condition for legal use on public highways or which is in the process of being dismantled.

**JUNK YARD** - See Definitions of [Scrap Yards](#) and [Vehicle Dismantaling Yards](#).

**KENNEL** - Any premises on which 5 or more dogs or cats over 6 months old are housed, groomed, boarded, trained, or sold for monetary gain.

**LARGE GROUP GATHERING** - Any gathering of 300 or more people, occurring on a non-regular basis and involving either the charging of a fee, request for a donation or sale of products or services. (Please refer to [Supplemental Section 627 - Large Group Gatherings](#) for additional details, conditions, and responsibilities).

**LIMITED BUSINESS/INDUSTRY** – See [Business/Industry, Limited](#).

**LOADING SPACE** - Space logically and conveniently located exclusively for bulk pickups and deliveries at commercial structures.

**LOT** - A parcel of land occupied, or designed to be occupied by 1 structure and the accessory structures or uses customarily incidental to it, including such open space as are required by this Zoning Law.

**LOT, COVERAGE** - That percentage of the lot which is devoted to building area. District regulations refer to the maximum percentage of the lot area devoted to building area. The maximum lot coverage (*% of Lot Area established in each zoning district*) is to include both primary and accessory use structures (*added November 14, 1991*).

**LOT, SIZE** - An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres.

**LOT LINE** - Any line dividing 1 lot from another.

**LOT WIDTH** - The horizontal distance between the side lot lines measured at right angles to its depth at the building line.

**MANUFACTURED HOME** - A general category of housing construction denoting single-family detached or attached multiple-family dwelling units which are partially or totally constructed away from the site where they are to be placed for occupancy. Included in this category are mobile homes, modular housing, and panelized (prefabricated) housing.

**MARINA, COMMERCIAL OR CLUB-TYPE** - A marina designed and operated for profit, or operated by any club or organized group where hull and engine repairs, boat and accessory sales, packaged food sales, eating establishments, personal services, fueling facilities, storage and overnight guest facilities or any combination of these are provided.

**MARINA, PRIVATE NONCOMMERCIAL** - A marina designed and intended to be used for mooring of boats by residents of the general neighborhood with no commercial facilities other than those necessary for minor servicing or repair.

**MOBILE DWELLING UNIT** - See [Dwelling Unit](#) (same as mobile home).

**MOBILE HOME** - See [Dwelling Unit](#). (*Amendment 2/2007....Any reference in the Zoning Ordinance where it states "mobile home" shall now read "mobile home".*)

**MOBILE HOME PARK** - A parcel of land upon which 2 or more mobile homes are set up for living purposes.

**MODULAR DWELLING UNIT** - See [Dwelling Unit](#).

**MOTOR HOMES** - A self-propelled, relatively small temporary living quarter generally used as mobile vacation homes. Motor homes generally have self-contained, independent utility systems.

**MOTOR VEHICLE** – Every vehicle operated, driven or capable of being operated or driven upon a public highway by any power other than muscular power. For the purposes of this Law, “motor vehicle” shall not include tractors used exclusively for agricultural purposes, self-propelled harvesting machines and self-propelled caterpillar- or crawler-type equipment. For the purposes of this Law, the term “motor vehicle” shall include motorcycles, buses and recreational vehicles.

**MOTOR VEHICLE SERVICE STATION** - Any area of land, including structures therein, that is used for the sale of gasoline or any other motor vehicle fuel and oil, and other lubricating substances: including any sale of motor vehicle accessories; and which may or may not include facilities for lubricating, washing, or otherwise servicing motor vehicles, but not including the painting thereof by any means, body and fender work, or the dismantling or replacing of engines.

**MULTIPLE DWELLING** - Two or more dwelling units per building.

**MUNICIPALITY** - Shall mean the Village or Town for which this Law applies.

**MUSIC STUDIO** - A facility which, for a consideration, is made available for the purpose of teaching, practicing or recording vocal or instrumental music. *(Added August 30, 2001)*

**NONCONFORMING STRUCTURE** - A building, structure or facility, or portion thereof, which was lawfully erected or altered or maintained, but which, because of the application of this ordinance to it, no longer conforms to the specific regulations applicable to the zone in which it is located.

**NONCONFORMING USE** - The use of a building, structure, or site, or portion thereof, which was lawfully established and maintained, but which, because of the application of this ordinance to it, no longer conforms to the specific regulations applicable to the zone in which it is located.

**NUISANCE** - A violation of this Law caused by an offensive, annoying, unpleasant, or obnoxious use of characteristics of said use which produces effects of such a nature or degree that they are detrimental to the health, safety, general welfare, property values, etc., thus resulting in harm or injury to adjacent or nearby properties. Common examples include excessive odors, noise, smoke, vibration, light, runoff, traffic, development density, electronic interference, etc.

**NURSING HOME** - Also referred to as a convalescent home, it includes buildings where, for a fee, non-ambulatory residents are provided full-time convalescent or chronic care by skilled nurses in addition to room and board. No care for the acutely ill is provided; and thus, clearly, hospitals and mental health centers are not to be considered as a nursing home.

**NURSERY** (For children) - See *Day Care Center*.

**OFFICE** - A place which is used to conduct a business or profession and is occupied by a physician, surgeon, dentist, lawyer, or person providing similar services or in whose office the functions of consulting, record keeping, and clerical work are performed.

**OPEN SPACE** - Common, public, or private greens, parks, or recreation areas, including playgrounds, woodland conservation areas, walkways, trails, stream crossings and drainage control areas, golf courses, swimming pools, tennis courts, ice skating rinks, and other similar recreational uses, but which may not include any such uses or activities which produce noise, glare, odor, air pollution, fire hazards, or other safety hazards, smoke fumes, or any use or activity which is operated for a profit, or other things detrimental to existing or prospective adjacent structures or to existing or prospective development of the neighborhood.

**OUTDOOR RECREATION/SPORTS FACILITY PLAYING FIELD/COURT** - The outdoor playing field/court portion of outdoor recreation/sports facilities shall include, but not be limited to, baseball/softball diamonds, soccer, field hockey, football and lacrosse fields, basketball, volleyball or tennis courts, skating rinks, horse riding rings or show areas, running tracks, swimming pools, golf driving ranges, golf courses, miniature golf courses, go-cart tracks or baseball hitting and archery ranges. The outdoor recreation/ sports facility playing field/court area shall not include parking lots, administrative offices, restrooms, ticket sales, concession stands, bleachers or other spectator viewing areas, and other such related facilities.

**PANELIZED** - See *Dwelling Unit, Prefabricated*.

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**PARKING, COMMERCIAL OFF-STREET** - An area, other than accessory off-street parking areas as required by the provisions of this Ordinance, where, for a charge or permit, motor vehicles may be stored for the purpose of temporary, daily or overnight off-street parking.

**PARKING, OFF-STREET** - Any space, whether or not required by the provisions of this Ordinance, specifically allotted to the parking of motor vehicles as an accessory use. For the purpose of this Ordinance, such space shall not be located in a dedicated right-of-way, a travel lane, a service drive, or any easement for public ingress or egress.

**PARKING LOT** - An area not within a building where motor vehicles may be stored for the purpose of temporary, daily or overnight off-street parking. For the purpose of Article 13, a parking lot shall consist of the entire surface of the parking lot, vehicular access to the parking lot, loading spaces, drive-through spaces and the exposed surfaces of parking decks; and shall include vehicle display lots, vehicle storage lots and commercial parking lots.

**PARKING SPACE** - A required off-street parking space. *(See Supplemental Section).*

**PASTURE (for Non-Commercial Animals)** - A fenced enclosure or confined area used for the grazing of livestock or small animals, which contains sufficient vegetation to serve as a principal food source for the livestock. In determining the area of the pasture available for grazing, front yards, drives and building footprints shall not be counted.

**“PICK-YOUR-OWN” ENTERPRISE** - A fruit or vegetable growing farm which provides the opportunity for customers to pick their own fruits or vegetables directly from the plant. This is also referred to as a PYO.

**PLANNING BOARD** - Refers to the Municipal Planning Board unless otherwise indicated.

**PORCH** - A roofed open structure projecting from an outside wall of a structure without any form of enclosure. Screens used as insect barriers are permissible and shall not cause the porch to be considered to be an enclosure.

**PORTABLE STORAGE UNIT** - Portable storage units are transportable units designed and used primarily for temporary storage of building materials, household goods, equipment, personal items and other materials for use on a limited basis. The term shall include, but not be limited to trailers, shipping containers, portable-on-demand storage units and other similar containers.

**PRECUT** - See *Dwelling Unit, Conventional*.

**PREFABRICATED DWELLING UNIT** - See *Dwelling Unit*.

**PRINCIPAL USE** - The main use of land or buildings as distinguished from a subordinate or accessory use.

**PREEXISTING USE** - Any use, either conforming or nonconforming with this Law, that is legally existing at the enactment date of this Law.

**PRIVATE CAMP** - A parcel of land on which a travel trailer, tent, cabin, or other structure is present for use on a seasonal basis for leisure or recreation purposes. *(See Supplemental Section)*

**PROFESSIONAL** - Any person with an advanced college degree who possesses a license to practice. This includes but is not limited to doctors, lawyers, CPA's, engineers, etc.

**PUBLIC** - Owned, operated, or controlled by a governmental agency (Federal, State, or Local) including a corporation created by law for the performance of certain specialized governmental functions, a public school district, or service district.

**RECREATION, COMMERCIAL** - Recreational facilities operated as a business and open to the general public for a fee. Recreational facilities shall include, but not be limited to, golf courses, ice skating rinks, and swimming pools.

**RECREATIONAL VEHICLE** - A vehicle primarily designed as temporary living quarters for recreational, travel or camping use, which either has its own mode of power, or is drawn by another vehicle.



**REGULAR FLOOD INSURANCE OR REGULAR PROGRAM** – The permanent program which is entered only after detailed flood information is provided by the Federal Insurance Administration (e.g.; Floodway/Floodway Fringe Area, Flood Insurance Rate Map).

**RESIDENCE, SINGLE-FAMILY DETACHED** - A detached building designed to contain 1 dwelling unit.

**RESIDENCE, TWO-FAMILY** - Either of the following:

- A. a building having 2 side yards and accommodating but 2 dwelling units; or
- B. a detached building containing 2 dwelling units separated by a party wall, each having 1 side yard.

**RESIDENCE, MULTI-FAMILY** - A building used or designed for 3 or more dwelling units including apartment houses, town houses, and condominiums.

**RESIDENTIAL CONVERSIONS** – The creation of 1 or more additional dwelling units within existing residential structure in accordance with conditions set forth in this Law.

**REST HOME** - Commonly referred to as homes for the aged. These facilities provide private sleeping rooms for ambulatory (able to walk) residents. Generally rest homes have common eating areas and provide minimal medical aid to residents. Only incidental convalescent care is provided which does not involve trained nurses, physical therapy or other activities provided in a hospital or nursing home.

**RETAIL BUSINESS, GENERAL** - For the purpose of this Law, whenever a general retail business is listed as an allowed use, it shall signify that any retail business which has a minimal negative impact and can meet the conditions specified in this Law shall be allowed in addition to the specific retail uses as being allowed.

**RETAIL SALES** - The sale of goods, merchandise and commodities for use or consumption by the immediate purchaser.

**RETAIL SALES ESTABLISHMENT** - Any establishment wherein the primary occupation is the sale of merchandise for use or consumption by the immediate purchaser. This term shall also include establishments such as tool rental establishments, artisan and specialty shops, and photographic, portrait, dance and music studios.

**RIDING ACADEMY** - Any establishment where horses are kept for riding for compensation. Riding academies shall be situated on a minimum of 10 acres of land and only in districts where allowed.

**ROADSIDE STAND** - A direct marketing operation without a permanent structure and only offering outdoor shopping. Such an operation features on-farm produced as well as locally produced agricultural products, enhanced agricultural products and handmade crafts.

**ROOMING HOUSE** - Any building or portion thereof containing sleeping accommodations for five (5) to twelve (12) persons wherein normally a charge is paid for such accommodations. The term 'rooming house' shall be deemed to include the term 'boarding house', but not motel or other accommodations used for transient occupancy.

**SAWMILL** - Commercial facility containing sawing and planning equipment utilized for the preparation of dimensional lumber used for construction. No on-premise sales to the general public take place.

**SCALE** - Scale refers to the relationship of the size of a building to neighboring buildings and of a building to a site. In general, the scale of new construction should relate to the majority of surrounding buildings.

**SCRAP YARD** - Any place of storage or deposit of more than 100 square feet, usually of a commercial nature, where metals, glass, rags, etc., are held, whether for the purpose of disposal, reclamation, recycling or resale of such, including establishments having facilities for processing iron, steel, and nonferrous scrap for re-melting purposes.

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**SEASONAL BUSINESS USE** - A primary use involving the sale of items related to calendar holidays, such as Christmas trees, Halloween pumpkins, etc., which may be conducted outside.

**SEASONAL SIGN** - Any sign that is removed for three consecutive months. These signs must be removed whenever business is closed for seven or more consecutive days. Because seasonal signs will be removed for a minimum of three months at a time, size and quantity restrictions do not apply.

**SECTION** - Unless otherwise noted section and section numbers shall refer to this Law.

**SELF-STORAGE FACILITY** - Commercial facility where secured areas in a structure are rented to individuals only for short-term storage of household items and other non-hazardous, non-perishable durable goods. No exterior storage of materials or items is allowed.

**SELF-STORAGE/MINI** - A single-level structure or group of structures containing separate spaces/stalls and which are leased or rented to individuals for the storage of goods.

**SEMI-PUBLIC** - Places of worship, institutions for the aged and children, nurseries, nonprofit colleges, hospitals, libraries, cemeteries, and institutions of the philanthropic nature; also, open space.

**SETBACK** - Distance measured from the street edge to a structure, sign, etc.

**SERVICE BUSINESS, GENERAL** - For the purpose of this Law, whenever a general service business is listed as an allowed use, it shall signify that any service business which has a minimal negative impact and can meet the conditions specified in this Law shall be allowed, in addition to the specific service uses listed as being allowed.

**SHOOTING RANGE COMMERCIAL** - The parcel (s) of land used for discharging of firearms with the intent to hit any object (moving or stationary) other than live game, by any person who pays a fee (e.g.; membership fees, shooting fee, etc.) to use said facilities. Commercial shooting ranges include but are not limited to nonprofit clubs (skeet club, etc.); and profit motivated business.

**SHOPPING CENTER** - A group of commercial establishments occupying adjoining structures all of which may be deemed as 1 building and normally owned/managed as 1 unit. Off-street parking as well as loading/unloading facilities is provided as an integral part of the unit.

**SIGN** - Any structure or part thereof, attached thereto, or painted, or represented thereon, which shall display or include any letter, work, model, banner, flag, pennant, insignia, device of representation used for the purpose of bringing the subject thereof to the attention of the public. The word sign does not include the flag, pennant or insignia of any nation, state, city, or other political unit, or of any political, educational, charitable, philanthropic, civic, professional, religious, or like organization, or the property thereof

**SIGN, AREA** - The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, 4-sided (straight sides) geometric shape which most closely outlines the said sign. Only 1 side of the sign shall be used in measuring the area.

**SIGN, ADVERTISING** - A sign which offers services or goods produced or available somewhere other than on which the sign is located. The words "advertising sign" include the word "billboard." Neither directional warning nor other signs posted by public officials in the course of their public duty shall be construed as advertising signs.

**SIGN, BILLBOARD** - Any sign with a total area larger than that permitted by sign regulations of this Law for the district in which the billboard either exists or is proposed to be located in.

**SIGN, BUSINESS** - A sign for permitted use conducted on the premises which shall identify the written name and/or the type of business and/or any trademark of an article for sale or rent on the premises.

**SIGN, DIRECTIONAL** - A sign which identifies an attraction or activity and provides directional information useful to the traveler in locating the attraction, such as mileage, route numbers, etc.

**SIGN, IDENTIFICATION** - A sign for a permitted use conducted on the premises for articles sold, or distributed by that use, or displaying the name of the premises.

**SIGN, INSTRUCTIONAL** - A sign conveying instructions with respect to the use of the premises, or a portion of the premises on which it is maintained, or a use or practice being conducted on the premises.

**SIGN, NAMEPLATE** - Any sign attached directly to the wall of a building occupied by the person to whom such a sign indicated the name, occupation and/or address of the occupant. A nameplate shall be not over 2 square feet in size.

**SIGN, PUBLIC** - Those signs erected to direct flow, speed and direction of traffic, effect general public safety or name streets and buildings.

**SIGN, SEASONAL** - Any sign that is removed for three consecutive months. These signs must be removed whenever business is closed for seven or more consecutive days. Because seasonal signs will be removed for a minimum of three months at a time, size and quantity restrictions do not apply.

**SIGN, TEMPORARY** - A sign which offers premises for sale, rent, or development; or announces special events or calls attention to new construction or alteration; or offers a sale of seasonal garden produce, garage, household, porch items or signs of similar nature; or political signs. Temporary status of signs will expire after 6 months.

**SOLAR STRUCTURE** - Any structure containing either a passive or active heat storage device which is dependent on direct contact with the sun in order to operate. Said heat storage devices are commonly used to heat totally or partially water, rooms, etc.

**SPECIAL EVENT** - An event or happening organized by any person or organization which will generate or invite considerable public participation and/or spectators for a particular and limited purpose of time, including, but not limited to, special sales and service promotions, car shows, arts and crafts shows, horse shows, carnivals, festivals, exhibitions, circuses, fairs, show houses and tours of homes for charity. Special events are not limited to those events conducted on the public streets but may occur entirely on private property. Special events may be for profit or nonprofit. Events which will occur in the public right-of-way, such as roadway foot races, fundraising walks, bikeathons, parades, etc. are subject to the approval by the designated municipal board.

**SPECIAL FLOOD HAZARD AREA** - Means that maximum area of the flood years (*i.e.*; that has a 1% chance of being flooded each year – “100-year flood”).

**SPECIAL USE PERMIT** - A special use permit deals with special permission, granted only by the Permitting Board after public hearing to occupy land for specific purposes when such use is not permitted By Right, but is listed as permitted by Special Use Permit.

**STABLE, RIDING/BOARDING** - A structure and/or use of land where four (4) or more horses or ponies are kept, maintained and/or boarded for profit, or in connection with which saddle horses or ponies are rented to the general public, made available to members of a private club, or boarded for the convenience of their absentee owners. Exercise rings and show rings shall be considered uses accessory to the use of the premises of a stable.

**STORAGE, MINI-WAREHOUSING ESTABLISHMENT (COMMERCIAL)** - A building consisting of individual, small, self-contained units that are leased or owned for the storage of business and household goods, or contractors' supplies.

**STORAGE STRUCTURE** - Any constructed combination of materials located or attached to the ground utilized for non-inhabited storage purposes. Trucks, truck trailers, truck bodies, and similar motor vehicles or any portion thereof, or mobile homes and RVs (*added November 14, 1991*) shall not be utilized as storage structures.

**STORAGE STRUCTURE (PRIVATE RESIDENCE)** - Any constructed combination of materials located or attached to the ground and utilized for non-inhabited storage purposes. Used trucks and similar motor vehicles shall not be utilized as storage structures. For the purposes of this Law, storage structures shall be less than 150 square feet with larger structures considered to be a customary accessory uses.

**STORAGE STRUCTURE, RESIDENTIAL** - A structure to be used, or intended to be used, for the private noncommercial, nonindustrial storage uses by the property owner.

**STORAGE YARD** - use of any space, whether inside or outside a building, for the storage or keeping of construction equipment, machinery, vehicles or parts thereof, boats and/or farm machinery.



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**STOREFRONT AREA** - That area of the front of a building associated with the first floor only. For businesses located above a first floor, the storefront area shall be calculated based on the ground floor entrance only.

**STORY** - That portion of a building excluding attics and cellars included between the surface of any floor and the floor next above it; or if there be no floor above it, then the space between any floor and the ceiling next above it.

**STORY, HALF** - A story under a gable, hip, or gambrel roof, the wall plates of which, on at least 2 opposite exterior walls, are not more than 2 feet above the floor of such story.

**STRUCTURE** – A combination of materials assembled, constructed or erected at a fixed location including for examples: a building, stationary and portable carports, swimming pools, raised patios and decks, and brick and masonry barbeques, the use of which requires a fixed location on the ground or attachment to something having a location on the ground. A storage shed, whether on skids or attached to the ground, shall also be considered a structure. *(Modified December 10, 2009)*

**SUBSTANTIAL IMPROVEMENT** – Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or any alternation of a structure listed on the Nation Register of Historic Places or a State Inventory of Historic Places.

**SWIMMING POOL** - Any man-made receptacle for water (expecting farm ponds) located above or below ground designed for capacity of over 4 feet in depth at any point and intended to be used for swimming.

**TEMPORARY DWELLING UNIT (MOBILE)** - Dwellings intended for temporary occupancy and including but not limited to: travel trailers, motor homes, truck campers, and tents. Persons residing in temporary dwelling units generally do not include those residing in the primary dwelling unit located on the parcel *(added June 23, 1994)*.

**TEMPORARY USE** - An activity conducted within a structure or on a tract of land for a specific limited period of time which may not otherwise be permitted by the provision of this Law. For example, a building used in conjunction with new construction which would be removed upon completion of the work.

**TOWER** - A structure generally fixed on the ground of a noncommercial or commercial nature, the purpose of which is to better enable the transmission or receiving of signals by achieving more height. For the purposes of this Law, a tower shall generally be capable of being climbed without utilizing special equipment and shall be categorized as:

- A. commercial;
- B. noncommercial more than 50 feet high as measured from the ground; and
- C. noncommercial 50 feet or less in height. Standard TV-type antennas are not to be considered to be a tower.

**TOWN HOUSE** - A dwelling unit designed to be occupied as a residence for 1 family and 1 of a group of 3 or more attached dwellings, placed side by side, separated by party walls, each containing 1 or 2 stories, and each having separate front and rear, or side and rear, or front and side entrances from the outside.

**TRACT** - A large piece of land under single ownership.

**TRASH** - Glass, scrap metals, salvaged metals, rags, refuse, garbage, wastepaper, salvaged machines, appliances, or similar materials, etc.

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**TRAVEL TRAILER** - A vehicular, portable structure built on a chassis and designed to be used for temporary occupancy for travel, recreational or vacation use; with the manufacturer's permanent identification 'Travel Trailer' thereon; and when factory equipped for the road, being of any length provided its gross weight does not exceed 4500 pounds, or being of any weight provided its overall length does not exceed twenty-nine (29) feet. For the purpose of this Ordinance, a travel trailer shall not be deemed a *Mobile Home*.

**TRAVEL TRAILER/CAMPER** - A relatively small temporary living quarter designed to be hauled behind a vehicle. Travel trailers are not designed as permanent living quarters and generally are used on a seasonal basis. They are supported at all times primarily by their own wheels. Travel trailers generally have self-contained independent utility systems. See definition of *Accessory Dwelling Unit*.

**TRAVEL TRAILER CAMP/COMMERCIAL CAMPGROUND** - A parcel of land used or intended to be used, let, or rented on a seasonal basis for occupancy by campers or for occupancy by or of travel trailers, motor homes, tents, or movable or temporary dwellings, rooms, or sleeping quarters of any kind.

**TRIPLEX** - A dwelling arranged, intended and designed to be occupied by 3 families living independently of each other.

**UNLICENSED MOTOR VEHICLE** - Any motor vehicle which has not been licensed with the proper authorities for a period of at least thirty (30) days from the expiration of the last licensing period.

**USE** - Any purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

**VARIANCE** - Permissive waivers from the terms of the Law, as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the Law will result in unnecessary hardship or practical difficulty or that the spirit of the Law shall be observed and substantial justice done and granted by the Zoning Board of Appeals.

**VEGETATIVE SCREEN** - An evergreen planting which, within three years of planting, provides a 100 percent visual barrier between a lot and adjacent lots and uses with a minimum height of 6 feet. A vegetative screen is composed of plant materials.

**VEHICLE DISMANTLING YARD** - Any place or storage of deposit where 2 or more unregistered, old, or secondhand vehicles, no longer intended for or in condition for legal use on public highways are held, whether for resale of parts or materials, or used parts and waste materials, which, when taken together equal in bulk 2 or more vehicles, shall constitute a vehicle dismantling yard. This excludes farm vehicles.

**VEHICLE, JUNK OR SALVAGE** - Any automobile, truck or other vehicle which is missing one of the following: 1) current registration, 2) license plate with current decal, 3) proof of liability insurance, 4) drive train component for more than 30 days.

**VEHICLE REPAIR SHOP** - A commercial business operated for profit which repairs or services motor vehicles.

**WHOLESALE** - A business establishment engaged in selling to retailers or jobbers rather than consumers in wholesale lots.

**WHOLESALE BUSINESS, GENERAL** - For the purpose of this Law, whenever a general wholesale business is listed as an allowed use, it shall signify that any wholesale business which has a minimal negative impact and can meet the conditions specified in this Law shall be allowed in addition to the specific wholesale uses listed as being allowed.

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**WHOLESALE, LIMITED** - A wholesale business with a maximum of 3 employees, no more than 4,000 square feet of floor space and no outside storage.

**YARD, FRONT** - The area extending across the entire width of the lot between the building line, and the front edge of the road into which space there shall be no extension of building partitions or accessory structures. For parcels adjacent to the lake, with a public or private roadway between the primary structure and the lake, the front yard shall consist of the land area between the primary structure and the public or private roadway serving the property. Where no such roadway exists between the primary structure and the lake, the front yard shall consist of the land area between the ordinary lake shoreline and the primary structure.

**YARD, REAR** - The area extending across the entire width of the lot between the rear wall of the principal building and rear line of the lot, and unoccupied except for parking, loading and unloading space, and garages and carports.

**YARD, SIDE** - That open area of a lot situated between the side lines of the building and the adjacent side lines of the lot.

**ZONING BOARD OF APPEALS** - Shall mean the Zoning Board of Appeals of the Town of Ellery.

**ZONING PERMIT** - Written permission issued by the appropriate Municipal Board/Officer authorizing the use of lots or structures. Zoning Permits are issued for uses which are permitted by the Zoning Law where all conditions required by the Law can be met for the district where the lot/structure is located. The relocation, enlargement, alteration, or other change of use shall require the issuing of a Zoning Permit. The two types of permits include by Right Permit and Special Use Permit.



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# **ARTICLE III**

## **ESTABLISHMENT OF DISTRICTS**

## ARTICLE III ESTABLISHMENT OF DISTRICTS

### SECTION 301 - CREATION & ENUMERATION OF DISTRICTS

For the purpose and provisions of this Local Law, the municipality is hereby divided into the following types of districts:

Single-Family Residential .....	R1
Single Family Residential – Warner Bay .....	R1-WB
Two-Family Residential .....	R2
Multiple Residential .....	R3
Retail Business .....	B1
Highway Business .....	B2
Lakeside Business .....	B3
Ellery Business .....	B4
Agricultural Residential .....	AR
Agricultural .....	A
Industrial (floating) .....	I1

### SECTION 302 - ZONING MAP

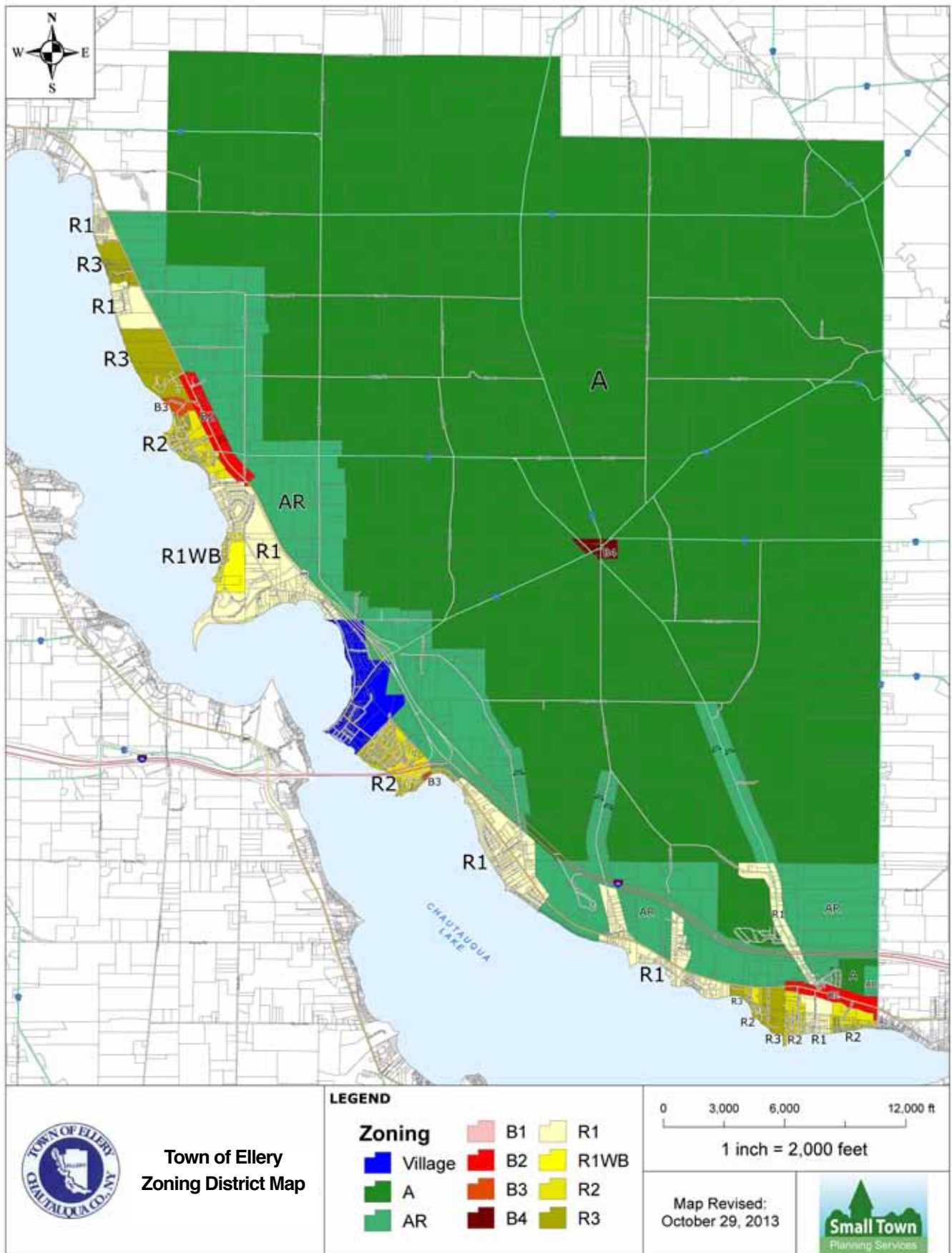
The boundaries of the aforesaid zoning districts are hereby established shown on the map entitled, *“Zoning District Map of the Town of Ellery, New York, dated October 29, 2013”*, which map accompanies and is made a part of this Local Law and shall have the same force and effect as if the zoning map, together with all notations, references, and other information shown thereon, were fully set forth and described herein.

### SECTION 303 - INTERPRETATION OF DISTRICT BOUNDARIES

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

- A. Where district boundary lines are indicated as approximately following the center lines of streets or highways, street lines, or highway right-of-way lines, such district lines shall be construed to be said boundaries.
- B. Where district boundary lines are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- C. Where district boundary lines are so indicated that they are approximately parallel to the center lines, or street lines of streets, or the center lines or right-of-way lines of highways, such district lines shall be construed to be said boundaries.
- D. Where the boundary of a district follows a stream, lake or other body of water, said boundary line shall be deemed to be at the limit of jurisdiction of the municipality unless otherwise indicated.
- E. Any party aggrieved by an interpretation may appeal to the Zoning Board of Appeals, whose decision will be final. However, all decisions of the Zoning Board of Appeals are subject to court reviews in accordance with applicable laws of the State of New York. The burden of proof shall be on the applicant.





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# **ARTICLE IV**

## **DISTRICT REGULATIONS**



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## ARTICLE IV DISTRICT REGULATIONS

### SECTION 401 – Zoning Districts – Purpose

The following zoning districts are established in the Town of Ellery for the purpose of implementing the land use goals of the Town and of this Law. While each purpose statement is intended to generally describe the community's intent and the types of land uses allowed in each district, the Town's official zoning map and specific regulations stated elsewhere in this Law shall take precedence over any particular purpose statement.

#### A. District Purposes

- 1.) **SINGLE-FAMILY RESIDENTIAL (R1)** – R1 Districts are established to primarily provide for new “subdivision” large lot single-family development or to protect existing neighborhoods from encroachment of all other uses or higher density development. Very few other uses are allowed in this district. R1 Districts are generally adjacent to and oriented toward Chautauqua Lake, thus accounting for its high development potential.
- 2.) **SINGLE FAMILY RESIDENTIAL – WARNER BAY (R1-WB)** – The R1-WB District is established to primarily provide for new “subdivision” large lot single-family development or to protect existing neighborhoods from encroachment of all other uses or lower density development in the Warner Bay area. Very few other uses are allowed in this district. The R1-WB District is adjacent to and oriented toward Chautauqua Lake, thus accounting for its high development potential.
- 3.) **TWO-FAMILY RESIDENTIAL (R2)** - R2 Districts are established primarily to provide for the protection of existing neighborhoods from other non-compatible uses. This District has a limited supply of vacant land. A limited portion of the District is adjacent to the lake.
- 4.) **MULTIPLE RESIDENTIAL (R3)** - R3 Districts are intended for attached multiple-family dwellings at a greater density than found in the R1 and R2 Districts. Perhaps the most desirable vacant property adjacent to the lake is within this District. New development will be strongly protected from non-compatible uses.
- 5.) **RETAIL BUSINESS (B1)** – B1 Districts were established to protect and foster existing limited business districts. Selected retail and service businesses are to be promoted.
- 6.) **HIGHWAY BUSINESS (B2)** – The purpose of the B2 District is to promote retail service uses which are vehicle oriented for the use of residents and visitors. At the same time, a major goal is to protect and enhance the community by encouraging aesthetically appealing businesses with safe ingress and egress and prohibiting chaotic strip development.
- 7.) **LAKESIDE BUSINESS (B3)** – The purpose of the B3 District is to promote lake oriented uses of a residential and commercial nature.
- 8.) **ELLERY BUSINESS (B4)** – The B4 District has the purpose of promoting a variety of retail and service uses which are vehicle oriented in addition to light industrial uses not associated with nuisances or large utility systems. A major goal is to protect and enhance the community by encouraging aesthetically appealing businesses with safe ingress and egress and prohibiting chaotic strip development.

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- 9.) **AGRICULTURAL RESIDENTIAL (AR)** - AR Districts are established to provide for a compatible mix of agricultural and residential uses along with a limited number of business uses. Clearly, the intent is to protect and provide agricultural uses and preserve the rural character of the neighborhood as well as providing for natural buffers.
- 10.) **AGRICULTURAL (A)** – Agricultural districts are primarily agricultural lands with scattered large lot residential units. Municipal utilities are to be discouraged in this district. Some commercial development is allowed along with recreational facilities.
- 11.) **INDUSTRIAL (I) FLOATING** - The purpose of the Industrial District is to provide space for new and expanding non-noxious industry in such a way as to protect nearby residential uses. Undeveloped industrial land may, in the interim, be utilized for agricultural purposes but new residential uses are not encouraged.

#### **SECTION 402 – Uses Permitted**

The following set of tables establishes the uses permitted by special use permit, by right, with no permit, or prohibited within the Town of Ellery's Zoning Districts. All uses are subject to the general provisions or supplemental regulations contained within this Law. General provisions and supplemental regulations applicable to uses in all zoning districts are given in Article V and Article VI of this Law.

USE TYPE	Refer to SECT #	R-1	R-1 WB	R-2	R-3	B-1	B-2	B-3	B-4	AR	A	I (floating)
AGRICULTURAL USES												
AGRICULTURAL BUILDING	512				R		R		R	R	R	R
AGRICULTURAL LAND USE	512				N		N		N	N	N	N
AGRICULTURE - LIMITED	512				N		N		N	N	N	N
ANIMAL FARM (MINK, ETC.)											N	
BLACKSMITH SHOP											S	
FARM ANIMALS (NON-COMMERCIAL)	628	SN	SN	SN	SN	SN		SN		R	R	
FARMERS MARKET	609									S	S	
FRUIT PROCESSING PLANT											S	S
HORTICULTURE - PRIVATE		N	N	N	N	N	N	N	N	N	N	N
NURSERY / GREENHOUSE - COMMERCIAL							S		S	S	R	
ROADSIDE STAND - GENERAL	609					S	S		S	S	S	
ROADSIDE STAND - LIMITED	609			N	N	N	N	N	N	N	N	N
SAWMILL - COMMERCIAL											S	S
WINERY						S	S		S		S	
RESIDENTIAL & RELATED USES												
ACCESSORY/EFFICIENCY APARTMENT / RESIDENTIAL CONVERSION	603	S	S							S		
APARTMENT ABOVE COMMERCIAL STOREFRONT												
CLUSTER RESIDENTIAL DEVELOPMENT	602	S	S	S	S	S	S	S	S	S	S	
CUSTOMARY ACCESSORY USE		R	R	R	R	R	R	R	R	R	R	R
DORMITORY / GROUP HOME												
DUPLEX DWELLING (2 UNITS) - ATTACHED				R	RS	S	S	S	S	S	R	
FUNNELING - WATERFRONT LOT DIVISION	638				RS	RS	RS	RS	RS	RS	RS	
GARAGE - ACCESSORY		R	R	R	R	R	R	R	R	R	R	R
MANUFACTURED HOUSING												
MOBILE HOME - TEMPORARY	632										S	
MOBILE HOME DWELLING - DETACHED (DOUBLE-WIDE)	629 & 632			S		S	S	S	S	S	S	
MOBILE HOME DWELLING - DETACHED (SINGLE-WIDE)	629 & 632										S	
MOBILE HOME PARK	630											
MULTIPLE DWELLINGS (3-5 UNITS) - ATTACHED	604				S			S	S		S	
MULTIPLE DWELLINGS (6+ UNITS) - ATTACHED	604				S			S	S		S	
NURSING HOME / REST HOME / HEALTH CENTER, HOME FOR AGED							S		S	S	S	
SENIOR HOUSING (3+ UNITS) - ATTACHED										S		
SINGLE FAMILY DWELLING - DETACHED (CONV., PREFAB., MOD.)		R	R	R	R	R	R	R	R	R	R	
TEMPORARY DWELLING UNITS (TRANSPORTABLE)	631	SN	SN	SN	SN	SN	SN	SN	SN	S	SN	
TRANSIENT/COMMERCIAL USE OF DWELLING UNITS	641			R	R	R	R	R	R	R	R	
R = By Right - Permit Required - No Hearing N = No Permit - Abide by Laws / Rules						S = Special Use - Permit & Hearing Required BLANK = Use Not Allowed		TOWN of ELLERY LAND USE TABLE				



USE TYPE	Refer to SECT #	R-1	R-1 WB	R-2	R-3	B-1	B-2	B-3	B-4	AR	A	I (floating)
COMMERCIAL USES												
Animal Services												
ANIMAL HOSPITAL / VETERINARY											S	
ANIMAL SHELTER											S	
FEED & SEED SHOP							S		S		S	
KENNEL BUSINESS							S		S		S	
PET STORE / TACK SHOP							S		S		S	
Artist / Crafts Shops												
ART AND CRAFT STUDIOS / SHOP												
ARTISAN SHOP										S	S	
CUSTOM WORKSHOP							S		S			
CUSTOM WORKSHOP - LIMITED							R		R		S	
Eating & Drinking Establishments												
BAR (LIVE ENTERTAINMENT / NO LIVE ENTERTAINMENT)							S		S			
BREW PUB / MICRO BREWERY												
RESTAURANT	606						S	S	S		S	
Financial Services												
BANK / CREDIT UNION							S		S			
Food & Beverage - Retail Sales												
BAKERY SHOP						S	S		S	S	S	
CORNER GROCERY STORE / CONVENIENCE STORE / MINIMART							S		S			
FARMERS MARKET												
FOOD SUPERMARKET							S		S			
LIQUOR STORE							S		S			
Lodging												
BED AND BREAKFAST / BOARDING HOME					S				S	S	S	
HOTEL / MOTEL							S		S			
CABINS / COTTAGES - COMMERCIAL								S	S		S	
Medical / Health Services												
CLINIC / HEALTH CARE FACILITY												
MEDICAL BUILDING												
Miscellaneous & Other Retail / Commercial												
FUNERAL HOME							S		S		S	
HOME OCCUPATION	607	S	S	S	S	S	S	R	S	S	S	
HOUSEHOLD SALE / GARAGE SALE	608	N	N	N	N	N	N	N	N	N	N	
LOADING/UNLOADING FACILITY	616					S	S	S	S		R	R
MONUMENT SALES							S		S	S	S	
RENTAL STORE							S		S			
SELF STORAGE FACILITY - COMMERCIAL	643											
R = By Right - Permit Required - No Hearing N = No Permit - Abide by Laws / Rules												
S = Special Use - Permit & Hearing Required BLANK = Use Not Allowed							TOWN of ELLERY LAND USE TABLE					

USE TYPE	Refer to SECT #	R-1	R-1 WB	R-2	R-3	B-1	B-2	B-3	B-4	AR	A	I (floating)
<b>COMMERCIAL USES (cont.)</b>												
<b>Parking - Commercial</b>												
PARKING, COMMERCIAL LOT	615					S	S	S	S	S	S	R
<b>Personal Services</b>												
ADULT ENTERTAINMENT	640					S	S		S			
BARBER / BEAUTY SHOP						S	S		S	S	S	
BARBER / BEAUTY SHOP - LIMITED							R					
DANCE / MUSIC STUDIO						S	S	S	S	S	S	
DAYCARE CENTER - ADULTS / CHILDREN							S		S		S	
HEALTH / PERSONAL CARE										S	S	
LAUNDRY / DRY CLEANING SHOP							S		S			
PHOTOGRAPHY STUDIO						S	S		S		S	
PHOTOGRAPHY STUDIO - LIMITED							R		R			
<b>Professional Offices</b>												
PROFESSIONAL / BUSINESS OFFICE						S	S		S		S	
PROFESSIONAL / BUSINESS OFFICE - LIMITED							R		R			
REALTY OFFICE						S	S		S		S	
REALTY OFFICE - LIMITED							R		R			
<b>Repair Service / Residential Storage Service</b>												
APPLIANCE REPAIR SHOP							S		S			
APPLIANCE REPAIR SHOP - LIMITED							R		R		S	
BOAT STORAGE BUSINESS								S	S		S	
<b>Retail Sales - General</b>												
ANTIQUE SHOP / STORE						S	S		S	S	S	
AUCTION BUSINESS											S	
BLDG. CONTRACTOR BUSINESS											S	
BLDG. MATERIALS STORE											S	S
CATALOG STORE							S		S			
DEPARTMENT / VARIETY STORE							S		S			
DRUGSTORE (PHARMACY)						S	S		S			
FARM MACHINERY / IMPLEMENTS STORE											S	S
FLORIST SHOP						S	S		S		S	
FURNITURE SHOP (SMALL)							S		S			
GIFT SHOP						S	S		S	S	S	
HARDWARE / GLASS / PAINT STORE							S		S	S	S	
LOCKSMITH SHOP							S		S		S	
MULTI TENANT PLAZA												
NEWSSTAND							S		S			
PLUMBING / HEATING SHOP							S		S			
RETAIL STORE - LIMITED										S	S	
SHOPPING CENTER / MALL	605						S		S			
SPECIALTY SHOP										S	S	
<b>Vehicle Sales, Service, &amp; Repair / Gas Stations</b>												
AUTO BODY REPAIR SHOP / TOWING SERVICE	611						S		S		S	
VEHICLE REPAIR SHOP / TOWING SERVICE	611						S		S		S	
VEHICLE SERVICE STATION	612						S		S			
<b>R = By Right - Permit Required - No Hearing</b> <b>N = No Permit - Abide by Laws / Rules</b> <b>S = Special Use - Permit &amp; Hearing Required</b> <b>BLANK = Use Not Allowed</b>												
<b>TOWN of ELLERY LAND USE TABLE</b>												

USE TYPE	Refer to SECT #	R-1	R-1 WB	R-2	R-3	B-1	B-2	B-3	B-4	AR	A	I (floating)
<b>COMMERCIAL USES (cont.)</b>												
<b>Wholesale Business</b>												
DURABLE GOODS WAREHOUSE											S	S
NONDURABLE GOODS WAREHOUSE											S	S
FUEL / MATERIAL STORAGE WAREHOUSE											S	S
<b>PUBLIC &amp; CIVIC USES</b>												
AIRPORT / AIRSTRIP / HELIPORT	635										S	S
CEMETERY / CREMATORY / PET CEMETERY											S	
CHURCH / RECTORY / CHURCH STORE							S		S		S	
FIRE HALL / FIRE STATION												
FRATERNAL MEETING FACILITY / CLUB							S		S		S	
LARGE GROUP GATHERING	627	S	S	S	S	S	S	S	S	S	S	
LIBRARY / MUSEUM / GALLERY							R		R	R	R	
MUNICIPAL OFFICE						N	N	N	N		N	
PUBLIC PARK – ACTIVE / PASSIVE		N	N	N	N	N	N	N	N	N	N	N
PUBLIC RESTROOMS												
SCHOOL / COLLEGE - PUBLIC / PRIVATE							S		S		S	
TELECOMMUNICATIONS TOWER	1401								S	S	S	
UTILITIES - PUBLIC (E.G. WATER, SEWER)		N	N	N	N	N	N	N	N	RN	N	N
UTILITIES - QUASI-PUBLIC (E.G. TELEPHONE)		S	S	S	S	R	R	R	R	RN	S	R
<b>CONSERVATION USES</b>												
FORESTRY / LUMBERING / REFORESTATION										N	N	N
GAME FARM / FISH HATCHERY / PRESERVE											N	
POND									N	N	N	N
SOLAR ENERGY SYSTEM	621	SN	SN	SN	SN	SN	SN	SN	SN	SN	SN	SN
TOPSOIL REMOVAL	636	N	N	N	N	N	N	N	N	N	N	N
WILDLIFE HABITAT		N	N	N	N	N	N	N	N	N	N	N
WIND ENERGY SYSTEM, SMALL - PRIVATE												
<b>RECREATION &amp; ENTERTAINMENT USES</b>												
AMUSEMENT PARK							S		S		S	
BOATHOUSE / DOCK / PIER - MUNICIPAL				S	S		S	S	S		S	
CHURCH CAMP				S								
CIRCUS / CARNIVAL - TEMPORARY											S	
COMMERCIAL RECREATION							S		S		S	
DRIVE-IN MOVIE - OUTDOOR	610						S		S		S	
ELECTRONIC GAME ROOM							S		S		S	
GOLF COURSE - PUBLIC / PRIVATE											S	
MARINA / TACKLE SHOP	614							S			S	
MOVIE THEATER (SINGLE / MULTIPLEX)							S		S		S	
RECREATION CAMP, SEASONAL - PRIVATE	642										R	
RECREATION CAMP - PUBLIC / QUASI-PUBLIC											S	
RIDING ACADEMY / STABLE											R	
RIFLE RANGE / SKEET / GUN CLUB											S	
SKI AREA - COMMERCIAL											S	
SWIMMING POOL - PUBLIC												
TENNIS COURT - PUBLIC / PRIVATE							S		S		S	S
TENT MEETING											R	
SEASONAL RECREATION / TRAVEL TRAILER PARK - COMMERCIAL	633										S	
R = By Right - Permit Required - No Hearing N = No Permit - Abide by Laws / Rules						S = Special Use - Permit & Hearing Required BLANK = Use Not Allowed			<b>TOWN of ELLERY LAND USE TABLE</b>			

USE TYPE	Refer to SECT #	R-1	R-1 WB	R-2	R-3	B-1	B-2	B-3	B-4	AR	A	I (floating)
INDUSTRIAL USES												
ELECTRONIC & SMALL PARTS MFG.							S		S		S	S
GAS / OIL WELL										N	N	N
GAS COMPRESSOR	622										S	S
GRAVEL AND SAND OPERATION											S	S
JUNK / SCRAP YARD	624											S
LIMITED INDUSTRY, GENERAL												S
MACHINERY SHOP											S	S
MANUFACTURING OF FOOD PRODUCTS												S
MANUFACTURING, GENERAL												S
RESEARCH LABORATORY - COMMERCIAL							S		S		S	S
VEHICLE DISMANTLING YARD	624										S	S
WECS - COMMERCIAL												
OTHER USES												
BOATHOUSE - PRIVATE		S	S	S	S			S			S	
DEMOLITION		R	R	R	R	R	R	R	R	R	R	R
FENCES / WALLS	618	RSN		RSN	RSN	RSN	RSN	RSN	RSN	RSN	RN	RSN
GASOLINE / VOLATILE FUEL TANK	634					R	R	R	R	R	N	N
HEATING FUEL TANK (E.G. OIL, PROPANE)	634							R		N	N	N
HEAVY VEHICLE PARKING	626						N	N	N	N	N	N
OPEN PORCH / DECK	508	R	R	R	R	R	R	R	R	R	R	R
OUTDOOR STORAGE - RECREATIONAL VEHICLE	614 & 631	N	N	N	N	N	N	N	N	N	N	N
PARKING, PRIVATE	615	N	N	N	N	N	N	N	N	N	N	N
PORTABLE TOILETS	637									S	S	
SIGNS	617	RSN	RSN	RSN	RSN	RSN	RSN	RSN	RSN	RSN	RSN	RSN
STORAGE STRUCTURE (150 SQ. FT. OR LESS)	625	R	R	R	R	R	R	R	R	R	R	R
STORAGE STRUCTURE (OVER 150 SQ. FT.)	625	S	S	S	S					S	S	
SWIMMING POOL – PRIVATE	613	R	R	R	R	R	R	R	R	R	R	
TELEVISION DISH ANTENNA	620	Deleted by local law #2 - 2013										
TENNIS COURT - PRIVATE		S	S	S	S	S	S	S	S	S	R	
TOWER - NONCOMMERCIAL (OVER 60 FT.)	619										S	
UNLICENSED VEHICLE	623	N	N	N	N	N	N	N	N	N	N	N
PORTABLE HOME STORAGE UNITS	644	N	N	N	N	N	N	N	N	N	N	N
R = By Right - Permit Required - No Hearing N = No Permit - Abide by Laws / Rules		S = Special Use - Permit & Hearing Required BLANK = Use Not Allowed					TOWN of ELLERY LAND USE TABLE					



**SECTION 403** – Density Standards - Building Setback, Lot Area Requirements and Structure Requirements regarding Maximum Building Height and Minimum Floor Space Area:

Town of Ellery - ZONING DISTRICTS AREA STANDARDS SUMMARY TABLE									
DISTRICT / TYPE OF USE		MINIMUM LOT SIZE (SQ. FEET)	MAX. LOT COVER	MINIMUM LOT WIDTH (FEET)	SETBACKS			STRUCTURE	
					FRONT YARD (FEET)	SIDE YARDS (FEET)	REAR YARD (FEET)	MIN. FLOOR SPACE (SQ. FT.)	MAX. BLDG. HEIGHT (FEET)
R1	<b>SINGLE-FAMILY RESIDENTIAL</b>								
	Single-Family (Primary Use)	20,000*	25%	100	50	15	50	1,000	30
	Single-Family (Accessory)	-----	-----	-----	50	10	10	-----	20
	Non-residential (Primary Use)	-----	25%	-----	50	20	50	-----	30
	Non-residential (Accessory)	-----	-----	-----	50	5	5	-----	20
R1-WB	<b>SINGLE-FAMILY RESIDENTIAL</b>								
	Single-Family (Primary Use)	10,000	25%	80	35	8	35	700	30
	Single-Family (Accessory)	-----	-----	-----	35	8	8	-----	20
	Non-residential (Primary Use)	-----	25%	-----	50	20	50	-----	30
	Non-residential (Accessory)	-----	-----	-----	50	5	5	-----	20
R2	<b>RESIDENTIAL</b>								
	Single-Family (Primary Use)	10,000	25%	80	35	8	35	700	30
	Single-Family (Accessory)	-----	-----	-----	35	8	8	-----	20
	Multi-Family (Primary Use)	5,000 + 7,000/unit	30%	90 + 8/unit	35	20 + 1/unit	35	650	30
	Multi-Family (Accessory)	-----	-----	-----	35	4 + 1/unit	10	-----	20
	Non-residential (Primary Use)	-----	25%	-----	50	20	50	-----	30
	Non-residential (Accessory)	-----	-----	-----	50	5	5	-----	20
R3	<b>MULTI-FAMILY RESIDENTIAL</b>								
	Single-Family (Primary Use)	20,000*	25%	100	50	15	50	1,000	30
	Single-Family (Accessory)	-----	-----	-----	50	10	10	-----	20
	Multi-Family (Primary Use)	25,000+* 7,000/unit	30%	120 + 8/unit	50	20 + 1/unit	50	650	30
	Multi-Family (Accessory)	-----	-----	-----	50	4 + 1/unit	10	-----	20
	Non-residential (Primary Use)	-----	25%	-----	50	20	50	-----	30
	Non-residential (Accessory)	-----	-----	-----	50	5	5	-----	20

# Town of Ellery - ZONING DISTRICTS AREA STANDARDS SUMMARY TABLE

DISTRICT / TYPE OF USE		MINIMUM LOT SIZE (SQ. FEET)	MAX. LOT COVER	MINIMUM LOT WIDTH (FEET)	SETBACKS			STRUCTURE	
					FRONT YARD (FEET)	SIDE YARDS (FEET)	REAR YARD (FEET)	MIN. FLOOR SPACE (SQ. FT.)	MAX. BLDG. HEIGHT (FEET)
B1	RETAIL BUSINESS								
	Single-Family (Primary Use)	10,000	25%	80	35	8	35	700	30
	Single-Family (Accessory)	-----	-----	-----	35	8	8	-----	20
	Multi-Family (Primary Use)	5,000 + 7,000/unit	30%	90 + 8/unit	50	20 + 1/unit	50	650	30
	Multi-Family (Accessory)	-----	-----	-----	50	4 + 1/unit	10	-----	20
	Non-residential (Primary Use)	15,000	40%	75	35	10	35	-----	30
	Non-residential (Accessory)	-----	-----	-----	35	5	5	-----	20
B2	HIGHWAY BUSINESS								
	Single-Family (Primary Use)	20,000	25%	100	50	15	50	1,000	30
	Single-Family (Accessory)	-----	-----	-----	50	10	10	-----	20
	Multi-Family (Primary Use)	25,000 + 7,000/unit	30%	120 + 8/unit	50	20 + 1/unit	50	650	30
	Multi-Family (Accessory)	-----	-----	-----	50	4 + 1/unit	10	-----	20
	Non-residential (Primary Use)	20,000	35%	100	50	20	50	-----	30
	Non-residential (Accessory)	-----	-----	-----	50	5	5	-----	20
B3	LAKESIDE BUSINESS								
	Single-Family (Primary Use)	20,000	25%	100	50	15	50	1,000	30
	Single-Family (Accessory)	-----	-----	-----	50	10	10	-----	20
	Multi-Family (Primary Use)	25,000 + 7,000/unit	30%	120 + 8/unit	50	20 + 1/unit	50	650	30
	Multi-Family (Accessory)	-----	-----	-----	50	4 + 1/unit	10	-----	20
	Non-residential (Primary Use)	20,000	35%	100	50	20	50	-----	30
	Non-residential (Accessory)	-----	-----	-----	50	20	20	-----	20
B4	ELLERY BUSINESS								
	Single-Family (Primary Use)	20,000*	25%	100	50	15	50	700	30
	Single-Family (Accessory)	-----	-----	-----	50	10	10	-----	20
	Multi-Family (Primary Use)	25,000+* 7,000/unit	30%	120 + 8/unit	50	20 + 1/unit	50	650	30
	Multi-Family (Accessory)	-----	-----	-----	50	4 + 1/unit	10	-----	20
	Non-residential (Primary Use)	15,000*	40%	75	35	10	35	-----	30
	Non-residential (Accessory)	-----	-----	-----	35	5	5	-----	20

## Town of Ellery - ZONING DISTRICTS AREA STANDARDS SUMMARY TABLE

DISTRICT / TYPE OF USE		MINIMUM LOT SIZE (SQ. FEET)	MAX. LOT COVER	MINIMUM LOT WIDTH (FEET)	SETBACKS			STRUCTURE	
					FRONT YARD (FEET)	SIDE YARDS (FEET)	REAR YARD (FEET)	MIN. FLOOR SPACE (SQ. FT.)	MAX. BLDG. HEIGHT (FEET)
AR	AGRICULTURAL RESIDENTIAL								
	Single-Family (Primary Use)	87,120 (2 acres)	-----	200	50	25	50	1,000	30
	Single-Family (Accessory)	-----	-----	-----	50	10	10	-----	20
	Multi-Family (Primary Use)	80,000 + 10,000/unit	-----	200 + 10/unit	50	30 + 3/unit	50	650	30
	Multi-Family (Accessory)	-----	-----	-----	50	5 + 2/unit	20	-----	20
	Non-residential (Primary Use)	-----	25%	-----	50	20	50	-----	30
	Non-residential (Accessory)	-----	-----	-----	50	5	5	-----	20
A	AGRICULTURAL								
	Single-Family (Primary Use)	87,120 (2 acres)	-----	200	50	25	50	700	30
	Single-Family (Accessory)	-----	-----	-----	50	10	10	-----	20
	Multi-Family (Primary Use)	80,000 + 10,000/unit	-----	200 + 10/unit	50	30 + 3/unit	50	650	30
	Multi-Family (Accessory)	-----	-----	-----	50	5 + 2/unit	20	-----	20
	Non-residential (Primary Use)	87,120 (2 acres)	25%	200	50	30	50	-----	40
	Non-residential (Accessory)	-----	-----	-----	50	10	10	-----	40
I	INDUSTRIAL (FLOATING)								
	Non-residential (Primary Use)	-----	30%	-----	50	25	50	-----	40
	Non-residential (Accessory)	-----	-----	-----	50	25	50	-----	40

\* LOTS WITHOUT DIRECT CONNECTIONS OR ACCESS TO PUBLIC SEWER OR WATER MUST BE AT LEAST 40,000 SQUARE FEET.

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# **ARTICLE V**

## **GENERAL PROVISIONS**

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## ARTICLE V GENERAL PROVISIONS

### SECTION 501 - Access to Public Streets

Except as otherwise provided for in this Local Law, every building shall be constructed or erected upon a lot, or parcel of land which abuts upon a public street unless a permanent public easement of access to a public street was of record prior to the adoption of this Law. However, this shall not preclude the creation of a private road on a 50 foot right-of-way which connects to a public road and serves 1 or more subdivided lots. Upon request from a developer, landowner(s), or other involved parties, the Municipal Board shall consider the takeover of a private roadway, but only after assurances are received by all involved parties that the roadway will be constructed to standards specified by the Municipality. The municipality is in no way obligated to take over any road even if it meets specified road construction standards.

### SECTION 502 - Contiguous Parcels

When two or more parcels of land are contiguous, and are held in one-ownership, they may be used as one building lot if combined. If not combined, a single parcel may be built upon if the parcel meets the size requirements of the district and all district front, side and rear yard setbacks can be met for the parcel containing the structure. See General Provision on Existing Substandard Sized Lots (Section 505).

### SECTION 503 - Corner Lots

Both street sides of a corner lot shall be treated as front yards in the application of bulk and area requirements and parking. Additionally, the remaining 2 yards shall be considered to be side yards and as such shall meet minimum side requirements.

### SECTION 504 - Height

- A. The height limitation of this Law shall not apply to church spires, belfries, cupolas, silos, penthouses (equipment building on a flat roof), and domes, not used for human occupancy; and this height limitation shall not apply to chimneys, ventilators, skylights, water tanks, bulkheads, similar features, and necessary mechanical appurtenances usually carried above the roof level. However, such features shall be erected only to such height as is necessary to accomplish the purpose they are to serve.
- B. The provisions of this Law shall not apply to prevent the erection above the building height limit of a parapet wall or cornice for ornament (and without windows) extending above such height limit not more than 5 feet.

### SECTION 505 - Existing Substandard Sized Lots

- A. **Purpose** – This section has the purpose of providing flexibility to the administration of this Zoning Law by allowing certain substandard lots to have structures placed on them without the need for an Area Variance.
- B. **Conditions** – An allowable use may be placed on a substandard sized lot existing and officially recorded at the time of enactment of this Zoning Law without an Area Variance if the following conditions are met:
  - 1. At the time of enactment of this Law, the substandard parcel was not contiguous with another parcel in the same ownership. Note that, if contiguous substandard lots under single ownership do exist, they must be combined to create a conforming or more conforming lot with respect to minimum lot size and minimum lot width.

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2. The substandard lot is not less than 80% of all of the applicable area standards to include minimum lot size, minimum lot width, minimum side yard, and minimum rear yard for the district in which the use is proposed to be located.
  3. The County Health Department approves the substandard lot where there are municipal utilities are not accessible.
  4. If condition B2 cannot be met but B3 has been accomplished, then the applicant can request an Area Variance from the Zoning Board of Appeals (see Variance Section) which will be granted if "Practical Difficulties" are shown to exist.

#### **SECTION 506 - Visibility at Intersections**

For the purpose of maintaining sight lines and promoting traffic safety on a corner lot in any district, no fence, wall, hedge, other structure or planting of more than 3 feet in height shall be erected or placed within the triangular areas formed by the intersecting street edge lines and the imaginary straight line down between the points 25 feet from the intersecting street edge lines along the street edge lines.

#### **SECTION 507 - Interpretation of Permitted Uses**

When a use is not specifically listed as a "*Use By Right*" or a *Use By Special Use Permit*" within any zoning district, it shall be assumed to be a prohibited use unless it is determined in a written decision by the Board of Appeals that said use is similar to permitted uses, meets the intent specified in the zoning districts, and is not inherently a nuisance, menace, or danger to the health, safety or welfare of the residents of the municipality.

#### **SECTION 508 - Preserving Yards, Courts & Open Space**

- A. Preservation of Yards, Courts and Open Space** - Rear yards, courts and other open space shall be kept undeveloped in order to meet setback and coverage requirements of this Law except as specified in subsection "B" below.
- B. Permitted Obstructions** - The following shall not be considered to be obstructions when located in the preserved yards, courts, and open space:
  1. Ground level, open patios and terraces, awnings and canopies, trellises, flag poles, or any protrusions not more than 3 feet from the wall of the structure, such as steps, bay windows, chimneys, overhanging eaves and gutters and similar uses, or children's play sets under 200 square feet in footprint area. **(Modified December 10, 2009)**
- C. Location** - All yards, courts and open space shall be located on the same undivided lot as the structure for which the setback and area requirements are required.

#### **SECTION 509 - Established Front Yards**

In an existing neighborhood where structures are not set back from the road *or lake* **(added November 14, 1991)** the distance specified by this Law, it shall be determined by the Enforcement Officer what appropriate setback will be permitted by new construction or by alterations to existing structures in order to aesthetically blend with existing adjacent structures. The varied setback will be based on the average of the setbacks of the adjacent structures. Any variation requested which is in greater variation than that permitted by this rule will require an Area Variance.

#### **SECTION 510 - Number of Residential Dwellings on a Lot (Lot Division)**

- A. Number of residential dwellings on a lot** - No more than one principal detached residential dwelling shall be constructed on a lot except in the Agricultural District when 2 acres are available per dwelling unit.

- B. Division of Lots** - No lot improved with a building or buildings shall hereafter be divided into two or more zoning lots and no portion of any zoning lot which is improved with a building or buildings shall be sold, unless all zoning lots resulting from each such division or sale and improved with a building or buildings shall not be less conforming to all the bulk regulations of the zoning district in which the property is located. However, any portion of a parcel may be removed if it is to be used with an adjacent parcel and the original parcel continues to conform to the bulk regulations.

#### **SECTION 511 - Driveways within Right-of-Ways**

When property to be developed fronts on a highway and access to the highway is desired, an approved permit from the applicable agency for the development of such highway access shall be presented. The Highway/Street Superintendent may require the installation of an appropriately sized sluice pipe where it is likely that drainage problems exist or may be created by the presence of a driveway on a public right-of-way.

#### **SECTION 511(b) - Driveway Turnarounds**

All residential dwelling construction commenced after the date of the adoption of this Section shall provide for a driveway on the premises with a driveway turnaround of sufficient area to enable a motor vehicle to enter a public highway in a forward direction, eliminating the need to back out onto a public highway. **(Added May 13, 1999)**

#### **SECTION 512 - Agriculture**

**A. Agricultural Preservation** - In order to promote, preserve and protect agricultural businesses, any portion of this Law that would reduce operational capability of an agricultural business shall be waived in that one instance. However, where a documented health or safety problem exists or would be created if sections of this Law were not adhered to, then, these sections will be enforced, but even then only to the minimum necessary. Determination or interpretations shall be made by the Zoning Board of Appeals.

**B. Manure Piles** - Manure piles may not be located within 200 feet of any neighboring water well on adjacent or nearby lots.

#### **SECTION 513 - Transition Between Districts**

**A. Purpose** - The purpose of this section is to promote harmonious use of land located at district boundaries.

**B. Conditions** - Where the Permitting Board determined there is a need to protect a residential neighborhood located in a Residential District from a permitted use in an adjacent district, the Board may:

1. Require an artificial or natural buffer such as a hedge, fence, wall, etc. which shields the residential units from the business use;
2. Require a doubling of the yard setback requirements to protect the neighborhood;
3. Control the positioning of signs, lights, parking, mechanical equipment, and any other features so as to reduce the potential nuisance; or
4. Impose other appropriate requirements.

**C. Preexisting Uses** - This section shall only apply to new construction and also include additions and enlargements.



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#### **SECTION 514 - Disputed Lot lines**

**A. Purpose** - It is the intent of this section to clarify the procedures to be followed in verifying where lot lines are in order to insure that area requirements (side yards, etc.) are met.

**B. Procedures** - When the Enforcement Officer is in doubt as to the location of lot lines and it is apparent that new development may not be in accordance with area requirements; the Enforcement Officer shall withhold the granting of the Zoning Permit until one of the following occurs:

1. Applicant provides proof such as a survey accomplished by a licensed surveyor.
2. Refer the matter to the Zoning Board of Appeals for an interpretation of documentation provided by the applicant.
3. Grant Zoning Permit after the applicant receives an Area Variance from the Zoning Board of Appeals.

#### **SECTION 515 – Unsafe Structures**

**A. Procedures** – Buildings damaged by fire, wind or other catastrophic causes as well as structures declared to be unsafe due to general dilapidation must be restored or rebuilt or demolished and removed within 6 months of the catastrophic incident or unsafe condition notification by the Code Enforcement Officer, or Fire Department (***added November 14, 1991***).

#### **SECTION 516 – Setbacks from State Highways**

In all Zoning Districts, all buildings, structures and other improvements shall have a minimum set back of thirty five (35) feet from the boundary of any New York State Highway right-of-way. (***Added May 13, 1999***)

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# **ARTICLE VI**

## **SUPPLEMENTAL REGULATIONS**

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## ARTICLE VI SUPPLEMENTAL REGULATIONS

### SECTION 601 - General Development Conditions

- A. Purpose** - Development conditions shall be attached to permits or variances when necessary or advisable to reduce or eliminate conflicts between uses or to protect the health, safety, and general welfare.
- B. Areas of Concern** - The following checklist shall be considered by the appropriate boards and administrators in their reviews of request for Building Permits, Special Use Permits and Variances. The checklist is not intended to be all inclusive and does not limit the areas of concern over which conditions may be imposed.
1. **Traffic** - Safety of ingress/egress from roadway, intersection visibility, level of anticipated new traffic generation in relation to existing road capacity and traffic, adequacy of off-street parking and loading, pedestrian safety, and/or location of structures in relation to all of the above.
  2. **Safety** - Trash disposal, steep slopes, open pits, toxic and/or flammable fluids.
  3. **Health** - Sewers/water, sunlight, air movement, junk vehicles and/or trash storage.
  4. **Character of a Neighborhood** - Development density, traffic volume, lot sizes, compatible uses, and/or buffers.
  5. **Public costs** - Road damage, need for new roads, and/or need for new utilities.
  6. **Environmental Protection** - Flood plain, wetlands, and/or natural features.
  7. **Nuisances** - Noise, odor, dust, lights, hours of operation, lot size, buffers, and/or nuisance location.
  8. **Land Use Preservation** - Agriculture, and/or open space.
  9. **Aesthetics** - Restoration, appearance, scenic views, and/or buffers.
- C. Failure to Comply** - Applicants who have received Variances or Special Use Permits with conditions attached shall be responsible for continual compliance with the specified conditions. Noncompliance with any condition shall result in revocation of the Variance/ Special Use Permit and continuance of the use shall only be allowed after reapplication for the Variance/Special Use Permit.

### SECTION 602 - Cluster Residential Development

- A. Purpose** - Cluster residential provisions are intended to allow flexibility where desirable to permit and encourage superior development of relatively large undeveloped sites; development aims may include the preservation of views or natural features, provision of amenities for common use, including recreational facilities not feasible on individual lots, and innovative groups of dwellings which will provide desirable variety in the municipal housing stock. To carry out this purpose, standards for individual lot area and dimensions may be reduced from the standards of the district in which the cluster is located, if compensating permanent common area ancillary to the dwelling units is provided in accordance with Section 602, B5.
- B. Standard for Development**
1. A cluster residential development shall not be less than 5 acres of contiguous undeveloped area under one ownership.
  2. Uses permitted shall be limited to the residential uses permitted in the district in which the cluster development is located, except that no home occupation shall be permitted.
  3. Maximum permitted reductions in individual lot standards - Any lot in a cluster development may be reduced from the standards of the district in which it is located by the following or lesser amounts:



- 
- a. Minimum lot area may be reduced by 20%.
  - b. Minimum lot width may be reduced by 10%.
  - c. Minimum rear yard, if abutting another residential lot, no reduction is permitted.
  - d. Minimum side yards may be reduced by 3 feet.
  - e. Minimum front yard standard may not be reduced.
  - f. Maximum lot coverage may be increased by 5%.
4. Compensating permanent common area ancillary to the dwelling units shall consist of all land and recreational areas held in common by the by the owners of the lots in the cluster development, exclusive of access ways, common parking areas, or other nonresidential areas which may also be held in common; further, such common space shall be of a nature and extent to be of benefit to the residents of the cluster development.
  5. Compensating permanent common area shall equal or exceed the total of individual lot area reductions.
  6. Permanent common areas shall be set aside and developed for the common use and enjoyment of all residents of the cluster development and appropriate convenient access shall be provided.
  7. Applicable general provisions and supplemental regulations of this law shall apply to all cluster residential development.

### **C. Application and Procedures for Establishing a Cluster Residential Development**

1. Application for establishing a cluster residential development shall be made to the Zoning Enforcement Officer who shall refer the application to the Municipal Board and Planning Board.
2. The application shall include:
  - a. names and addresses of owner and developer;
  - b. written statements concerning need for development and suitability of site, potential impact on abutting properties and the neighborhood, development schedule for private and common areas, method of disposition of common areas including pertinent documents regarding owner's association or other organizations and long-term maintenance, estimates of annual maintenance costs, other pertinent information;
  - c. location map drawn to scale of not less than 1 inch equals 1,000 feet showing subject parcel, existing and proposed access streets and nature of abutting development.
  - d. overall development plan drawn to scale of 1 inch equals 10 feet with contour interval of 2 feet, showing exact size and shape of the subject parcel, natural features to be preserved, proposed residential lots and their dimensions, internal and surrounding streets and all other provisions for pedestrian and vehicular access and circulation, off-street parking and loading areas, utility rights-of-ways or installations on or near the property, location, dimensions and area of proposed open space or other commonly held facilities which are part of the compensating permanent common area, comparison of total area of residential lot reduction with total area of common area, nature and location of public or private utilities which would serve the residential cluster;
  - e. preliminary landscaping and drainage plans at a scale of 1 inch equals 10 feet with 2 foot contour intervals and/or;
  - f. preliminary architectural and engineering drawing to show the nature of residential and open space or recreational facilities proposed.

### **D. Action by Municipal (Permitting) Board and Planning Board**

1. The Permitting Board will review and rule on the application for a cluster residential development expeditiously as practical and in no case later than 90 days after all information required for the application is received. The Planning Board shall make a recommendation to the Permitting Board in accordance with the article on Planning Boards.

2. The Board will consider:
  - a. need for development and suitability of site;
  - b. impact on the neighborhood, circulation system, and municipality as a whole;
  - c. feasibility and practicality of providing and maintaining common areas, including cost to prospective homeowners;
  - d. need for complete disclosure to prospective buyers of future costs and responsibilities in connection with common areas;
  - e. need to require performance bond if nature of development warrants; and
  - f. other factors which affect the viability of the proposal and the general welfare of the municipality.
3. The Permitting Board may request preliminary meetings with the applicant to provide additional information or explain the proposal.
4. The Permitting Board may hold an informational meeting in addition to a required public hearing to receive local opinion and reaction and shall make information concerning the proposal available to the public before such meetings.

### SECTION 603 – Accessory Apartments

- A. Purpose – The conversion of existing single-family dwelling to multiple-family units shall be regulated in accordance with this section for districts where conversions are specifically listed as being allowed uses. The purpose is to protect established neighborhoods (especially those that are predominantly single-family) from adverse change resulting from density increases.
- B. Conditions – The following conditions must be met, otherwise a variance shall be requested.

CONDITIONS	R1 DISTRICT
Number of Apartments Created .....	Maximum 1
Apartment Size .....	Minimum 650 sq. ft. Maximum 800 sq. ft.
Area Requirements .....	Lot must conform with R1 area requirements
Parking .....	Minimum 1 ½ spaces per unit
Size of Original Single Family Dwelling .....	Minimum 2,000 sq. ft. floor space
Accessory Building Use .....	May utilize for apartment if existing garage space is not reduced.
Character of Neighborhood .....	Will not be changed.

### SECTION 604 - Multiple Dwellings

- A. **Purpose** - Attached multiple dwellings, in districts where allowed shall be subject to Special Use Permits and where 5 or more units are proposed site plan review requirements shall also apply. Each development proposal shall be evaluated on its own merits with reasonable conditions attached.
- B. **Conditions** - The following shall be considered where appropriate for inclusion.
  1. Special Use Permit Conditions -
    - a. Safe Ingress and Egress
    - b. Roadway Ownership and design. Insure roadways and fire lanes are adequate for year-round fire equipment movement.

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- c. Parking in accordance with the supplemental section and additionally, auxiliary parking.
  - d. Storage facilities such that adequate indoor storage is available. See supplemental sections.
  - e. Utilities to include sewer, water, telephone, electric, cable TV, etc.
  - f. Common property ownership and the creation of an owner's association.
  - g. Sign size, location, lighting, etc. See supplemental [section on signs](#).
  - h. Recreational uses, active and passive.
  - i. Buffers, natural and man-made as necessary.
  - j. Density of development as specified in the area requirements.
  - k. Other reasonable and appropriate conditions as deemed necessary by the Permitting Board. See *supplemental section on development conditions*.
2. Site Plan Review Conditions - See [site plan review section](#).
3. Fire Regulations - Dry hydrants and residential sprinkler systems shall be required for attached multiple dwellings where no municipal water system (with fire-fighting capabilities) exists and the following criteria are exceeded.

	<b>FIRE FIGHTING CAPABILITY 1/</b>	
	<b><u>Optimum</u></b>	<b><u>Minimal</u></b>
<b><u>Dry Hydrant Only</u></b> required if:		
- Number of units in project exceeds the specified number and 1 of the following criteria is exceeded:	20 units	15 units
-Maximum units per acre exceeds:	7 units	5 units
-Maximum units per building exceeds:	8 units	6 units
<b><u>Sprinkler System 2/ &amp; Dry Hydrant</u></b> required if:		
-Number of units in project exceeds the specified number and 1 of the following criteria is exceeded:	30 units	25 units
Maximum units per acre exceeds:	9 units	7 units
-Maximum units per building exceeds:	15 units	12 units

**Notes:**

- 1/** Based on response time, availability of fire-fighting personnel year round fire lane access, topography, fire equipment potential, and year-round availability of sufficient water and ISO rating.
- 2/** Refers to residential sprinkler system as defined in NFPA Fire - Code 13D.

## **SECTION 605 - Shopping Center**

- A. Purpose** - Commercial shopping centers or malls in districts where allowed shall be subject to Special Use Permits and where 5,000 or more square feet of floor space is being proposed, site plan review requirements shall also apply. Each development proposal shall be evaluated on its own merits with reasonable conditions attached.
- B. Conditions** - The following shall be considered for inclusion, where appropriate -
- 1. Special Use Permit Conditions** -
    - a. Safe ingress and egress.
    - b. Alleys, fire lanes, and all other means of fire equipment movement shall be adequate for year-round movement.

- c. Dry hydrants shall be required where year-round access to pond, stream, or other source of water for fighting fires is not available.
- d. Sufficient parking in accordance with the supplemental section on parking ([Section 616](#)).
- e. Loading and unloading spaces in accordance with the supplemental section on loading.
- f. Signs shall be in conformance with the supplemental section on signs ([Section 617](#)).
- g. Buffers, either natural or man-made, shall be required where a conflict of uses needs to be reduced to acceptable levels.
- h. Trash should be handled in accordance with the supplemental section on trash.
- i. Other reasonable and appropriate conditions as deemed necessary by the permitting board. See supplemental section on development conditions ([Section 601](#)).

2. **Site Plan Review Conditions** - see site plan review section ([Section 1101](#)).

## SECTION 606 – Restaurants

- A. **Purpose** – Restaurants are regulated in order to promote safe, appealing establishments with minimal nuisances present.
- B. **Permanent Conditions** – The following conditions must be met as required by the Permitting Board in order to receive the Special Use Permit.
  - 1. **Parking** – See supplemental section on parking to determine the number of off-street parking spaces required. The location and layout of the parking spaces may be specified in the permit.
  - 2. **Traffic Safety** – The entrance and exit location and size shall be safely designed with minimal obstructions. Pedestrian safety shall also be considered.
  - 3. **Nuisances** – Noises from electric motor, compressors, etc. or glare from lighting shall be minimal.
  - 4. **Signs** – All sign regulations as specified in the supplemental section shall be complied with fully.
  - 5. **Decks** – Any deck, patio, porch or similar area utilized by customers shall be approved and in accordance with all area requirements.
  - 6. **Trash** – All trash shall be located inconspicuously and in well-maintained containers that minimize the chance for spillage, unhealthy, or unsightly conditions.
  - 7. **Buffers** – As is required by the Permitting Board, appropriate buffers may be required which shield adjacent properties from any adverse conditions associated with the restaurant (e.g., parking lots, lighting, etc.).
  - 8. **Entertainment** – The applicant shall specify the type of entertainment to be utilized, location in building, maximum frequency and hours of entertainment. No nuisance shall be permitted; and if it becomes apparent that any of these provisions are creating a nuisance, a public hearing shall be required to reevaluate the original application.
  - 9. **Other** – Any other condition as deemed reasonable and necessary may be required by the Permitting Board.
- C. **Preexisting Restaurants** – Restaurants existing before the enactment of this Law shall be required to comply with the above conditions: B3, Nuisances; B7, Buffers; and B8, Entertainment. A public hearing should be held to determine the conditions which can be reasonably met and the period of time for which the condition must be met. A minimum of 1 year shall be allowed for compliance but a longer period shall be specified where compliance will be more complex. Preexisting restaurants shall be subject to this section 1 year from the date of enactment of this Law.



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## SECTION 607 - Home Occupations

- A. **Purpose** - To preserve the residential character of neighborhoods, Home Occupations shall be controlled to various degrees dependent upon the density of development of a neighborhood and the planned use of the area as designated by the Zoning District.
- B. **Applicability** - For each proposed Home Occupation the enforcement officer shall determine the district and the distance from the Home Occupation to the parcel of the adjacent owners and then determine from the following matrix which category of control applies. The Permitting Board will then use this information to determine which column in Part C below will be used to review the proposal.

### CATEGORY OF HOME OCCUPATION:

DISTRICT NAME	DISTANCE IN FEET FROM \ <sup>1</sup> HOME OCCUPATION TO ADJACENT OWNERS PARCEL	MOST CONTROLLED	VERY CONTROLLED	MODERATELY CONTROLLED	LEAST CONTROLLED
B-3	0 +	X			
R-1	Less than 50	X			
R-2	50 - 149	X	X		
R-1-WB	150 +	X	X	X	
AR-1, A-1 & A-2	Less than 50	X	X		
	50 - 149	X	X	X	
	150 +	X	X	X	X
R-3	Less than 20	X	X		
B-1	20 - 49	X	X	X	
B-2 & B-4	50 +	X	X	X	X
I-1	Less than 50	X	X	X	
	50 +	X	X	X	X

**C. Conditions**<sup>\2</sup>

**CATEGORY OF HOME OCCUPATION**

<b>CONDITIONS</b>	<b>MOST CONTROLLED</b>	<b>VERY CONTROLLED</b>	<b>MODERATELY CONTROLLED</b>	<b>LEAST CONTROLLED</b>
Floor Area-Maximum (% of Living Space)	10%	15%	20%	25%
Use of Accessory Bldg.				
- <i>Exist. Acc. Bldg. Only (Max. Sq. Ft.)</i>	No	100	400	600
- <i>New Accessory Bldg.</i>	No	No	No	500
Use of Land Outside of Structure (% lot)	0%	0%	0%	1%
Use of Nonhousehold Equipment	No	No	Yes	Yes
On Premise Sale of Goods to Client	No	Yes	Yes	Yes
On Premise Service to Client	No	Yes	Yes	Yes
Max. Number of Clients at One Time <sup>\3</sup>	0	1	3	No limit
Number of Employee "Equivalents" (Non-family) Working on Premise	0	1	2	3
Outside Display of Goods	No	No	Yes	Yes
Signs Allowed:	Yes	Yes	Yes	Yes
- <i>Location of Sign:</i>	On Dwelling	On Dwelling	Anywhere	Anywhere
- <i>Sign Size:</i>	3 sq. ft.	3 sq. ft.	3 sq. ft.	3 sq. ft.
- <i>Number of Signs:</i>	1	1	1	2
Lighting of sign	No	No	No	No
Hours of Operation may be Specified	Yes	Yes	Yes	Yes
Parking Required				
Sufficient for Peak Demand	N/A	Yes	Yes	Yes
Min. Spaces for Employees	0	1	2	3
Min. Spaces for Clients	0	1	2	3
Effects on Character of Neighborhood (Nuisances such as noise, lights, odors)	None	Minimal	Minimal	Some
Permit Required	None	Special Use	Special Use	Special Use

**Refer to the NOTES on the following page for reference to the above chart.**

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**NOTES:**

- (1) To determine the distance from the Home Occupation to the property line, measure from the outer wall of the structure in which the Home Occupation is located to the closest property line. When the distance is close to the limit specified in this section, e.g., 50 feet, assume that the distance falls into the "higher" category, e.g., 50-149 feet.*
- (2) The above conditions are guidelines only. The Permitting Board is authorized to vary the conditions in a reasonable manner based on the circumstances in each case when the effects on the character of the neighborhood will still be minimal.*
- (3) A client in the case of a Day Care Center is the child or adult that is cared for at the day care facility.*

**D. Preexisting Home Occupations** - Home occupations legally existing at the time of enactment of this Law shall not generally be required to comply with the above conditions. However, where there is clear evidence that a nuisance is present, due to an increased level of activity or a substantial change in the nature of the home occupation, the use shall be subject to a Special Use Permit proceeding and any of the above conditions may be imposed on the use where reasonably possible. Compliance shall take place within the period specified by the Permitting Board but shall be no less than 6 months.

**E. Home Occupation Uses** - The following uses illustrate the types of uses that typically would be "conditionally" allowed within the four categories established. This list is **NOT** all inclusive.

- 1. Most Controlled** - Typing Business, Appraisal Business, Marketing Books, Consulting.
- 2. Very Controlled** - Boat Storage, Delivery Service, Catering, Computer Service, Art Studio, Nail Care, Beauty / Barber Shop, Professional Office, Veterinarian, Photography Studio, Locksmith, Greenhouse, Fire Equipment Sales, Scuba Equipment Sales, Software Sales, Electrical (sales, parts, services), Bakery, Florist Shop, Gift Shop, Feed and Seed, Antique Shop, Dog Grooming, Upholstery Shop, Video Rentals, Bed & Breakfast, Day Care Center, Therapy Massage.
- 3. Moderately Controlled** - Auto Detailing, Cafe / Coffee Shop, Saw/Blade Sharpening, Boat Motor Repair, Custom Woodshop, Blacksmith, Plumbing Shop, Funeral Home, Realty Office, Christmas Tree Sales, Roadside Stand, Molded Cement, Building Contractor, Repair Shop By Type, Kennel, Tattoo Parlor, Bookstore / Newsroom.
- 4. Least Controlled** - Auto Body, Sawmill, Used Car Lot.

**F. Home Occupation Limitations** - All Home Occupations shall be subject to the following limitations of the Town's Zoning Ordinance:

- 1.** A home occupation must be conducted by the home occupation permit applicant within the dwelling which is the primary residence of the applicant or in an accessory building thereto which is normally associated with a residential use and shall be clearly subordinate to the principal use of the lot as a dwelling.
- 2.** There shall be no exterior evidence that the property is used in any way other than for a dwelling except as specified or allowed by this zoning ordinance.
- 3.** No mechanical or electrical equipment shall be employed other than machinery or equipment customarily found in the home, associated with a hobby or avocation not conducted for gain or profit, or customary for a small office.
- 4.** No outside display or storage of goods, equipment or materials used in connection with the home occupation shall be permitted except as specified or allowed by this zoning ordinance.
- 5.** The home occupation permit applicant and other persons who use the dwelling as their primary residence may be involved in the home occupation use. In addition and as allowed by this zoning ordinance, one to three nonresident person(s), whether paid or not for their services, may be involved in the home occupation use on the property provided that such person(s) on the property and the hours of such person(s) shall be limited to 8:00 AM to 5:00 PM, Monday through Friday.

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6. The dwelling in which the home occupation is being conducted shall be open for inspection to the Town's zoning enforcement officer or a town designated representative during reasonable hours.

7. A permit for a home occupation is valid for only the original applicant and is not transferable to any resident, address or any other occupation. Upon termination of the applicant's residency, the home occupation permit shall become null and void.

8. There shall be no customers or clients, except for schools of special education, whose class size shall not exceed more than four (4) pupils at any given time and not more than eight (8) pupils in any one day.

9. If there are any changes proposed in the dwelling or in the plumbing or the electrical system, appropriate permits will be required. Approval of this permit or of any other permit does not relieve the Applicant from compliance with the provisions of any applicable ordinances or laws of the town, the county, or the state.

10. A permit for a home occupation shall be revocable by the Town's code enforcement officer or a town designated representative because of the failure of the owner or operator of the use covered by the permit to observe all requirements of the permit and/or the Zoning Ordinance.

#### **SECTION 608 - Household Sales**

In order to preserve the character of neighborhoods, garage and other similar types of noncommercial sales (lawn sales, household sales, flea market, etc.) shall be subject to the following conditions:

**A. Frequency** - Sales shall be limited to 3 periods of 3 days each per year per property owner.

**B. Signs** - refer to supplemental sign section.

**C. Fees** - No fees shall be charged for household sales and permits are not required.

#### **SECTION 609 - Roadside Stand / Farm Market**

**A. Definition** - For the purpose of this Law, roadside stands shall consist of two types, general roadside stand and limited roadside stand.

1. **General Roadside Stand** - Produce sold but not necessarily grown on premises where stand is located

2. **Limited Roadside Stand** - All produce grown on premises (lots) where the stand is located and are sold only by the owner(s) of said premises. Also, the stand may only be located at the sales location during the produce sales season.

#### **B. Regulations**

1. **General Roadside Stand** - permitted by Special Use Permit in accordance with appropriate portions of [Sections 601 \(General Conditions\)](#).

2. **Limited Roadside Stand** - Permitted by Right in accordance with part B3 of this section. No permit shall be required nor shall a fee be charged.

#### **3. All Roadside Stands / Farm Markets shall comply with the following:**

a. There shall be one 10ft. x 20ft. parking area per 200 sq. ft. of selling and display area, with a minimum of 2 spaces. Parking spaces are exclusive of driveways and turnarounds. For the purpose of calculating the required number of parking spaces, production facilities, garden plots, planting beds and outdoor storage area opened to the public are excluded. Pick-your-own operations will require a greater number of off road parking spaces based on expected number of cars per day.

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- b. **FRONT YARD**- 20 feet from the right of way line to front of sales area, excluding production facilities, garden plots, planting beds and outdoor storage areas open to the public. No parking is allowed within front yard setback or within 20 feet of the edge of roadway, whichever distance is less.
  - c. **SIDE YARD** - 20 foot setback from property line.
  - d. **REAR YARD**- 40 foot setback from property line. Where a roadside stand or farm market is located on a separate parcel of land, maximum lot coverage by buildings shall be 30%. Total coverage, including parking areas, shall not exceed 70%.
  - e. **SIGNS**: Seasonal signs are allowed in accordance with Section 617 of this law.
  - f. **LIGHTING**: No outdoor lighting shall produce glare beyond the boundary of the property.
  - g. **BUFFERS**: Where necessary as determined by the permitting board, buffers may be required to mitigate negative impacts on adjacent or nearby residential properties.
  - h. Hours of operation shall be set which are compatible with the neighborhood.
  - i. Safe entry and exit from the property shall be maintained.

**C. Preexisting Roadside Stands** - All stands utilized in the 24 month period prior to the effective date of this Law shall be exempt from all regulations found in this section. However, any expansion or alterations shall be subject to regulations of this section.

#### **SECTION 610 - Drive-in Establishment**

- A. Definition** - Drive-in establishments shall include those businesses designed to either wholly or partially provide services to customers while in their vehicles parked on the premises.
- B. Regulations** - Drive-in establishments shall be allowed in districts where they are listed and the following conditions shall be considered prior to granting the permit:
  - 1. supplemental [section 601 on General Conditions](#); and/or
  - 2. traffic safety;
    - a. *Provisions for traffic to “back up” off of public streets shall be provided.*
    - b. *Safe entry and exit shall be provided with only one entry and exit point.*
    - c. *Proper parking, which allows convenience and safety, shall be provided.*
    - d. *Pedestrian safety shall be considered when constructing the facility and parking spaces.*
  - 3. Location considerations will be analyzed to insure that the character of the neighborhood will not be significantly diminished.
  - 4. Hours of operation.
  - 5. The need for natural or artificial buffers, especially when situated near residential structures.

#### **SECTION 611 - Vehicle Repair Shop/Auto Body Repair Shop**

- A. Purpose** – In order to preserve the character of neighborhoods and promote safe and aesthetically pleasing repair shops, all such shops shall be reviewed in accordance with the conditions which follow:
- B. Conditions** - The following conditions shall be met -
  - 1. *Storage of Vehicles Awaiting Repairs* -
    - a. 1 - 3 vehicles stored outside awaiting repair shall be kept in one contiguous location and neatly arranged.
    - b. Where 4 to 10 vehicles are temporarily stored outdoors they shall be screened by an appropriate fence which makes it impossible to view the vehicles from adjacent roads or properties.
    - c. The temporary storage of over 10 vehicles outdoors shall be prohibited.
  - 2. *Hours of Operation* - The hours of operation shall be derived so as to limit the noise during non-business hours.



3. *Area Requirements* – The lot on which the shop is to be located shall be a minimum of 1 ½ times the minimum lot size for the appropriate district (other use category).
4. *Buffers* – Where deemed necessary, appropriate buffers shall be required.
5. *Other Conditions* – Conditions listed in supplemental section on “General Conditions” may be required where deemed appropriate.

**C. Preexisting Uses -**

1. *Expansion and enlargements* - All expansions or enlargements of repair shops in existence prior to enactment of this Law shall be subject to regulations of this section.
2. *Preexisting Uses* - Where it is determined at a public hearing held by the Municipal Board that a nuisance exists with a preexisting use, then B1, Vehicle Storage; B2, Hours of Operation; B4, Trash; can be required to be enforced within a reasonable time period.

**SECTION 612 – Motor Vehicle Service Stations**

- A. **PURPOSE** - Gas stations, as defined in the definitions section, are regulated in this section to promote safe and properly located stations which are visually attractive.
- B. **ENTRANCE/EXIT** - No public garage or motor vehicle service station, or private garage of more than 5 vehicles shall have a vehicular entrance closer than 200 feet to an entrance to a church, school, theater, hospital, public park, playground, or fire station. Such measurement shall be taken as the shortest distance between such entrances across the street, and along the street frontage if both entrances are on the same side of the street or within the same square block.
- C. **LOCATION** - All motor vehicle service stations shall be so arranged and all gasoline pumps shall be so placed as to require all servicing on the premises and outside the public way; and no gasoline pump shall be placed closer to any side property line than 50 feet.
- D. **STORAGE OF VEHICLES WAITING REPAIRS** –
  1. One to three vehicles stored outside waiting repairs shall be kept in one contiguous location and neatly arranged.
  2. Where four to ten vehicles are temporarily stored outdoors, they shall be screened by an appropriate fence which makes it impossible to view the vehicles from adjacent roads or properties.
  3. The temporary storage of over ten vehicles outdoors shall be prohibited.
  4. All parts shall be enclosed within a screened/fence area or stored inside of a building.
- E. **ABANDONED TANKS & PUMPS** – All abandoned tanks and pumps shall be secured in accordance with the NYS Uniform Fire and Building Code.

**SECTION 613 – Private Swimming Pools**

- A. **CONDITIONS** - A private swimming pool installed or maintained as an accessory to a residential use shall, *at a minimum*, meet the following requirements and the requirements of the New York State Building Code:
  1. **FENCE** - Any such pool which is installed in-ground shall be completely enclosed by a security fence not less than 4 feet in height and for all pools there shall be gates, ladders, or doors equipped with self-closing; and self-latching devices designed to keep and capable of keeping such gates, ladders, or doors securely closed at all times when not in actual use.
  2. **FILTRATION SYSTEM NOISE** - Pools which are equipped with an integral filtration system and filter pumps or other mechanical devices shall be so located and constructed as not to interfere with the peace, comfort, and repose of the occupants of any adjoining property.
  3. **MAINTENANCE** - Both in-ground and above-ground pools, accessory buildings, fences, etc., shall be properly maintained.

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4. DRAINAGE - Provisions for the drainage of such pools shall be adequate and shall not interfere with the public water supply system, existing sanitary facilities, neighboring properties, etc.
  5. SETBACK REQUIREMENTS– Pool shall be installed in accordance with the area requirements of the appropriate zoning district.
  6. CHEMICAL STORAGE – See the NYS Uniform and Building Code for chemical storage procedures.

**B. PREEXISTING USES** - Pools in existence prior to the enactment of this Law shall, within 1 year, comply with the following conditions in the previous paragraph: A1, Fence; A3, Maintenance; and A4, Drainage.

## **SECTION 614 - Lakeshore Regulations**

The following regulation shall apply to parcels located adjacent to Chautauqua Lake. In cases of conflict with other regulations, ***the most stringent shall apply.***

- A. Setbacks** - No principal structure intended for inhabitation shall be permitted within 50 feet of the lakeshore based on high water levels of 1310.5 feet mean sea level (MSL). *In established neighborhoods new construction or alterations to existing structures will meet the average setbacks of existing adjacent structures, when such structures are greater than 50 feet from the lakeshore in order to aesthetically blend with the established structures (added November 14, 1991).* Refer to general provisions section on established front yards.
- B. Accessory Buildings** - Accessory Building not utilized for inhabitation shall be allowed “By Right” when set back 50 feet or more from the shoreline (based on high water level of 1310.5 feet above MSL). Accessory buildings less than 50 feet from the shoreline shall be allowed by Special Use Permit with consideration given to the following:
1. Visibility from adjacent parcels.
  2. Maximum floor space of 150 square feet recommended.
  3. Structure is sufficiently anchored to prevent movement due to wind, high water, etc.
  4. Structure does not extend beyond the natural high water shoreline.
  5. Other reasonable conditions deemed necessary.
- C. Break walls** - Any modifications of a shoreline shall be in accordance with NYS Department of Environmental Conservation Regulations.
- D. Fences** - Any fence established within *50 feet of the shoreline* (based on high water level of 1310.5 feet MSL) shall be by Special Use Permit only. Consideration shall be given to the supplemental section on fences; and the following:
1. visibility from adjacent parcels;
  2. height of fence,
  3. type of fence, and
  4. other reasonable conditions deemed necessary by the Permitting Board,
  5. preexisting fences over 4 feet in height shall be subject to a Special Use Permit review to determine if a nuisance exists. If so, the nuisance shall be corrected within a reasonable time period as determined by the Permitting Board.
- E. Dock Use-** All docks extending from Residential Districts shall be utilized only for noncommercial pleasure uses by the owner of the property or any person(s) who may have a permanent legal right-of-way over the property from which the dock extends.
- F. Uses allowed** - Any use created on a dock, pier, island, floating vessel or, in general, on Chautauqua Lake shall be listed as an allowed use in the district over which access is obtained to the proposed use. Adequate off-street parking shall be required.
- G. Dock Storage** – All docks stored in any district shall be removed sufficiently from public roadways such that they do not obstruct snow plowing operations.

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## H. Outdoor storage on parcels adjacent to Chautauqua Lake

1. **Purpose** - Unique lakeshore properties where development density is very high should be preserved and upgraded to encourage a high grade of development for this limited resource.
  2. **Items allowed to be stored outdoors** - Recreational vehicles (boats, ATV's, motor homes, snowmobiles, etc.), noncommercial trailers, small items, and indoor items shall be allowed to be stored outdoors if the conditions which follow are abided by.
  3. **Conditions** -
    - a. Only lakefront lots *less than 15,000* square feet shall be regulated with respect to outdoor storage of regulated items.
    - b. A maximum of 1% of the lot area shall be utilized for regulated outdoor storage items.
    - c. All small items or "excess" outdoor items (over 1% limit) shall be stored indoors in sheds, primary structures, garages, other allowed enclosures, or off premise.
    - d. **Indoor Items** - Where a nuisance exists due to a large number of indoor items being stored or kept outside, it shall be required that the items causing the nuisance be moved indoors.
    - e. **Location** - Items allowed to be stored outdoors shall be:
      - (1) stored out-of-sight to the greatest degree possible;
      - (2) stored in accordance with area setbacks of the district;
      - (3) placed as far back from the lake as possible;
      - (4) placed out of the sight line of neighbors to the greatest degree possible; and
      - (5) stored in an orderly fashion.
    - f. **Recreational Vehicles and Noncommercial Trailers** - When a recreational vehicle must be stored or kept outdoors, it shall be required to adhere to the following conditions:
      - (1) Recreational vehicles and noncommercial trailers shall not intrude into the right-of-way or obstruct sight visibility from adjacent driveways, right-of-ways, or access easements.
      - (2) Parking or storage of recreational vehicles or noncommercial trailers for compensation is not permitted unless parcels are in a commercial district.
      - (3) Recreational vehicles and noncommercial trailers shall be kept in a side or rear yard in compliance with setback requirements applicable to accessory structures. If the vehicle cannot be stored in a side or rear yard setback due to site constraints, one recreational vehicle or noncommercial trailer may be located in the front yard area as follows:
        - (a.) *In the driveway, provided setback requirements applicable to the primary structure are met.*
      - (4) Recreational vehicles shall be maintained in a clean, well-kept state which does not detract from the appearance of the surrounding neighborhood.
      - (5) Recreational vehicles and noncommercial trailers shall not be parked in the in the areas defined within [614 \(A\) & \(B\)](#) of this section.
      - (6) Disabled or unlicensed recreational vehicles or noncommercial trailers shall not be parked or stored outdoors (except for kayaks, rowboats, paddle boats and canoes or other watercraft, which is designed to be, and is, non-motorized). Auto or boat repair shops may have disabled licensed vehicles on the premises which are being repaired.
  4. **Administration** - The Enforcement Officer shall notify owners of lakefront properties of obvious violations of this section as he is made aware of them. The violator shall within a reasonable time period notify the Enforcement Officer of steps to be taken to come into compliance and shall specify a compliance schedule. If the violator does not voluntarily comply or respond a reasonable time period, the Enforcement Officer shall in
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writing specify the conditions to be an informal meeting with the Zoning Board of Appeals to settle the matter. Aggrieved parties may also request a meeting with the Zoning Board of Appeals to ask for an interpretation on compliance with this section.

**I. Parking** - Where commercial parking lots are an allowed use, it shall be allowed only by Special Use Permit.

**J. Launch Ramps** – Preexisting and new launch ramps shall only be utilized in such a manner so as to not cause a nuisance. The Zoning Board of Appeals shall respond to legitimate complaints by requiring the operator to apply for a Special Use Permit. Reasonable conditions shall be set up and attached to the permit. Said conditions may include but not be limited to hours of usage, buffers, and other reasonable conditions.

## **SECTION 615 – Off-street Parking**

**A. Purpose** - Off-street parking space(s) with a proper and safe access shall be provided within a structure or in the open to serve adequately the uses on each lot within the district. Any application for a building permit for a new or enlarged building structure or change in use shall include with it a plot plan drawn to scale and fully dimensioned, showing any parking in compliance with the regulations of this Law. However, in existing Commercial Districts, parking shall only be required to be provided for new development where it is reasonably possible.

**B. Size Requirements** - A required off-street parking space shall be an area of not less than 171 square feet, not less than 9 feet wide by 19 feet long, exclusive of access drives or aisles, ramps, columns, or office and work areas. Aisles between vehicular parking rows shall not be less than 12 feet in width when serving automobiles parked at a 45 degree angle in one direction and not less than 20 feet in width when serving automobiles parked perpendicular to the aisles and accommodating two way traffic.

**C. Street Access** - Parking facilities shall be designed with appropriate means of vehicular access to a street or alley in such a manner as will least interfere with the movement of traffic.

### **D. Location of Parking Places**

1. **Purpose** – When new construction takes place, this section shall promote the proper design of off-street parking by encouraging parking in side and rear yards where possible and prohibiting front yard parking where no driveway or defined parking area exists.
2. **Multiple Family & Commercial Development** – It is recommended that off-street parking be located behind the front yard accessory setback required by the district area requirements. However, when this is not practical, all private parking spaces shall be out of right-of-ways and located such that they do not pose any safety problems for pedestrian traffic or traffic on the adjacent roadways. Parking areas shall be well-defined. The Permitting Board may, upon request of the applicant, allow required parking spaces to be located off the applicant's property to include both private and public parking within 500 feet of said property.
3. **Single-family & Duplex Development** – Well-defined residential driveways shall be the primary source of outdoors parking for single-family and duplex structures actual defined parking areas shall not be in a street right-of-way and shall, preferably, be set back from the road as far as is practical. Parking on lawns shall be prohibited.
4. **Vacant Lot Parking** – Parking lots created on vacant lots shall meet the accessory setback requirements of the district in which they are placed.

**E. Material Composition** - All open off-street parking space and access areas, except those accessories to single-family dwellings and duplexes shall be surfaced with some type of all-weather low dust materials such as stone, gravel, or macadam.



**F. Number of Spaces** - The following parking spaces shall be provided and satisfactorily maintained by the owner of the property, for each use which, after the date when this Law becomes effective, is erected, enlarged, or altered for use for any of the following reasons:

USES	MINIMUM OF 1 SPACE PER
One-Family Residence & Mobile Home	½ Dwelling Unit
Two-Family Residence	½ Dwelling Unit
Multi-Family Residence	½ Dwelling Unit
Church	5 Fixed Seats
Home for Aged	3 Residents
Elementary School	20 Students
High School & College	12 Students
Library	1,000 Sq. Ft.
Places of Assembly, inc., Convention Hall & Dance Hall	200 Sq. Ft
Club, Lodge (Without Sleeping Accommodations)	Each 5 capacity of hall
Places Providing Sleeping Accommodations	
Inc., Hotels, Motels, & Tourist Homes	Sleeping Unit
Mortuaries or Funeral Parlors	1/8 Viewing Rm., plus 1 for every employee
Offices, Banks	100 Sq. Ft. Floor Area
Food Market	200 Sq. Ft. Floor Area
Eating & Drinking Establishments	4 Seats or 1 for each 200 Sq. ft. of floor area - whichever is more
Bowling Alley	¼ Alley
Other Commercial	300 Sq. Ft. Sales Area
Industrial	Employee (Max. Work Shift)
Other Uses not Listed Above	500 Sq. Ft. Floor Area

#### SECTION 616 - Loading & Unloading

- A. **Need** - Off street loading and/or unloading spaces for non-farm commercial vehicles while loading and/or unloading shall be provided for new uses where it is deemed that such facilities are necessary to serve the use or uses on the lot. At least 1 off-street loading and/or unloading space shall be provided for all commercial establishments in excess of 7,500 square feet of floor area.
- B. **Size** - Each loading and/or unloading space shall be at least 14 feet wide, 60 feet long and shall have at least a 15 foot vertical clearance; and it shall have a 60 foot maneuvering area. Refer to [Variance Section 904](#) where this requirement cannot be met.
- C. **Use of Parking Spaces** - Generally parking space shall not be used for loading and/or unloading purposes except during hours when business operations are suspended or if pedestrian and vehicle traffic will not be obstructed. However, the Permitting Board may allow the use of parking spaces when it is determined that the effects will be minimal.
- D. **Design** - Loading and/or unloading facilities shall be designed so that trucks need not back in or out, or park in any public right-of-way. No truck shall be allowed to stand in a traveled roadway or pedestrian walkway or in any way block the effective flow of persons or vehicles. The loading and/or unloading area shall have an all-weather surface to provide safe and convenient access during all seasons.
- E. **Preexisting Uses** – Any loading and unloading use existing, as of the effective date of this Law, shall not be subject to this section.



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## SECTION 617 - Signs

**A. Purpose** - The intent of this section is to preserve and enhance the Commercial and Industrial Districts by encouraging signs in character and scale with individual buildings and with the municipality to avoid a chaotic, unsafe, or unattractive clutter of signs by prohibiting signs or advertising devices which are inappropriate in size or type, to municipal character; and to protect the character of the Residential Districts by strictly limiting signs within them.

### **B. Administration**

1. **Permits Required** - Except as listed in paragraphs B2 and B3, a Zoning Permit shall be required before an outdoor sign is created, altered, relocated, or enlarged. A permit shall not be issued until all applicable sign regulations are met. All requests for permits must be accompanied by a plan drawn to scale showing the exact size, shape, location, and type of sign.
2. **Exempt signs** - The following signs shall be exempt from all regulations of this Section: public signs such as directional, street, traffic.
3. **Signs Requiring No Permit** - The following signs shall be subject to all regulations of this section but shall be exempt from obtaining a permit as required above:
  - a. Temporary Signs to include contractor signs, political signs and fruit stand signs  
(see C3e below);
  - b. non-illuminated, indoor signs;
  - c. realty signs; and
  - d. household sale signs. (See C3d below)

**C. Specific Regulations by Sign Type** - Specific regulations shall take precedence over the more general sign regulations.

#### **1. Signs Attached to Buildings**

- a. No sign shall project more than 12 inches from the building wall on which it is attached.
- b. No sign shall project higher than the roof line.
- c. No sign shall be permitted to be mounted on the roof of a building above the roof line.
- d. No sign shall extend higher than 18 feet in height as measured from the ground.
- e. No sign shall be located as to overhang above a walkway or a right-of-way.

#### **2. Freestanding Signs** - Freestanding Signs where allowed shall be in accordance with the following:

- a. Height - A maximum height of 18 feet from the ground to the top of the sign shall be allowed.
- b. Setback - Freestanding signs shall be set back a minimum of 25 feet from the road edge.

#### **3. Temporary Sign Regulations** - The following specific regulations shall apply to temporary signs:

- a. Contractor signs shall be allowed during periods from when the job commences and is completed. The sign must be removed if substantial progress on the job is not taking place. The maximum size shall be 10 square feet.
- b. Political signs up to 10 square feet in size shall be allowed 4 weeks before and 1 week after the election and it shall be the responsibility of the candidate to comply with this regulation. Permission from the property owner must be received prior to sign placement. A sturdy all-weather backing shall be utilized.
- c. Sandwich Signs, in Business Districts, shall be allowed when located on premise, and when there is at least nine feet of clearance between the sign and the edge of the street curb. The size of the sign shall not exceed 3' x 5' in size.

- d. Household Sale signs shall be permitted in accordance with the following regulations:
- (1) **Maximum Size** - no more than 4 feet high by 4 feet wide.
  - (2) **Maximum Number** - permission must be received from property owners where off premise signs are located.
  - (3) **Location** - Signs shall not be placed on "Off premise" trees or utility poles.
  - (4) **Illumination** - Signs shall not be illuminated.
  - (5) **Time** - Household signs may be erected on the day the sale starts and must be removed on the last day of the sale.
- e. Seasonal On-premise Roadside Stand Signs shall be allowed in accordance with the following conditions:
- (1) **Maximum Size** - No more than 4 feet high by 4 feet wide.
  - (2) **Maximum number** - No more than 2 signs shall be used per property with more signs requiring a permit.
  - (3) **Location** - Signs shall not be placed on off premise trees or utility poles.
  - (4) **Illumination** - Signs may be illuminated by a maximum of 2 lights which must meet all illumination requirements of this section.
  - (5) **Time** - Roadside stand signs shall only be permitted during the season in which the agricultural product being sold is available.
  - (6) **Permits** - No permit shall be required for seasonal on premise roadside stand signs.
- f. Real estate signs up to 10 square feet in size shall be allowed until 1 month after the sale is finalized.
- g. Signs for quasi-public uses to include churches, schools, libraries, hospitals, and nursing homes shall be a maximum of 25 square feet in size, and shall require a Special Use Permit. If the sign is to be freestanding, it shall be setback 15 feet from the street edge.
4. **Billboards** - Billboards shall not be allowed.
5. **Interior Illuminated Window Signs** - Inside illuminated signs shall be a maximum of 2 square feet each and no more than 5% of the front window area can contain such signs. No permit is required. More than these maximum limits would require a Special Use Permit.
6. **Electronic Messaging Signs** - Electronic messaging signs are prohibited in all districts.

**D. General Regulations for Business Signs** - The following general regulations shall only apply to signs for which regulations covered herein are not covered in other more specific subsections.

DISTRICT	Permit Type For Business Signs		Size of Signs (max. sq. ft.) Business Signs	
	ON-PREMISE	OFF-PREMISE	ON-PREMISE	OFF-PREMISE
R1	N/A	N/A	N/A	N/A
R2	N/A	N/A	N/A	N/A
R3	S	N/A	50	N/A
B1	R(3)	N/A	50	N/A
B2	R(3)	N/A	50	N/A
B3	R(3)	N/A	50	N/A
B4	R(3)	N/A	50	N/A
AR	N/A	N/A	N/A	N/A
A	R(3)	N/A	50(2)	N/A
I	R(3)	N/A	200(2)	N/A

**LEGEND:** R - By Right Permit  
 S - Special Use Permit  
 N/A - Not Allowed

**NOTES:**

- 1.) The sign size provided represents the maximum square feet allowed per business.
- 2.) Or 20% of the store front, whichever is greater.
- 3.) Sign proposed to be located 100 feet or less from a Residential District shall require a Special Use Permit.

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MAXIMUM NUMBER OF SIGNS		
DISTRICT	PRIMARY	SECONDARY
R3	1	1
B1to B4	2	2
A	2	2
I	2	2

## **E. General Regulations**

### **1. Condition**

- Every permitted sign must be constructed of durable materials and kept in good condition and repair.
- Any sign which is allowed to become dilapidated may be removed by the municipality at the expense of the owner or leaser of the property on which it is located.

### **2. Location**

- TRAFFIC
  - No sign shall be so located that the sign might interfere with traffic, be confused with or obstruct the view or effectiveness of any official traffic sign, signal or marking.
  - No sign shall be stapled, pasted or otherwise attached to utility poles or trees within a road or street right-of-way.
- INGRESS, EGRESS
  - No sign shall be located which shall prevent free ingress or egress from any window, door, or fire escape.
  - No sign shall be so placed that it will obscure light and/or air movement from a building.
- LOCATION ON TREES – No signs shall be temporarily or permanently attached to a tree or utility pole.
- PRIVATE PROPERTY – All signs must be located on private property with the permission of the property owner.

### **3. Illumination**

- No off premise neon signs are permitted.
- Illuminating arrangements for signs shall be such that the light is concentrated on the sign with a minimal spillover cast on the street, sidewalk or adjacent properties.
- Signs which contain include or are illuminated by any flashing, intermittent or moving lights are prohibited.

### **4. Moving Parts**

- No permanent signs shall utilize moving parts.
- Pennants, banners, flags, bunting whirligigs, or other similar attention-getting devices shall not be permitted where its purpose is to advertise or bring attention to a commercial business operation. This provisions does not apply to the displaying of a national, state, or other flags not intended for advertising. However, temporary signs utilizing moving parts shall be allowed By-Right for up to 2 weeks with longer periods permitted by Special Use Permit.

## **F. Cessation**

- If a use ceases for a period of 1 year, all detached signs must be removed.
- Such signs may be removed by the municipality at the expense of the owner or lessee of the property on which the sign is located if the sign has not been removed after 30 days' notice. All state laws will be complied with in causing removal of any sign.

## **G. NYS Regulations**

- New York State Highway regulation related to outdoor advertising shall also apply where applicable.

**H. Preexisting Signs**

1. General Regulations Covered - Legally existing nonconforming signs shall be required to comply with the following general paragraphs:
  - a. Part E I. b, Dilapidation; and
  - b. Part F, Cessation;
2. Compliance - Sign owners notified of a violation shall respond within 30 days of receipt on how they intend to comply. Compliance shall take place within 3 months of notification.

**SECTION 618 Fences/Walls**

**A. Regulations** - Fences and walls as defined in Section 202 (Definitions) shall be allowed by permit in any district and shall conform to the regulations which follow:

1. **Exempt Fencing** - Fencing used for agricultural purposes on farms (see definition) shall be exempt from all regulations except for maintenance requirements detailed below. Additionally, non-boundary fencing located more than 25 feet from any property line shall be exempt.
2. **Permits** - Fences shall be allowed up to 4 feet in height by right. Fences above 4 feet in height shall require a Special Use Permit and consideration will be given to visibility from adjacent properties, light and air movement, etc.
3. **Setback from Road** - Fences shall be set back a minimum of 10 feet from the edge of the road (street) and shall not be located within legal highway rights-of-way.
4. **Proximity to Neighboring Properties** - All fences, walls, and/or hedges shall be located no closer than 2 feet from adjacent property lines. This rule can be waived or agreed to in writing by adjacent property owners.
5. **Fire Hazard** - Any fence considered to be flammable shall be prohibited. Also, any fence in a potentially hazardous location shall be not allowed.
6. **Finished Sides** - The finished sides of all fences must face adjacent properties. This rule can be waived if agreed to in writing by adjacent property owners.
7. **Materials** - Only durable materials generally used and accepted by the industry shall be used for fences.
8. **Maintenance** - All fences shall be maintained structurally and visually.

**A. Preexisting Fences** - Fences in existence at the time of enactment of this Law shall only be subject to the above regulations numbered 8, Maintenance; and 1, Exempt Fencing, above.

**B.** No fences or walls, as defined in Section 202, shall be allowed in the Zoning District designated as 401.1 - Single Family Residential (R1-WB) District of the Town of Ellery Amended Zoning Law of 1989. *(added on November 26, 1997)*

**SECTION 619 Reserved****SECTION 620 Reserved****SECTION 621 Solar Energy Systems and Solar Access**

- A. Purpose** - Solar energy electrical systems in the Town of Ellery will reduce the need for additional electrical generation and distribution and tend to reduce atmospheric pollution that is considered harmful to the environment. This section is added in order to promote and protect the use of solar systems in the Town of Ellery.
- B. Applicability** - The requirements of this section shall apply to all solar energy system installations modified or installed after the effective date of this zoning law. All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the State Building Code.

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Solar energy systems shall be permitted only to provide power for use by owners, lessees, tenants, residents or other occupants of the premises on which they are erected. Solar energy commercial operations are prohibited.

**C. Conditions (By-Right)** - Ground-mounted, freestanding and roof-mounted solar energy systems are permitted by-right in all zoning districts of the Town, subject to the following requirements:

- 1.) The location of the solar energy system meets all applicable setback requirements of the district; and
- 2.) Roof mounted solar energy systems shall not be higher than:
  - a.) Three feet more than the finished roof of the building on which it is mounted if located in the R1, R2, R3, B1, B2, B3 or R1-WB Districts; or
  - b.) The building height allowance within the A, AR or B4 Districts.
- 3.) The solar energy system is located in a side or rear yard.
- 4.) Non-reflective glass is utilized in design of solar energy system to minimize glare impacts.

**D. Conditions (Special Use)** - Ground-mounted, freestanding and roof-mounted solar energy systems require a special use permit, if any of the following conditions occur :

- 1.) Ground mounted, pole mounted or freestanding units exceed ten (10) feet in height.
- 2.) Any proposed front yard installation.

**E. Solar Access** – Solar energy systems seeking protection for solar access purposes under this law shall only be approved by special use permit. If a solar energy system applicant seeks such protection, it may only be granted under the following conditions:

- 1.) The solar energy system shall be located the furthest distance from adjoining properties, on the southern exposure, which is reasonably possible. This distance shall be a minimum of 100 feet and may be required to be more if the slope so dictates.
- 2.) A sun and shadow diagram specific to the installation shall be submitted with the special use application to enable the Town to determine if solar access will be impaired due to the proposed location or from the location of objects which may obstruct solar access.
- 3.) Properties within 200 feet of the property on which the solar energy system is to be placed will be notified in writing of the intent to place a solar energy system in the neighborhood and the possible effects that this could have on future development. The date, time and location of the public hearing shall be included in the notification.

**F. Solar Access – Adjacent Property Control** – The placement of structures, trees, towers, etc., which have the potential of blocking the sun from adjacent solar energy systems established by special use permit under [Section 615\(E\)](#) of this law, shall also only be allowed by special use permit. The placement of said potential obstruction shall be such that it least interferes with the adjacent solar energy system while still allowing reasonable use of the land.

## **SECTION 622 - Gas Compressors**

**A. Purpose** - Gas transmission compressors are capable of producing unacceptable environmental and noise intrusion, especially where residential uses are prevalent. In order to avoid unreasonable use of property resulting in substantially reduced use-value of adjacent inhabited or non-inhabited properties, this section shall regulate the location and installation of all gas compressors not under the jurisdiction of the NYS Public Service Commission. Generally, the section is intended to preserve and protect the general welfare, health, and safety of the public while still promoting the transmission of natural gas in a reasonable environmentally acceptable manner.



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**B. Administration -**

1. **Permit Requirements** - In districts where gas compressors are permitted, a Special Use Permit shall be required for the placement of a new gas compressor.
2. **Pre-existing Gas Compressors** - All gas compressors existing or being constructed at the time of enactment of this law shall be subject to the following conditions as listed below: C2c, (Maintenance); C2d, (Barriers); and C3, (Identification Signs). These conditions shall be considered at a public hearing held a minimum of 30 days after the owner of the compressor station is notified in writing. All owners of parcels as well as all renters within 2,000 feet of the proposed/existing gas compressor shall be notified in writing of the public hearing. Compliance shall take place within two months of the receipt of a written decision by the Permitting Board. A longer compliance period may be granted by the Permitting Board if the cost of the alterations is significantly high.

**C. Conditions** - All gas compressors shall be located and designed such that the nuisances associated with the use shall be minimized. It shall be unlawful for any person or firm to make, continue, or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures, or endangers comfort, repose, health, peace or safety to others. The following specific conditions shall be met:

1. **Location** - The site shall be appropriately located with consideration given to predominant wind direction, topography, location of dwelling units, and any other reasonable conditions as deemed necessary by the Permitting Board.
2. **Noise Levels** -
  - a. **Easement** - All new gas compressors covered by this section must be located such that lands subject to a 40 decibels or higher noise level produced by a new compressor shall be covered by a noise easement clearly delineating the maximum noise level allowed at any inhabited dwelling unit or proposed site of a dwelling unit. Preexisting leases shall not negate the requirement for a noise easement as described above.
  - b. **Certification of Noise Level** - Prior to being granted a permit for the placement of a gas compressor, the owner of the proposed compressor shall be responsible for verifying the compressor and quieting devices (silencer, low speed fan, barriers such as walls or berms, etc.) as proposed will meet the specified decibel level requirements. A certified noise consultant must certify in writing that the requirements will be met. Additionally, after placement of the compressor is completed, along with the specified quieting devices, the same certified noise consultant must verify that the 40 decibels requirements are not exceeded. This certification must be accomplished within 30 days or the compressor shall be only operational during daylight hours until it is brought into compliance.
  - c. **Maintenance** - The compressor and quieting devices must be properly operated and maintained such that the noise level will not rise above the specified permissible levels. If it becomes apparent to the Permitting Board that the noise levels are not in compliance, the Board may require the owner of the compressor to do corrective maintenance and again, at the owner's expense, have the compressor noise level verified by a certified noise consultant. This certification must be accomplished within 30 days or the compressor shall be only operational during daylight hours until it is brought into compliance.
  - d. **Barriers** - Where it is deemed necessary, either a natural or man-made acoustical barrier may be required for the purpose of minimizing the nuisances associated with a gas compressor. In extreme cases, where no alternative is available, a fully enclosed acoustically designed structure may be required.

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3. **Identification Sign** - Each gas compressor shall be identified with a conspicuously placed sign identifying the compressor, its location and the name of the person/company responsible for the unit in case of emergency. Additionally, a 24 hour emergency telephone number shall be included.

4. **Other** - Any other reasonable conditions as deemed necessary by the Permitting Board.

**D. State Environmental Quality Review Law** - All permit requests for gas compressors shall be subject to an environmental review, in accordance with State law. No zoning permit shall be granted until this environmental review has been accomplished by the municipality or their representative.

## **SECTION 623 – Unlicensed Vehicles**

**A. Purpose** - It is the intent of this section to minimize safety, health and aesthetic related problems by limiting the storage outdoors of vehicles.

**B. Unlicensed Motor Vehicles Allowed** – One unlicensed vehicle shall be allowed to be maintained outdoors for every household for a period not to exceed six (6) months, and must meet the following conditions:

1. Has a valid NYS Inspection sticker and is operable.
2. In the Agricultural District, one additional unlicensed vehicle shall be allowed if it is in operable condition and is used for farm use, snow plowing, or other general purpose function. Active agricultural use vehicle which are licensed once per year are allowed under this section.
3. Vehicle must be located in compliance with Article IV, Area Standards for Accessory Uses.

**C.** No junk or abandoned motor vehicle shall be allowed to be stored outdoors in the Town of Ellery, except in an approved vehicle dismantling, scrap or junk yard.

## **SECTION 624 - Vehicle Dismantling, Scrap, and Junk Yards**

**A. Conditions** - Prior to the granting of a Special Use Permit, assurances will be received that the following conditions will be met:

### **1. Fences -**

- a. Yards shall be completely surrounded with a fence for screening and security purposes of at least 8 feet in height. However, where the Permitting Board determines that the character of the neighborhood does not require aesthetic screening or security fencing, this 8' fence requirement can be waived to any degree for the side and rear yards.
- b. There shall be located a gate in the fence which shall be kept locked at all times except when the vehicle dismantling or scrap yard is in operation.
- c. The fence shall be located a minimum of 50 feet from adjacent public highways.
- d. All storage, dismantling, and work on the vehicles or scrap shall take place within the fenced area.
- e. The type of materials used shall be generally accepted by the industry and commonly used as fencing material. Fences shall be permanent and substantial.
- f. Fences shall obscure or screen, adequately, the contents of the yard.
- g. Fences shall be well-maintained and aesthetically pleasing.

### **2. Location Considerations**

- a. Yards shall only be allowed in the Industrial District.
- b. Yards shall be allowed where there will be a minimum negative effect on the character of existing neighborhoods.
- c. No yard shall be permitted within 500 feet of a church, school, public building, or other place of public assembly.

- d. Yards shall not be permitted to be located upon areas where an 8 foot fence will not reasonably screen the yard's contents from adjacent highways or properties.

**3. Off-street Parking**

- a. Sufficient off-street parking shall be provided for customers.

**4. Fire Safety**

- a. The fire department shall be notified prior to the granting of a Special Use Permit for a yard and be given 30 days within which to make recommendations.
- b. Inside, adjacent to and contiguous with the fence, a strip of land at least 10 feet wide shall be kept clear of all dry grass or other growth or combustible material so as to provide a fire lane around the whole yard area.
- c. There shall be maintained at least one fire extinguisher of approved design and capacity for each 40,000 square feet of area. Each fire extinguisher shall be hung or mounted in a conspicuous place, clearly marked and visible.
- d. All vehicles and scrap and junk shall be disassembled by means other than burning. The yard's content shall be arranged in neat rows so as to permit easy, clear passage through the area.

**5. Visual Considerations**

- a. There shall be no stacking of vehicles, scrap or junk above 8 feet in height from the ground. However, vehicles and scrap which have been crushed may be loaded on to the bed of a truck where they will be removed from the premises within a reasonable time period.
- b. An appropriate buffer shall be established between adjacent properties.

**6. Minimum Lot Size -**

- a. Adequate acreage shall be available to handle present and future needs of proposed yards.

**7. Other Considerations -**

- a. Suitable sanitary facilities shall be provided in accordance with State Health Laws.
- b. Inspection of yards shall be allowed at any reasonable time to insure compliance with this and other laws.
- c. Reasonable hours of operation may be specified.
- d. Other reasonable conditions may be imposed as is deemed necessary by the permitting board.

**B. Preexisting Yards -** Yards in existence before the enactment of this Law shall be subject to the following conditions: A1a, (Fence height); A1b, (Gates); A1c, (Fence location) (with the exception that the minimum distance is 25 feet and not 50 feet); A1d, (Work location); and A5a, Visual Considerations, above. Compliance shall take place within a 6 month period of time. In addition, any expansion or enlargement of any preexisting yards shall be subject to all of the regulations of this Law when they can be reasonably enforced as determined by the Municipal Board.

**SECTION 625 – Storage Structures**

- A. Purpose –** Storage structures are regulated to insure that they are properly located so as to protect the rights associated with neighboring properties with respect to visibility, light and air movement, fire, safety, and aesthetics.
- B. Administration –** All storage structures shall as a minimum, require a Permit By-Right while storage sheds over 150 square feet which are located in a Residential District shall require a Special Use Permit. Multiple storage sheds shall be aggregately considered to determine if the 150 square foot requirement is surpassed.
- C. Conditions –**
  - 1. Area Requirements – The accessory area requirements for each district shall be met.
  - 2. Lakeshore Regulations – Refer to supplemental section on Lakeshore Regulating for

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additional requirements for any storage shed which is proposed to be located on a parcel adjacent to a lake.

#### **SECTION 626 - Heavy Vehicles**

- A. Purpose** - This section has as its main purpose the preservation of densely developed neighborhoods and particularly the elimination of noise from diesel engines and air conditioning units caused by large commercial truck parking. Visual intrusion into residential neighborhoods is also a primary concern.
- B. Regulations** - Heavy vehicles shall comply with the following regulations:
1. **Location** - Heavy vehicles shall not be allowed to park in any district unless listed as a permitted use.
  2. **Location Waivers** - In an emergency (e.g., truck breakdown) or for normal deliveries, the location requirements in B1, above, shall be waived for a maximum of 48 hours.
- C. Preexisting Heavy Vehicles** - This section shall apply to all heavy vehicles immediately, including those that have, in the past parked in such a manner so as not to be in compliance with this section.

#### **SECTION 627 - Large Group Gathering**

- A. Purpose** - In order to promote safe and healthy gatherings of large groups of people, as defined in the definition section, certain conditions shall be complied with as defined below.
- B. Conditions** - Prior to the granting of a Special Use Permit, the following will be taken into consideration:
1. traffic safety, adequate parking areas, appropriate access road(s) to accommodate emergency vehicles;
  2. excessive noise levels and expected times and duration;
  3. health and sanitation;
  4. character of neighborhood and development density;
  5. beverages to be served;
  6. security and traffic control;
  7. cleanup and restoration of land; and
  8. other appropriate considerations.
- C. Sponsor Responsibility** - The sponsor of any large group gathering shall be responsible for compliance with any conditions which are specifically imposed as well as the overall conduct of the gathering. The sponsor shall contact the local emergency personnel (e.g. fire department) regarding the details and location of the large gathering event.
- D. Preexisting Uses** - All 'large group' gatherings held after the effective date of this Law shall be subject to this section.

#### **SECTION 628 – Animals in Residential/Commercial Districts**

Keeping of animals shall be regulated in the following manner:

- A. Commercial Operations Prohibited** - Animals, poultry, and birds shall not be raised for profit or as a commercial venture. They shall only be allowed when kept for recreational use or for home consumption of its products. This rule shall **only** apply to all districts where “**agricultural land use**” is not a permitted use.
- B. Nuisance** - Farm animals which create a nuisance due to odor, noise, etc., shall be prohibited in all districts where “**agricultural land use**” is not a permitted use.



- C. Horses & Cows** – The maximum number of horses or cows allowed shall be allowed shall be based on the acres of pasture available with 1 acre being required per horse or cow. Horses and cows shall be fenced so as not to be able to come within 50 feet of adjacent residential structures nor within 10 feet of any boundary line.. This rule shall apply to districts where “*agricultural land use*” is not a permitted use.

#### **SECTION 629 – Mobile Home Standards**

- A. Conditions** - In districts where mobile homes are allowed by Special Use Permit, all of the conditions listed below shall be considered prior to the granting of the zoning permit.
1. **Minimum Floor Space** - The original “advertised” floor space for a mobile home, excluding add-ons shall be a minimum of 900 square feet. Other area requirements shall be met.
  2. **Parking** - Off-street parking spaces in accordance with the supplemental section on parking.
  3. **Skirting** - Attractive, fire-resistant skirting shall be installed within 3 months of when the mobile home is placed on the lot unless prohibited by extenuating circumstances.
  4. **Location** - Mobile homes shall only be allowed when they will not have a substantial negative effect on the existing character of a neighborhood.
  5. **Landscaping** - Landscaping appropriate to the neighborhood shall be considered.
  6. **Additions** - All additions shall be in accordance with the New York State Uniform Code and shall be compatible with the construction of the mobile home.
  7. **HUD Requirements** - All mobile homes shall be in accordance with HUD requirements.
  8. **Storage** - Miscellaneous garage and recreational items traditionally stored under cover shall not be stored outdoors. Appropriate storage shall be supplied.
  9. **Location on Lot** – A mobile home shall be situated on a property which has a primary dwelling unit occupied by the property owner. Additionally, the mobile home shall be adjacent to the primary dwelling unit as determined by the Permitting Board.
  10. **Occupancy** – The mobile home is occupied by a dependent or parent of the property owner; and additionally, the occupant shall be elderly and/or infirm. A mobile home may also be occupied by an agricultural worker while employed by the owner of farm with the mobile home located on said farm.
  11. **Vacancy** – Mobile homes shall be removed within 6 months from the date the permitted occupant(s) vacates the premises. The lot and the site shall be restored to the condition it was in prior to the time when the mobile home was moved onto the lot.
  12. **Districts** – Mobile homes shall only be allowed in districts where mobile homes are specified as being allowed by Special Use Permit.
  13. **Other Considerations** – Any other reasonable conditions as deemed necessary by the permitting board shall be considered for inclusion. See supplemental section on general conditions for a list of possible conditions to include.
- B. Pre-existing Uses** - Preexisting mobile homes shall comply with the above conditions A3, (Skirting) and A2, (Parking), where it is reasonable. These conditions shall be met within 6 months from the date of written notification. See also, the article on nonconforming uses, section entitled, “Use Changes” for rules on replacing mobile homes.

#### **SECTION 629.1 – Double-wide Mobile Homes** (added June 8, 1995 – Local Law #1)

Manufactured homes known as Double-Wide Mobile Homes shall be allowed in the following districts: R-2, AR, A B-1, B-2, B-3 and B-4, and must meet the following conditions:



- 
- A. Must be HUD approved.
  - B. Must have vinyl or shingle siding and have a minimum 3/12 pitch shingle roof.
  - C. If not built on a basement or crawl space, it must have a non-load bearing masonry or brick wall on all four sides or the space between the sill and finished grade must be finished with no less than ½ inch pressure treated plywood with coating to look like masonry on all four sides.

## **SECTION 630 - Mobile Home Parks**

**A. Conditions** - Mobile home parks shall comply with the following standards:

### **1. Area and Setback Requirements**

- a. **Size** - Parks shall consist of a minimum of 5 acres and shall be designed for a maximum of 5 units per acre overall.
- b. **Buffer** - An appropriate vegetation or open space buffer shall be located around the perimeter of the park. Type and size of the buffer shall be determined by the density and type of adjacent uses and the need for separating the uses. As a minimum, a 25 foot buffer (open space and/or vegetation) shall be required with the Permitting Board determining the need for a more appropriate size or type of buffer.
- c. **Setback** - All mobile homes and other development shall be located a minimum of 100 feet from the edge of any public road. Mobile homes shall be setback a minimum of 20 feet from the edge of the park's private road(s).
- d. **Lot** - Each Mobile home shall be located on a lot which is a minimum of 5,000 square feet, and a minimum of 50 feet in width. The width requirement can be waived for corner lots.
- e. **Side Yard** - Mobile homes that include enclosed additions shall be spaced a minimum of 25 feet from other enclosed additions.
- f. **Floor Space** - The minimum floor space allowed for a mobile home placed in a park shall be 700 square feet. Add-ons shall not be used in calculating the size. Additionally, all mobile homes shall be in accordance with the NYS Uniform Code as well as HUD requirements.

### **2. Streets and Walkways**

- a. **Entrance and exits** to the park shall be located and designed to standard highway safety requirements.
- b. **Private roads** shall be a minimum of 16 feet wide and shall as a minimum be carpet coated, graveled, or paved, and be approved by the fire chief for use by emergency vehicles.
- c. **Private roadways** shall be maintained in such a manner so as to permit safe travel year round (e.g., free of snow and ruts)
- d. **Walkways** from the roadway to door shall be required in addition to a patio for each mobile home.

### **3. Parking**

- a. **Off-street Parking** shall be provided with a minimum of 400 square feet of parking area for each mobile home with gravel, carpet coating, or paving being used.
- b. **Sufficient auxiliary parking** shall be provided for trucks, boats, travel trailers, etc.

### **4. Recreation**

- a. **Open space and recreational areas** shall be set aside and improved at central locations at a rate of 700 square feet per mobile home. They shall be maintained in a manner conducive to recreational use.

### **5. Skirting**

- a. **Mobile homes** shall be skirted with an attractive fire-resistant material within three months from the time of setup.

### **6. Outdoor Storage** - Due to the limited lot sizes and close proximity of mobile homes, no

outdoor storage of tools, materials, equipment, junk or any other items, other than registered vehicles, or patio-related items shall be allowed. Where storage sheds are necessary to comply with this requirement, they shall be located in rear yards and out-of-sight to the greatest degree possible, substantially anchored, and well-maintained.

7. **Accessory Retail or Service Uses** - Accessory uses such as recreational facilities, convenience stores, Laundromats, and mobile home sales/service customarily associated with mobile home parks shall be permitted. However, the land utilized in this manner should not account for more than 5% of the total area of the park. Finally, no commercial character shall be visible from outside the park and such services shall only be allowed when the number of sites is sufficient to support these services.

**B. Bond** - At the discretion of the Permitting Board, the developer may be required to obtain an appropriate bond to insure compliance with conditions attached to the Special Use Permit/Site Plan Review.

**C. Review** – The Planning Board shall be notified of the request for a mobile home park permit and shall have the opportunity to make recommendations.

**D. Preexisting Parks** - Mobile home parks in existence before the enactment of this Law shall be subject to the following regulations:

1. Mobile homes shall be skirted with an attractive, fire-resistant material within 1 year.
2. Enlargement or expansions of all mobile home parks in existence before the enactment of this Law shall comply with all regulations in this Law to the extent determined by the Permitting Board.
3. Off-street parking shall be provided within 1 year, where reasonable
4. Other reasonable conditions for mobile home parks in existence before the enactment of this law as deemed necessary.

#### SECTION 631 – Recreational Vehicles

**A. Temporary Dwelling Units (Transportable)** - Travel trailers, not located in a commercial travel trailer park, may be inhabited by non-renters on a temporary basis in accordance with the following chart and conditions. No permit or fee is required unless the number of inhabitation days desired is greater than that specified, in which case a Special Use Permit must be requested:

<u>DISTRICT</u>	<u>MAXIMUM NUMBER OF DAYS INHABITED PER TIME PERIOD</u>
Residential & Commercial .....	14 days per 2 months
Other "Rural" .....	120 days per 12 months

#### **B. Conditions -**

1. **UTILITIES** – Permanent utility systems, used exclusively for temporary dwellings in residential or commercial districts shall not be constructed.
2. **NUISANCES** – Temporary dwellings shall not be utilized in such a manner as to cause a nuisance.
3. **FIELD OFFICES** – Contractors may use temporary dwellings for "field offices" after obtaining a Special Use Permit. Additionally, temporary dwelling units may be utilized by owner/builders during the construction of a structure. Temporary Special Use Permits shall be valid for up to 1 year with extensions possible.

**C. Storage** - When a recreational vehicle must be stored or kept outdoors, it shall be required to meet to the following conditions:

- 
- (1.) A recreational vehicle may be stored outdoors (uninhabited) on any lot indefinitely except on lakefront lots, which are regulated by the supplemental section on lakeshore regulation.
  - (2.) Recreational vehicles and noncommercial trailers shall not intrude into the right-of-way or obstruct sight visibility from adjacent driveways, right-of-ways, or access easements.
  - (3.) Parking or storage of recreational vehicles or noncommercial trailers outdoors for compensation is not permitted unless parcels are in a commercial district.
  - (4.) Recreational vehicles and noncommercial trailers shall be kept in a side or rear yard in compliance with setback requirements applicable to accessory structures. If the vehicle cannot be stored in a side or rear yard setback due to site constraints, one recreational vehicle or noncommercial trailer may be located in the front yard area as follows:
    - (a.) *In the driveway, provided setback requirements applicable to the primary structure are met.*
  - (5.) Recreational vehicles shall be maintained in a clean, well-kept state which does not detract from the appearance of the surrounding neighborhood.
  - (6.) Disabled or unlicensed recreational vehicles or noncommercial trailers shall not be parked or stored outdoors (except for kayaks, row boats, paddle boats, canoes or other watercraft, which is designed to be, and is, non-motorized) within sight of the public right-of-way or adjacent residents. Auto or boat repair shops may have disabled licensed vehicles on the premises which are being repaired.
  - (7.) Area requirements (e.g., front, rear, and side yard setback requirements) shall be met.

## **SECTION 632 - Temporary Mobile Homes**

### **A. In conjunction with construction (inhabited) -**

1. **Administration** - A temporary mobile home Special Use Permit may be applied for in conjunction with the construction of a dwelling unit.
2. **Conditions** - The following conditions may be attached to the permit:
  - a. **A time schedule** for commencement and completion of construction of the dwelling unit. As a minimum, construction on the dwelling unit shall begin within 1 year from the date when the mobile home is placed temporarily on the lot. A 6 month extension may be granted where circumstances warrant such an extension.
  - b. **The placement** of the mobile home on the lot shall be in accordance with area standards unless the Permitting Board determines that such conforming placement would not be practical, in which case the conditions will be specified.
  - c. **Mobile homes** granted a Temporary Special Use Permit shall be required to be skirted.

### **B. Not Inhabited -**

1. **Administration** - A mobile home may not be stored uninhabited any district.
2. **Preexisting Mobile Homes** – Non-inhabited mobile homes preexisting at the time of enactment of this Law shall be removed within 6 months of notification.

## **SECTION 633 - Seasonal Recreation / Travel Trailer Parks (Commercial Campground)**

- A. PURPOSE** - The purpose of this section is to protect existing neighborhoods from intense development associated with travel trailer parks. Consideration will be given to aesthetics, buffers, safe access, and other reasonable conditions.

**B. CONDITIONS** - Travel trailer parks shall comply with the following standards:

**1. AREA & SETBACKS -**

- a) All lots (pads) shall be a minimum of 75 feet from any public highway.
- b) A **100** feet wide buffer zone of appropriate vegetation shall be provided around the circumference of the park where adjacent property use is of such a nature that there could be conflicts. No travel trailers or other structures shall be located in the buffer area.

- c) Minimum lot sizes shall be 2,500 square feet for a vacation camp and 1,500 square feet for overnight camps.

**2. STREETS & WALKWAYS -**

- a) Access to the park must be designed to assure safe and convenient movement of traffic into and out of the park with a minimum disruption of traffic on adjacent public roads. This shall include a minimum clear view of 150 feet while pulling out onto the adjacent public roadways.
- b) Walkways shall be provided to service buildings.
- c) All park roadways shall be a minimum of 50 feet from any property line except for the entry and exit roads.
- d) Park roads shall be constructed or treated in such a manner so as to minimize the creation of dust or mud.

**3. PARKING -** Off-street parking, loading, and maneuvering space shall be provided.

**4. OCCUPANCY -** The maximum length of occupancy per year shall be *8 months*. Trailers shall not be utilized as a permanent residence.

**5. ACCESSORY USES -** Accessory uses such as snack bars, showers, laundromats, etc., customarily associated with travel trailer parks shall be permitted. However, the land utilized in this manner should not account for more than 10% of the total area of the park and the services shall be directed toward the occupants of the park. Finally, no commercial character shall be visible from outside the park and such services shall only be allowed when the number of sites is sufficient to support these services.

**6. LOCATION -** Parks shall not be located so as to cause heavy traffic to be directed through residential areas not accustomed to heavy traffic.

**7. SUPERVISION -** The park owner shall be responsible for having supervisory personnel on premises as necessary during the camping season for the purpose of policing the premises within the limits prescribed to him by law.

**8. NUISANCES -** The park owner shall prevent any undue proliferation of smoke, dust, or any pollution of the air or water by the campers or campsites. Quiet hours shall be established by the owner as necessary.

**9. RECREATIONAL FACILITIES AND AREAS -** Sufficient recreational areas shall be set aside in appropriate locations to meet the needs of campers. As a minimum, the acreage established at the campground will be calculated using 500 sq. ft. per campsite. The types of facilities provided (e.g., playgrounds, picnic area, walking paths, etc.) will be based on the estimated age distribution of the campers. A comprehensive recreational plan shall be established and submitted with the application.

**C. PREEXISTING USES -** All travel trailer parks in existence before the enactment of this law shall be, as necessary, subject to the following subsections above: *B4 - Occupancy, B7 - Supervision, and B8 - Nuisances*. These conditions shall be met three months after a written decision, established at a public hearing, is received by the park owner. Expansions of existing parks shall be subject to all conditions of this section except B6 location.

**SECTION 634 - Fuel Tanks**

**A. Purpose -** The purpose of this section is to promote the safety of residents in residential districts from fire and explosion resulting from gasoline/volatile liquid tanks. As a secondary purpose, the maintenance of aesthetic values in residential neighborhoods is also promoted.

**B. Prohibition of Gasoline/Volatile Liquid Tanks –** In districts where gasoline/volatile liquid tanks are not listed as allowable uses, they shall be prohibited. In districts where said tanks are allowed with “no permit,” no conditions shall be specified except area (setback, etc.) requirements.



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## **SECTION 635 - Aircraft Landing Strip**

**A. Purpose** - In order to protect residents from the creation of unsafe conditions or nuisances, the following conditions shall be considered prior to the granting of any permit for an aircraft landing strip.

**B. Conditions -**

1. **Location** - Potential airstrips should be located such that they are a minimum of 300 feet from any dwelling and also not more than 10 dwellings are within 500 feet of any portion of the actual runway.
2. **Posted signs** - Airstrips shall be posted with signs of sufficient quantity to alert any person entering the area that aircraft may be present.
3. **No dwellings** shall be in the immediate clear area of the ends of the airstrip.
4. **All commercial development** proposed to be located on the airstrip property must be allowed in that district.
5. **Referral to State** - Prior to acting on any aircraft landing strip permit request, the Municipal Board shall, by resolution, request the NYSDOT Commissioner to review the proposed airstrip and make a recommendation in accordance with Section 249 of General Business Law.

**C. Permit Requirements** - All requests for permits shall include a description of the type and quantity of aircraft using the facilities, frequency of flights, a map drawn to scale showing the airstrip and prevailing winds as well as dwellings in the neighborhood and proposed commercial development.

## **SECTION 636 - Topsoil / Excavation**

During the construction of a foundation, general landscaping, or any other extensive excavating project, a person, firm, corporation, etc., shall not strip, excavate, or otherwise remove soil/gravel unless the following conditions are met:

- A. TOPSOIL** - Topsoil is replenished or left on-site with sufficient amounts to support future development needs.
- B. GROUNDWATER RUNOFF** – Runoff shall be managed and controlled so it will not be caused to flow into neighboring properties, to pool, or cause erosion.
- C. TIME REQUIREMENT** - All of the above conditions shall be met within one year from the time the project started. However, the Municipal Board shall have the power to grant extensions or shorten the time frame for just cause after receiving a written request which includes the reasons for the request.

## **SECTION 637 – Regulation of Portable Toilets** *(added January 9, 1997)*

The outdoor placement or use of port-a-johns or portable toilets shall be prohibited in the R-1, R-1WB, R-2 and R-3 Zoning Districts within the Town of Ellery with the following exceptions:

- A. No more than two (2) fully enclosed portable toilets or port-a-john units may be placed on premises for no longer than three (3) days in any one (1) year.
- B. One fully enclosed portable toilet or port-a-john may be placed on a premise for longer than three (3) days per any one (1) year with a Special Use Permit.
- C. One fully enclosed portable toilet or port-a-john may be placed on a premise during actual construction on said premises while a valid building permit from the Town of Ellery is in effect.

All such uses shall comply with all the District set back requirements for accessory buildings.



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**SECTION 638 – Funneling (Waterfront Lot Division)** *(added October 8, 1998)*

- A. Purpose** – Provide waterfront access opportunities primarily to owners of upland dwelling units (single or multiple family) through a relatively small lakefront lot while, at the same time, providing the visual and density protection to lot owners in close proximity to the access lot. For purposes of this section, the term “owners of upland dwelling units” or “upland owners” shall mean all individuals or entities except fee owners of a parcel of real property fronting upon Lake Chautauqua improved by a dwelling or dwellings.
- B.** Except as hereinafter provided, there shall be no funneling allowed in the R1, R1WB, and R2 Districts of the Town of Ellery.
- C. Permits & Conditions** – *(Refer to table on next page)*

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## TYPE OF PERMIT REQUIRED

LOT CHARACTERISTICS	BY RIGHT	SPECIAL USE SITE PLAN PERMIT	AREA VARIANCE
1. Minimum lot width of each lakefront lot created	50 feet	40 feet	Less than 40 ft.
2. Min. lot width per household unit	25 feet	20 feet	Less than 20 ft.
3. # Housing units with access	2 or less	More than 2	N/A
4. Width of all contiguous lakefront lots	50 ft. min	25 to 49 ft.	Less than 25 ft.
5. # docks to be included on Each lakefront lot	1 max.	2 Max.	Over 2
6. Dock separations possible between docks associated with new lot & contiguous lots	Min 25 ft.	Min. 25 ft.	Less than 25 ft.
7. Parking spaces	Min. 1 off-street Per household	Min. 1 off-street Per household	Min. 1 off-street Per household
8. Shoreline Shape – Docks convergence/separation as they parallel or extend out from shore separate		X	X
9. Zoning District & lot density req. (lot sizes for dwelling units)		X	X
10. Existing number of “funnel” access points within 1000 ft.		X	X
11. Potential for future “funnel” access points e.g., amount of upland open space		X	X
12. Presence of existing buffers or the need for them		X	X
13. Opinions of residents of Neighborhood		X	X
14. The willingness of landowners involved in the lot division to use legal means – e.g., area covenants to give permanence to decisions.		X	X
15. Overall affect on character of Neighborhood		X	X
16. Elimination or demolition of Existing structures		X	X
17. Restricted use of waterfront parcel - e.g., access to boat only		X	X
18. Other reasonable conditions		X	X

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**SECTION 639 Reserved****SECTION 640 - Adult Entertainment Facilities**

- A. PURPOSE** - It is the purpose of the Local Law to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of the citizens of the Town of Ellery, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this law have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent of this Local Law to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor the effect of this law to condone or legitimize the distribution of obscene materials.
- B. FINDINGS** - Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Town Board and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini-Theaters*, 426 U.S. 50 (1976), *F.W./PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990), *Barnes v. Glen Theater, Inc.*, 511 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 Supreme Court 1382 (2000), and on other studies in other communities including, but not limited to Phoenix, Arizona; Minneapolis/St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; and St. Croix County, Wisconsin, the Town Board finds:
- Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operation of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
  - Certain employees of sexually oriented businesses defined in the law as adult theaters and adult cabarets engage in higher incidents of certain types of illicit sexual behavior than employees of other establishments.
  - Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos or live sex shows.
  - Offering and providing such space encourages such activities, which creates unhealthy conditions.
  - Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses.
  - At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
  - That here in Chautauqua County we have, in recent years, had an HIV-AIDS outbreak which has caused the County to become aware of the inherent problems.
  - The development and proliferation of adult entertainment facilities without regulations as to siting, concentrations and locations may result in the

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deterioration of residential neighborhoods and business districts. In addition, these types of businesses located near schools, churches and/or other institutions of learning or religion in the Town of Ellery can result in a negative environment to the purposes for which these institutions were formed.

- i) The findings noted in Subsections “a” through “h” raise substantial governmental concerns.
- j) Sexually oriented businesses have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns.

### **C. Definitions for Adult Entertainment Facilities -**

- 1. **Adult Book/Video/Media Store**: An establishment having as its stock-in-trade, books, magazines, videos and other periodicals which are distinguished or relating to specified sexual activities or specified anatomical areas, such as defined herein, or an establishment with a segment or section devoted to the sale or display of such material.
- 2. **Adult Entertainment Facilities**: Means and refers to “adult news-racks”, “adult book stores”, “adult motion picture theaters” and “exotic cabarets.”
- 3. **Adult Motion Picture Video Theater**: An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined herein, for observation by persons within the use.
- 4. **Adult News Rack**: Any machine or device, whether coin-operated or not, which dispenses material which is distinguished or characterized by emphasis depicting, describing or relating to the “specified sexual activities” or “specified anatomical areas” defined herein.
- 5. **Exotic Cabaret**: A night club, bar or restaurant or similar commercial establishment which regularly features 1) persons who appear nude or semi-nude; or 2) live performances which are characterized by the exposure of “specified anatomical area” or by “specified sexual activities” or 3) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas”.
- 6. **Specified Sexual Activities**: a) human genitals in a state of sexual stimulation or arousal; b) acts of human masturbation, sexual intercourse or sodomy; c) fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.
- 7. **Specified Anatomical Areas**: a) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breasts below a point immediately above the areola; b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

### **D. Location -** The following provisions shall apply to the location of adult entertainment facilities:

- a) Adult entertainment facilities shall be permitted only in B-1 Retail Business, B-2 Highway Business and B-4 Ellery Business Districts, as established in Article III of the Zoning Law of the Town of Ellery, upon approval of a special use permit.
- b) No adult entertainment facility shall be permitted within 500 feet of any residence.
- c) No adult entertainment facility shall be permitted within 1,000 feet of any:
  - 1. school,
  - 2. religious institution, or
  - 3. public park or public recreation facility.

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- E. Sign Requirements** - All signs shall follow the regulations as set forth in [Section 617](#) (Signs) of the Town of Ellery Zoning Law.
  - F. Public Display of Certain Matter Prohibited** - Materials offered for sale from “adult news-racks” shall not be displayed or exhibited in any manner which exposes to the public view any picture or illustration depicting any “specified sexual activity” or any “specified anatomical area”. Material offered for sale or viewing at any adult entertainment shall not be displayed or exhibited in a manner which exposes any depiction of “specified sexual activity” or “specified anatomical areas” to the view of persons outside the building or off the premises on which such store or theater or use is located.
  - G. Restrictions Cumulative in Nature** - The restrictions set forth in this law are in addition to any applicable provision of the Zoning Law of the Town of Ellery. In the event of any conflict between any such provisions, the more restrictive provisions shall be applied.

#### **SECTION 641 – Transient / Commercial Use of Dwelling Units**

The following transient/commercial use of dwelling units should be included in the Uses by Right in all zoning districts in the Town of Ellery **with the exception of** the Single-Family Residential “R-1” District and the Single-Family Residential “R-1 WB” District.

#### **THE TRANSIENT/COMMERCIAL USE OF A DWELLING UNIT, SUBJECT TO THE FOLLOWING CONDITIONS:**

- A. Criteria Required:** Prior to undertaking such transient use, the owner of the premises upon which the use shall be exercised shall supply, in writing, the following information to the Town of Ellery Zoning Enforcement Officer:
  - a. Street address and section, block and lot number(s) of the premises as set forth on the official Town of Ellery Tax Map.
  - b. A plan, drawn to scale, showing the lot, location of the improvements and available parking area.
  - c. Proof of ownership and the name, address and telephone number of each and every person or entity with an ownership interest in the premises.
  - d. Full name, address and telephone number of any agent or real estate agent or broker acting on behalf of the owner or owners with respect to renting or leasing the premises.
  - e. Occupancy load of the premises.
  - f. Certification of operable smoke detectors and operable carbon monoxide detectors located on the premises.
  - g. Name, address and telephone number of a local contact person available to respond to any and all complaints concerning the transient use of the premises within 24 hours after said complaint is filed with the Town of Ellery.
  - h. Garbage/ trash pickup schedule for the property.
  - i. A copy of the written list of rules to be posted in the dwelling unit for the renters. Certain rules are mandatory such as no fireworks permitted, no tents on the premises and quiet hours are from 10:00 p.m. to 7:00 a.m. weekdays and midnight to 7:00 a.m. on weekends.
  - j. Written certification that the above mentioned rules will be conspicuously posted in the premises.
  - k. Any additional information required by the Code Enforcement Officer to determine compliance with the provisions of this Section.



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- B. Upon the submission of the written documentation as set forth above, together with a determination that the premises are not in violation of any of the provisions of the Town of Ellery Zoning Code, the Town of Ellery Zoning Code Enforcement Officer shall issue a Vacation Rental Permit for the transient/commercial use of the premises.
- C. It shall be unlawful for any owner, tenant, agent or other representative of the owner to rent, lease, advertise or hold out for rent any dwelling unit for transient/commercial use without a Vacation Rental Permit.
- D. Transient/Commercial Use shall be defined as follows:  
Transient/commercial use of a dwelling unit shall mean a commercial use of the dwelling unit wherein it is rented, leased or assigned for a term less than 28 days duration. It does not include hotels, motels and RV spaces which are specifically addressed in each Zoning District in the Town of Ellery Zoning Law.
- E. A Vacation Rental Permit may only be issued for one dwelling unit per lot or adjoining lots under a common ownership.
- F. Violations. A complaint alleging a violation of the provisions and requirements set forth herein maybe filed with the Code Enforcement Officer of the Town of Ellery. Such complaint shall be in writing and signed by a person having personal knowledge of the facts alleged therein. The Code Enforcement Officer of the Town of Ellery shall then cause an investigation to take place based on such written complaint. In the event that such investigation results in the Code Enforcement Officer having reasonable belief that the violation has occurred, a Notice of Violation shall be served either personally or by the United States Postal Service upon the owner, owners or agents thereof setting forth the nature of the violation. Said Notice of Violation shall specifically set forth any terms and conditions of the Town of Ellery Zoning Law which it is alleged have been violated.
- G. Penalties. Any violation of the provision of this Section by any person shall be punishable as set forth in [Section 1202](#) of the Town of Ellery Zoning Code.
- H. Any signs displayed on the premises advertising the same for lease or rent shall be in compliance with [Section 617](#) of the Town of Ellery Zoning Law.
- I. A Vacation Rental Permit shall be revoked by the Zoning Board of Appeals after finding two separate violations of the requirements and provisions of this Section by the permit holder within a time period of 2 years or for any material misrepresentation of information provided, required by Paragraph 1 of this Section, after the permit holder is given notice and a hearing is held by the Zoning Board of Appeals.

## **SECTION 642 - Seasonal Recreation Camps (Private)**

- A. Purpose** - This section is created for the purpose of preserving rural character and providing protection for existing uses.
- B. Conditions** - The following conditions shall apply:
- 1. Lot Size** - A minimum lot size of 5 acres shall be required.
  - 2. Floor Space** - Any habitable recreational camp structure shall, as a minimum, be 150 sq. ft. of living area.
  - 3. Structure Location** - A minimum front yard setback of 200 feet shall be required.
  - 4. Construction** - The type, size and method of construction shall be considered. Mobile homes, trucks and bus bodies shall not be used for a dwelling unit.
  - 5. Buffer Zones** - Existing natural buffers should be retained to the greatest degree possible and new buffers should be considered where it is apparent that they are necessary.
  - 6. Permit** - When more than one dwelling unit is being proposed to be placed on the property owned by the applicant, a Special Use permit shall be required. For a single dwelling, a "By Right" permit shall be utilized.

7. **Year-round Conversion** - The conversion of seasonal camps to year-round housing or any other allowed uses shall be allowed only by Special Use Permit.
8. **Access to Public Roads** - Seasonal camps must either have access to a public road or a 50 foot public right-of-way shall be required.
9. **Inhabitation** - The maximum inhabitation time annually shall be 180 days.
10. **Other requirements** - Other reasonable conditions may be required as deemed necessary.

## SECTION 643 – **Self-Storage Facility (Commercial)**

### A. PERMITTED LOCATIONS

- 1.) Self-storage facilities are permitted by right in the B-2 district *located along New York Route 394 at Maple Springs*. Freestanding self-storage facilities are not permitted in the B-1, B-3 or B-4 districts *or in the B-2 district located along New York Route 430 in Greenhurst*.

### B. CONDITIONS

- 1.) Uses not related to the short-term storage of household items and non-hazardous, non-perishable durable goods are prohibited at self-storage facilities. This includes automobile, boat, vehicle and heavy equipment storage; storage of hazardous items, perishable goods or animals; and use as a residence, office, workshop, studio, band rehearsal area or place of business.
- 2.) Electrical service to individual units must be for lighting and climate control only. Electrical outlets must not be provided in individual units.
- 3.) A dwelling occupied by the owner or on-site manager is permitted as an accessory use to a mini-storage warehouse.
- 4.) All storage shall be inside an enclosed building.

### C. ARCHITECTURAL THEME

- 1.) Architectural details must relate to an overall architectural theme. Facilities should be designed to be consistent with the dominant theme or design of surrounding buildings.
- 2.) Bright primary colors are prohibited on buildings, regardless of corporate standards or preferences.
- 3.) All buildings, including storage units, must be surfaced in high quality materials. Smooth-faced concrete block, painted masonry, tilt-up and precast concrete panels are prohibited.

### D. GENERAL ARCHITECTURAL REQUIREMENTS

- 1.) Unit doors must be screened or sited so they are not visible from the street or residential properties to the maximum extent practicable.
- 2.) Unit doors must not face the street.
- 3.) Unit doors must be integrated into the overall design theme of the site through color and texture.

### E. ROOF DESIGN

- 1.) Buildings must include a roof pitch of  $\geq 4:12$ , with roofs incorporating a high quality surface such as architectural shingles, seam metal or red tile. Flat roofs are prohibited.

### F. LANDSCAPING

- 1.) Landscaping and berming must screen storage buildings from the public right-of-way and adjacent residential zoning districts

### G. CIRCULATION AND STACKING

- 1.) Greater than 20% of the units must be accessible to a full sized moving truck.
- 2.) Drive aisles must be  $\geq 24'$  wide. Units and drive aisles must be sited so a vehicle parked at a unit cannot trap another vehicle and prevent it from leaving the facility.
- 3.) Parking spaces must not be located in the street yard.

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## H. SIGNS

- 1.) Attached signs are permitted only on the main office/security building. Signs are prohibited on storage unit buildings.

## I. FENCING AND SCREENING

- 1.) Perimeter fencing, security fencing, and entry gates must be constructed of attractive materials that are compatible with the design and materials used throughout the site. Acceptable fencing types include masonry, decorative metal and wrought iron, with regular recesses and centers to break up long stretches, are encouraged. Barbed wire, stockade fencing, cinder block, precast concrete and chain link fencing are prohibited.

## J. OUTDOOR LIGHTING

- 1.) Night lighting and security lighting must be sensitively designed to ensure no off-site glare is directed to neighboring parcels and that the overall intensity of the site lighting is not excessive.
- 2.) Excessive night security lighting is discouraged, and other security measures should be considered.
- 3.) Building mounted sconces must be used instead of freestanding light poles wherever possible.
- 4.) When a mini-storage facility is adjacent to a residential zone or parcel, pole mounted lights must be turned off between 9:00 PM and 6:00 AM.

## SECTION 644 – Portable Home Storage Units

- A. No Portable Home Storage Units may be utilized as a temporary structure unless a zoning permit is obtained from the Code Enforcement Officer who shall issue such permit if the following requirements are met:
  - 1.) A portable home storage unit is located as a temporary structure on property within the Town for a period not to exceed thirty (30) consecutive days.
  - 2.) When necessary to facilitate clean up and/or restoration activities resulting from a flood, fire or natural disaster to a building or structure one portable home storage unit may be located on the property for a period not to exceed one hundred eighty (180) days.
  - 3.) No more than two portable home storage units may be located on a specific piece of property within the Town at one time; such structures shall be individually limited to the duration time established herein.
  - 4.) Such temporary structures shall meet all applicable setbacks and be located no closer than 10 feet to the property line.
  - 5.) Any portable home storage unit, which is not removed at the end of the time for which it may lawfully remain in place, or immediately upon direction of the Code Enforcement Officer for removal of such temporary structure for **public** safety reasons, may be removed by the Town immediately, without notice. All expenses incurred by the Town of Ellery in connection with the removal of the unsafe temporary structure shall be assessed against the land on which the portable home storage unit was located.

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# **ARTICLE VII**

**ADMINISTRATION BY ENFORCEMENT OFFICER**



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## ARTICLE VII ADMINISTRATION BY ENFORCEMENT OFFICER

### SECTION 701 - Enforcement

This Law shall be enforced by the Zoning Enforcement Officer who shall be appointed by the municipality. No building permit shall be issued by the Building Code Inspector except where there is to be compliance with all provisions of this Law.

### SECTION 702 - Duties

It shall be the duty of the Zoning Enforcement Officer in connection with this Law to do the following:

- A. Permits** - Issue building/zoning permits or refuse to issue such permits and give the reasons for such refusal to the applicant in writing.
- B. Records** - Keep a record of all applications for permits and record of all permits issued with a notation of all special conditions involved.
- C. Fees** - Receive all required fees and deposit them with the municipal clerk.
- D. Coordination** - Keep the Municipal Board, The Zoning Board of Appeals, and Planning Board informed and advised of all matters, other than routine matters in connection with the Law.
- E. Reports** - Submit such reports as may be deemed necessary.
- F. Assist Applicants** - Whenever possible advise and assist persons applying for building permits with the preparation of their applications.
- G. Violations** - Assist in securing warrants and prosecution of violators of the provisions of this Law.
- H. Notices** - Serve or cause to be served all notices that may be required to be served in connection with this Law.
- I. Fire Inspection** - Notify Fire Code Inspector of all permits issued.
- J. Building Code Inspector** - Notify Building Code Inspector of all permits issued.
- K. Amendment Recommendations** - Make recommendations to the Municipal Board for keeping the Zoning Law and accompanying map up-to-date.
- L. Inspections** - Inspect new construction, building renovations / revisions, and changes of use during and/or after construction or change in use to insure conformity with the provisions of this Law and other applicable laws.
- M. Flood Insurance** – Administer the National Flood Insurance Program in accordance with the following:
  - 1. Insure Needed Permits are Obtained** – Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
  - 2. Maintain Flood Carrying Capacity** – Review all development permits to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. “Adversely affects” means damage to adjacent properties because of rise in flood stages attributed to physical change of the channel and the adjacent overbank areas.
    - a. If it is determined that there is no adverse effect, then the permit shall be granted consistent with the provisions of this Local Law.
    - b. If it is determined that there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
  - 3. Use of Other Base Flood Data** – When base flood elevation data has not been provided in accordance with *BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD*, the Zoning Officer shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state, or other source in order to administer the Flood Plain section, “Specified Standards,” found under District Regulations.
  - 4. Information to be Obtained and Maintained** -
    - a. Obtain and record the actual elevation (in relation to mean sea level) to which the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

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- b. For all new or substantially improved floodproofed structures:
    - (1) Obtain and record their actual elevation (in relation to mean sea level) to which the structure has been floodproofed, and
    - (2) Maintain the floodproofing certifications required.
  - c. Maintain for public inspection all records pertaining to the provisions of this Local Law.

**5. Alterations of Watercourses -**

- a. Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

**SECTION 703 – Zoning Permits**

- A. Permit Required** – No building, structure, accessory uses, or lot shall be erected added to, structurally enlarged, or changed to another use until a zoning permit has been issued by the Environment Officer. Excluded, however, from these permit requirements are:
  - 1. interior modifications unless additional dwelling units or different types of uses are created,
  - 2. home repairs or improvements not involving additions or enlargements of floor space.
  - 3. Refer to Article IV, District Regulations, for other exclusions.
- B. Permit Contents** – The application for a permit shall be made on a form obtained from the Enforcement Officer. The form shall, as a minimum, contain the following:
  - 1. applicant information – name, address, etc.;
  - 2. property identification – street address and Section/Block/Lot;
  - 3. project description including purpose – proposed use;
  - 4. construction type – height, family units, lot dimension, setbacks, accessory buildings, etc.;
  - 5. other information – copy of Health Department Permit, off-street parking, location of wetlands, floodplains, need for curb cut;
  - 6. signature of applicant; and
  - 7. plot plan drawn to approximate scale showing the lot size, setback, highways, existing and proposed structures, and any other pertinent features as determined by the Enforcement Officer.
- C. Site Plan Review Check List for Residential Projects Over \$20,000** – All applicants and projects requiring a building permit or any other permits for residential projects, with a construction cost of over \$20,000, shall provide all documents necessary to comply with and satisfy the following site plan review checklist of required materials. The following information must be submitted with each building permit application. Other additional information may be requested by the Town Board and Zoning Enforcement Officer.
  - 1. Architectural drawings or blueprints including the name and address of applicant and architect or engineer. Identification of N.Y.S. licensed architect or engineer, where applicable, must include the location, type of construction, proposed use, exterior dimensions of all buildings, designs and general construction materials to be used.
  - 2. Boundaries of property plotted to scale including north arrow, dimensions and setbacks from property lines, roads, existing buildings, and proposed building.
  - 3. Elevation and grading plan. If a grade is unusually steep or sloping toward lakes or streams, a topographical map may be required, and a stormwater protection plan may also be required.
  - 4. Drainage plan with French drains, gutter drains, garage and lawn drains indicated.
  - 5. Description and location for method of sewage disposal, septic or municipal sewer if applicable. The Chautauqua County Health Dept. must approve septic plan.
  - 6. Description and location of water supply, well, or municipal water lines if applicable.
  - 7. Description and location of electrical service, overhead or underground if applicable.
  - 8. Description and location of fuel service, i.e. piped in natural gas, propane tank or fuel oil tank, if applicable.
  - 9. A copy of any other applications, permits, easements, restrictions, etc. from any other

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government bodies, homeowners associations, common ownerships or sub-developments.

- D. Flood Permits** – A development permit shall be obtained before construction or development begins within any area of special flood hazard. Application for a development permit shall be made on forms furnished by the Zoning Officer and may include, but not limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing.
- E. Validity** - Zoning permits shall be valid for a one year period only. Within 1 year from the date that the Zoning/Building permit is granted, the exterior of the structure shall be completed, backfilling and rough grading will be accomplished, and no new building materials will be stored outside. Structures not completed within the time period specified by the permit shall be in violation of the Zoning Law and shall be subject to [Section 1201](#), Violations and [Section 1202](#), Penalties. Upon expiration of the 1 year permit, a 1 year extension may be requested. Only 1 permit extension of 1 year shall be allowed and this limitation shall apply to all projects for which previous permits and extensions were granted and have since expired. After the expiration of the 1 year extension, an applicant may apply for further extensions. However, the basis for granting or denying this extension shall be the actual sustained construction progress that previously occurred and/or evidence of good faith intent to complete the structure, that is, a dated/signed contract between the property owner and an insured contractor dealing with the completion of the exterior of the structure with the completion date indicated. The Zoning Officer shall determine if extensions are to be granted. If an extension is denied, the applicant may apply for a variance from the Zoning Board of Appeals. (*Modified October 12, 1995*)
- F. Notification of Adjacent Property Owners** - Attempts shall be made in writing, to notify property owners of land adjacent to parcels of land involved in requests for zoning permits, special use permits, variances, or zoning law amendments. The notification shall be a copy of any public notice advertising the meeting or hearing. Failure of such adjacent property owners to receive such notice, however, shall not be a basis for invalidating such a building permit; nor of contesting the actions of the Enforcement Officer, Board of Appeals, Planning Board, or the Municipal Board in regard to the issuance or withholding of such permit.
- G. Decisions** -
1. All decisions by the Zoning or Code Enforcement Officer to grant or deny a zoning permit shall be made in writing within 20 days from the time that the completed zoning permit form is submitted along with full payment of the required fee.
  2. The decision form shall, as a minimum, include a project description, location information, reference to the section of the Zoning Law which would not be complied with, and a description of any alternatives that may be open to applicants who are denied a permit.

#### **SECTION 704 – Schedule of Fees**

The Town Board, by resolution, shall establish and amend from time to time, a schedule of fees for the applications and permits required by this zoning law. The current schedule shall be on file with the Code Enforcement Officer and with the Town Clerk.



# **ARTICLE VIII**

## **NONCONFORMING USES**



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## ARTICLE VIII NONCONFORMING USES

### SECTION 801 - Continuation

The lawful use of any building or land existing at the time of the enactment of this Law may be continued although such use does not conform to the provisions of this Law. However, all legally preexisting uses which do not conform to specific provisions of this Law shall not be required to comply with these provisions unless it is specifically stated within this Law that they must comply within a certain reasonable time period.

### SECTION 802 - Alteration of Structures

- A. Unsafe Structures** - Nonconforming buildings damaged by fire, wind, and other catastrophic causes as well as structures declared to be unsafe due to general dilapidation may be restored or rebuilt for the nonconforming use it was used for last. Unsafe structures cannot be restored or rebuilt if it would result in a use which is more nonconforming than the structure was prior to becoming unsafe. When the unsafe condition was caused by fire, wind, or any catastrophic causes, the permit must be applied for within six months from the date of the catastrophe. Otherwise, the building permit need not be granted, as decided by the Zoning Board of Appeals.
- B. Alterations of structures** - A nonconforming structure may be added to or altered during its life to an extent of up to 50% of the market value of the building as long as the alterations do not cause the structure to be more nonconforming. If the alterations are made to bring the building into conformity with all provisions of this Law, then the 50% rule does not apply. Alterations above 50% shall be allowed if all conditions of the Law are met.

### SECTION 803 - Prior Approved Construction

Nothing herein contained shall require any change in plan, construction, or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently carried on within three months of the date of such permit.

### SECTION 804 - Abandonment

Whenever a nonconforming use has been voluntarily discontinued for a period of one year, such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this Law.

### SECTION 805 - Displacement

No nonconforming use shall be extended or enlarged to displace a conforming use on the property or adjacent property.

### SECTION 806 - District Changes

Whenever the boundaries of a district or zone shall be changed so as to transfer an area from one district or zone to another district or zone of a different classification, the provisions of this article shall also apply to any uses made nonconforming as a result of the change.

### SECTION 807 - Nonconforming Yard Changes

A permitted use which is not in conformance with yard requirements (e.g., setbacks, etc.) may be removed and replaced with another structure (same use) which is the same or more in compliance with the yard requirements without going through area variance procedures. The Zoning Enforcement Officer shall determine the applicability of this section to specific cases.

### SECTION 808 - Use Changes

- A.** Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.
- B.** A legal nonconforming use may be changed to another nonconforming use which is of such a character so as to be equal or less of a nuisance and more in conformance with the zoning law requirements. The Zoning Board of Appeals shall make all determinations as to what new nonconforming uses would be allowable through the normal use variance procedures. ([Refer to Section 904 on variances](#)).



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# **ARTICLE IX**

## **ZONING BOARD OF APPEALS**

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## ARTICLE IX ZONING BOARD OF APPEALS

### SECTION 901 - Creation

*There is hereby established a Zoning Board of Appeals having the powers authorized under the New York State Town Law. Said Board shall consist of seven (7) members of staggered 5-year terms, including a chairperson, appointed by the Town Board. Appointments shall be in accordance with the New York State Town Law and an appointment to a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. In the absence of a Town Board appointment of a chairperson the Board of Appeals may designate a member to serve as acting chairperson. The Town Board may also provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper. Board of Appeals members shall complete training and continuing education courses as required by New York General Municipal Law.*

### SECTION 902 - General Procedures

- A. Duties** - The Zoning Board of Appeals shall act in strict accordance with procedures specified by law and this Zoning Law. The major duties of the Board shall be to hear and decide on variance requests as well as to interpret the meaning of the Zoning Law as requested. Additionally, they shall hear requests for selected Special Use Permits, when a Variance (Use or Area) is also required.
- B. Format for Requests** - All requests shall be in writing on forms prescribed by the Zoning Board of Appeals. Specific provisions of the Zoning Law shall be referred to and as a minimum, the following information shall be provided by the person requesting the variance or interpretation.
  - 1. property identification;
  - 2. project description;
  - 3. a drawing of sufficient detail to provide needed information sufficient to decide on the request;
  - 4. reasons for permit denial;
  - 5. proof of unnecessary hardship or practical difficulties; and
  - 6. hearing information.
- C. Referral to Planning Board** - On an optional basis, the Zoning Board of Appeals may request in writing a recommendation by the Planning Board. The failure of the Planning Board to submit said report shall be deemed to be an approval of the appeal or interpretation in favor of the applicant.
- D. Hearings** - All hearing procedures shall be in accordance with appropriate laws with respect to notices, timeliness, etc.
- E. Decisions** - Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings. Decisions shall be made in a timely manner in accordance with state law. As per state law, a majority of the membership are needed to pass or reject any request.
- F. Time Requirements** - All appeals to the Zoning Board of Appeals for an interpretation or a variance shall be submitted to the Zoning Board of Appeals within 30 days of the date of denial of the application.

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## **SECTION 903 - Interpretation**

The Zoning Board of Appeals shall have the power to interpret the meaning of this Zoning Law whenever called upon by the Municipal Board, Zoning or Code Enforcement Officer, or an aggrieved party. This shall include the power to reverse any order, requirement, decision, or determination of an administrative official or Board. This interpretive power shall include the determination of the location of district boundary lines.

## **SECTION 904 - Use & Area Variances**

**A. Reasons for Variances** - The Zoning Board of Appeals has the authority to vary or modify the strict letter of the Zoning Law where a literal interpretation would cause practical difficulties (Area Variances) or unnecessary hardships (Use Variance).

### **B. Applicability & Limitations -**

1. The Zoning Board of Appeals can decide appeals from a person who feels aggrieved by a decision of the Enforcement Officer.
2. The Zoning Board of Appeals may reverse, affirm, or modify the decision made by the Municipal Board.
3. The Zoning Board of Appeals has absolutely no power to amend the Zoning Law and must exercise great care to insure that its rulings do not, in effect, amend the Zoning Law.

### **C. Area Variances –**

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative officials charged with the enforcement of this law, to grant area variances as defined herein.
2. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board of Appeals shall also consider:
  - (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
  - (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  - (c) whether the requested area variance is substantial;
  - (d) whether the proposed variance will have an adverse effect or impact on the physical or Environmental conditions in the neighborhood or district; and
  - (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
  - (f) 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.

### **D. Use Variances -**

1. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officials charged with the enforcement of this law, shall have the power to grant use variances, as defined herein.
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.

3. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant. In order to prove ***unnecessary hardship*** the applicant shall demonstrate that for each and every permitted use under this Local Law for the district in which the applicant's property is located:

- a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- b. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d. The alleged hardship has not been self-created.

***Failure to demonstrate any one of the requirements in Subsections 1(a) through 1(d) above is sufficient to justify the denial of a use variance.***

- E. 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, and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- F. **Temporary Variances** - The Zoning Board of Appeals may issue, for uses which are of a temporary nature, a Variance. Said Variance shall clearly state the conditions of the variance to include, when it shall terminate, the possibility of renewal, and other conditions deemed necessary.

#### **SECTION 905 - Special Use Permits**

- A. **Applicability** – Whenever a Variance (Use or Area) is required before a Special Use Permit can be reviewed, the Zoning Board of Appeals shall be the authorized Board for dealing with both the Variance and the Special Use Permit. This Special Use Permit review is only authorized by the Zoning Board of Appeals for commercial projects involving 5,000 or fewer square feet of floor space or residential projects involving 5 or less residential units.
- B. **Basis for Granting Special Use Permits** – See article on Planning Board, section on Special Use Permit.
- D. **Referral to Municipal Board and Planning Board** –
  1. Prior to action on Special Use Permits, the Zoning Board of Appeals shall advise the Municipal Board and Planning Board of the proposed actions.
  2. The Municipal Board and Planning Board shall have 15 days in which to review the proposed action and return their recommendation to the Zoning Board of Appeals. After the 15 days has expired, the Zoning Board of Appeals may act without receipt of a response.

#### **SECTION 906 - Mandatory Referral** (General Municipal Law 239 l & m)

- A. **Applicability** - In accordance with General Municipal Law 239 l & m, before issuing a Special Use Permit or granting a variance affecting any real property lying within a distance of 500 feet of the boundary of this Municipality or from the boundary of any existing or proposed county or state park or other recreation area, or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road, or highway, or from the channel owned by the county or for which the county has established

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channel lines, or from the existing or proposed boundary of any county or state owned land on which a public building or institution is situated, the matter shall be referred to the Chautauqua County Planning Board.

- B. Response Time** - Within 30 days after receipt of a full statement of such referred matter, the Chautauqua County Planning Board, to which referral is made or an authorized agent of said agency, shall report its recommendations thereon to the Board of Appeals, accompanied by a full statement of the reasons for such recommendations. If the Chautauqua County Planning Board fails to report within such period of 30 days, the Board of Appeals may act without such report. If the Chautauqua County Planning Board disapproved the proposal, or recommends modification thereof, the Board of Appeals shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after the adoption of a resolution, fully setting forth the reasons for such contrary action by the Board of Appeals.
- C. Report of Action** - Within 7 days after final action by the Board of Appeals, modifications or disapproval of a referred matter, the Board of Appeals shall file a report of the final action it has taken with the Chautauqua County Planning Board which had made the recommendations, modifications or disapproval.



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# **ARTICLE X**

## **MUNICIPAL PLANNING BOARD**

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## ARTICLE X MUNICIPAL PLANNING BOARD

### SECTION 1001 - Duties

The Planning Board shall have the following duties with respect to this Zoning Law.

#### A. **Special Use Permit** –

1. **Applicability** – The Planning Board shall hear all requests for Special Use Permits for commercial projects involving 5,000 or less square feet of floor space and for residential projects involving 5 or less residential units. However, the aforementioned projects, which also require an Area or Use Variance, shall not be handled by the Planning Board (see Article in Zoning Board of Appeals).

#### 2. **Special Use Permit Provisions**

a. **General Provisions** – The special uses listed in this Zoning Law for which conformance to additional standards are required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this Zoning Law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

b. **Standards** – The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it, and the location of the site with respect to the existing or future streets giving access to it, shall be such that it will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls, and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof. Operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibrations, or lights, than would be the operations of any permitted use.

#### c. **Conditions** –

1. In the granting of Special Use Permits, the Permitting Board shall attach such conditions and safeguards as it deems appropriate under this Law.
2. The supplemental section of this Law entitled, General Conditions, will be referred to and used as a checklist of possible conditions to be attached to the Special Use Permit being requested. It should not be assumed that this section is all-inclusive.
3. A plan for the proposed development of a site for designated special use shall be submitted with an application for a Special Use Permit, and plan shall show the location of all buildings, lots, parking areas, traffic access, and circulation drives, and any other pertinent information that the Permitting Board deems necessary.

d. **Procedures** – The Permitting Board shall act in strict accordance with procedure specified by law and by the Zoning Law with regard to public hearings, notices, publications, etc.

e. **Expiration** – A Special Use Permit shall be deemed to authorize only 1 particular use and shall expire if the Special Use shall cease for more than 1 year.

f. **Existing Violations** – No Special Use Permit shall be issued for a property where there is an existing violation of this Law.

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**B. Recommendations –**

1. Optional Reports – The Planning Board shall submit reports within 30 days after referral on any matter referred to it.
2. Mandatory Recommendations – The Planning Board shall submit recommendations to the appropriate Board on all applications for:
  - a. Zoning amendments; and
  - b. All other uses for which a referral to the Planning Board is mandatory.

**SECTION 1002 - Referral to Municipal Board**

- A.** Prior to action on Special Use Permits the Planning Board shall advise the Municipal Board of the proposed action.
- B.** The Municipal Board shall have 15 days in which to review the proposed action and return their recommendation to the Planning Board. After the 15 days has expired, the Planning Board may act without receipt of a recommendation from the Municipal Board.

**SECTION 1003 - Mandatory Referral**

General Municipal Law 239 l & m must be followed when acting on a Special Use Permit/Site Plan Review. The Mandatory Referral section found in the Zoning Board of Appeals Article should be consulted for the procedure to be followed.

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# **ARTICLE XI**

## **MUNICIPAL BOARD**

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## ARTICLE XI MUNICIPAL BOARD

### SECTION 1101 - Duties

The Municipal Board shall have the following duties with respect to this Zoning Law.

#### **A. Amendments -**

1. The Municipal 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 hearing.
2. The Municipal Board by resolution adopted at a scheduled meeting shall fix the time and place of a public hearing on the proposed amendment and cause notice to be given in accordance with applicable Law.

#### **B. Special Use Permit/ Site Plan Review -**

1. **Applicability** - The Municipal Board shall hear all requests for Special Use Permits/ Site Plan Reviews for commercial projects involving over 5,000 square feet of floor space and for residential projects involving more than 5 residential units.
2. **Special Use Permit Provisions –**
  - a. **General Provisions** - The special uses listed in this Zoning Law for which conformance to additional standards are required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this Zoning Law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.
  - b. **Standards** - The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it, and the location of the site with respect to the existing or future streets giving access to it, shall be such that it will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls, and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof. Operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibrations, or lights, than would be the operations of any permitted use.
  - c. **Conditions -**
    - (1) In the granting of Special Use Permits, the Permitting Board shall attach such conditions and safeguards as it deems appropriate under this law.
    - (2) The supplemental section of this law entitled, General Conditions, will be referred to and used as a checklist of possible conditions to be attached to the Special Use Permit being requested. It should not be assumed that this section is all-inclusive.
    - (3) A plan for the proposed development of a site for designated special use shall be submitted with an application for a Special Use Permit, and plan shall show the location of all buildings, lots, parking areas, traffic access, and circulation drives, and any other pertinent information that the Permitting Board deems necessary.
  - d. **Procedures** - The Permitting Board shall act in strict accordance with procedure specified by Law and by the Zoning Law with regard to public hearings, notices, publications, etc.

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- e. **Expiration** - A Special Use Permit shall be deemed to authorize only 1 particular use and shall expire if the special use shall cease for more than 1 year.
  - f. **Existing violation** - No Special Use Permit shall be issued for a property where there is an existing violation of this Law.
3. **Site Plan Review Requirements** -
- a. **Purpose** - Site Plan review has the purpose of specifying for all involved parties what the intended design, arrangement, and uses of the land shall consist of so as to optimize the physical, social and economic effects on the community for specified types of development.
  - b. **Administration** -
    - (1) **Permits** - The Permitting Board shall be responsible for a site plan review of all commercial development with over 5,000 square feet of floor space or residential development involving more than 5 dwelling units. In these instances the Permitting Board shall also be responsible for administering the Special Use Permit requirements, with both processes taking place simultaneously.
    - (2) **Expiration** - A Site Plan Review shall be deemed to authorize only 1 particular use and shall expire if the use shall cease for more than 1 year.
    - (3) **Hearings** - An attempt shall be made to integrate, where appropriate, the Site Plan Review requirements into the required Special Use Permit Hearing, thus, eliminating the need for 2 hearings.
    - (4) **Referral** - The Permitting Board shall within 7 days of receipt of the complete application, submit to the Planning Board a request for an opinion on any proposed project. The Permitting Board shall wait 14 days for a response prior to acting on the matter.
    - (5) **Decision Requirements** - Within 45 days of receipt of the complete application the Permitting Board shall render a decision to the Zoning Officer. If no decision is made within the 45-day period, the site plan shall be considered approved. The applicant shall be notified in writing of its decision with the reasons for the decision specified.
  - c. **Information Required** - Sketches drawn to approximate scale will be prepared by the applicant, where feasible, to display the following information:
    - (1) **Administration, Legal and Other Miscellaneous Information** -
      - (a) **Project** title and date
      - (b) **Name, address** and telephone number of applicant, owner (if different), contractor, architect, and other major involved parties;
      - (c) **Construction schedule** to include phasing and the completion date;
      - (d) **Performance bond** to include amount, public improvements covered and bond approval;
      - (e) **Location, width, and purpose** of all easements; public land holdings, leases, covenants, deed restrictions or any other unique land restriction; and
      - (f) **Record of all applications** for permits from the Federal, State, or County governments to include approval status.
    - (2) **Existing Man-made Features to be Shown** -
      - (a) **Boundary lines** of project site as well as adjacent properties; and
      - (b) **Ownership pattern** of all adjacent parcels.
      - (c) **Existing structures** on project site and adjacent property to include location, dimensions, height, and use. Decks and accessory structures should also be shown as well as historic structures.
      - (d) **Roadways** to include public roads, private roads or driveways on the site, on and off street parking, load/unload zones, access and egress, pedestrian pathways, or sidewalks. Width and elevations should be included.

- (e) **Utilities** shall be identified to include location and size of water sewer, drainage pipes, telephone, electric, gas, and TV cable. Additionally, any solar energy system should be identified.
  - (f) **Miscellaneous features** to include: fences, signs, outside lighting, public address systems, storage areas, and retaining walls shall be shown.
  - (g) **Fire lanes and fire hydrants**, if any exist, should be displayed.
  - (h) **Recreational areas** both on the site and adjacent should be displayed to include public and private facilities. Decks, pools, tennis courts, etc., should be included.
  - (i) **Trash or garbage collection** areas shall be identified.
  - (j) **Services** such as banks, schools, retail, or service districts should be identified.
  - (k) **Zoning district** boundaries shall be identified.
  - (l) **Other** information deemed necessary by Permitting Board.
- (3) **Existing Natural Features to be shown -**
- (a) **Topographic features** with a minimum interval of 10 feet but preferably 2 feet. Areas of steep slope should be delineated.
  - (b) **Geographic features** such as depth to bedrock and load bearing capacity for large development proposals.
  - (c) **Hydrogeological features** including drainage and runoff patterns, flood hazard areas, wetlands, depth to ground water and drainage capacity of soil.
  - (d) **Landscaping** and vegetative cover including wooded areas, significant isolated trees, ground cover, shrubs, and other similar features. Buffers should be identified.
  - (e) **Watercourses** to include lakes, streams, or ponds.
  - (f) **Archaeologically significant areas.**
  - (g) **Significant viewscapes** should be identified.
  - (h) **Other information** deemed necessary by the Permitting Board
- (4) **New Proposal Features**
- (a) Referring to the EXISTING man-made and natural features above, provide a description/sketch of any changes that are being proposed.
  - (b) Include construction materials proposed for use.
  - (c) Provide design features.
  - (d) List the positive and negative effects for each existing feature listed above (e.g. - traffic to be generated and the effects it will have on specific roadways.)

#### **SECTION 1102 - Referral To Municipal Planning Board**

- A. Prior to action on** any Zoning Law or zoning map amendments, the Municipal Board shall advise the Planning Board of the proposed amendment.
- B. The Planning Board** shall have 30 days in which to review the proposed amendment and return their recommendation to the Municipal Board. After the 30 days has expired, the Municipal Board may act without receipt of a recommendation from the Planning Board.

#### **SECTION 1103 - Mandatory Referral**

General Municipal Law 239 l. & m must be followed when amending a Zoning Law. The Mandatory Referral Section found in the Zoning Board of Appeals Article should be consulted for the procedure to be followed.



# **ARTICLE XII**

## **VIOLATIONS & PENALITES**



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**ARTICLE XII  
VIOLATIONS & PENALTIES**

**SECTION 1201 Violations**

Whenever a violation of this 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 Enforcement Officer, who shall properly record such complaint and immediately investigate. However, the Municipal Board shall be responsible for insuring compliance with this Law when it is brought to their attention that a violation may exist, even though no formal complaint is filed.

**SECTION 1202 Penalties**

Any violation of any provision of this Law by any person shall be punishable by fine or other penalties as specified by law. Each week's of continued violation shall constitute a separate additional violation.



# **ARTICLE XIII**

## **LEGALITY**

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**ARTICLE XIII  
LEGALITY**

**SECTION 1301 Repealer**

Any previously adopted Zoning Law or regulation of the municipality, together with all changes and amendments thereto, are hereby repealed and declared to be of no effect.

**SECTION 1302 Effect**

This Local Law shall take effect 10 days after the date of its publication and posting as required by Law.



# **ARTICLE XIV**

## **TELECOMMUNICATIONS FACILITIES**

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## ARTICLE XIV TELECOMMUNICATIONS FACILITIES

### SECTION 1401      Regulation of Telecommunication Facilities

#### A. LEGISLATIVE INTENT

The Town of Ellery recognizes the increased demand for wireless communication transmitting facilities and the need for the services they provide. Often these facilities require the construction of a communication tower and/or similar facilities. The intent of this Section is to regulate the location, construction and modification of these facilities in accordance with sound land use planning by:

1. Minimizing adverse visual effects of towers and/or similar facilities through careful design, siting and vegetative screening and/or buffering.
2. Avoiding potential damage to adjacent properties from tower failure or falling debris through engineering and careful siting of tower structures.
3. Maximizing use of any new and/or existing tower or existing building and/or structure to reduce the number of towers and/or similar facilities needed in the Town.
4. Providing for the general health, safety and welfare of the Town by the regulation of these facilities as such regulation is permitted under applicable Federal and/or State law.
5. Accommodating and allowing wireless service providers to meet their service objectives in a manner consistent with these regulations and/or other applicable Federal or State law.

#### B. DEFINITIONS FOR TELECOMMUNICATIONS FACILITIES

**ACCESSORY STRUCTURE** - A non-habitable accessory facility or structure serving or being used in conjunction with a communications tower and/or similar facility or antenna, and located on the same lot as the communications tower or antenna. Examples of such structures include utility or transmission equipment, storage sheds or cabinets.

**ANTENNA** - A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal wireless communication services (PWCS), and microwave communications.

**BOARD** - This term shall mean the Planning Board of the Town of Ellery.

**CO-LOCATED ANTENNAS** - Telecommunication facilities which utilize existing towers, buildings, or other structures for placement of antennas and do not require construction of a new tower.

**FALL DOWN ZONE** - The radius around a tower within which all portions of a tower and antennas would fall in the event of a structural failure of the tower.

**FAA** - This term shall mean the Federal Aviation Administration.



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**FCC** - This term shall mean the Federal Communications Commission.

**TELECOMMUNICATION FACILITIES** - Towers and/or antennas and accessory structures used in connection with the provision of cellular telephone service, personal wireless communication services (PWCS), paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services.

**TELECOMMUNICATION TOWER** - A structure designed to support antennas. It includes, without limitation, free-standing towers, guyed towers, monopoles, and similar structures which do, or do not, employ camouflage technology.

#### **C. TELECOMMUNICATION FACILITY PERMIT REQUIRED**

1. **PERMIT REQUIREMENT** -No telecommunication facility shall be sited, located, constructed, erected, or modified, without the issuance of a Special Use Permit as prescribed by this Section.
2. **PERMITTING BOARD** - The Planning Board is hereby authorized after notice and a hearing to review and approve, approve with modifications or disapprove Special Use Permits pursuant to this law. The Planning Board shall have the authority to impose such reasonable restrictions and conditions as are directly related to or incidental to the proposed antenna, tower, or accessory structures.
3. **COMPLIANCE**- Notwithstanding any inconsistent provisions of the Zoning Law of the Town of Ellery, towers and antennas shall be permitted and regulated only in accordance with the provisions of this Section.

#### **D. GENERAL STANDARDS**

1. No permit or renewal thereof or modification of the conditions of a current permit relating to a telecommunication facility shall be authorized by the Planning Board unless it finds that such telecommunication facility or proposed modification thereto:
  - a. Is necessary to meet current or expected demands for the services supported by the telecommunications facility;
  - b. Conforms with all applicable regulations promulgated by the Federal Communication Commission and/or any other applicable Federal or State regulatory agency.
  - c. Is designed, constructed and sited in a manner which minimizes its visual impact.
  - d. Complies with all other requirements of the Zoning Law of the Town, including this Section.
  - e. Is the most appropriate site within the immediate area for the location of a telecommunication facility, based on the report required under [Section 1401 G](#). It is preferred that telecommunication facilities be co-located as provided in this Section unless the Planning Board finds that co-location not to be appropriate under the circumstances.

#### **E. SITING PREFERENCES**

1. Consistent with the objectives set forth in [Section 1401 A](#). hereof, a proposed telecommunications facility shall be located in accordance with the following: siting preferences, from most favorable to least favorable, to the extent that there are commercially available locations which are technically feasible and otherwise consistent with the standards of Section 1401:

- a. Existing towers in low density areas suitable for co-location
- b. Existing towers in high density areas suitable for co-location
- c. Property with an existing structure suitable for location or co-location
- d. A - Agricultural District
- e. AR - Agricultural Residential District
- f. B-4 - Ellery Business District
- g. Churches, when camouflaged on steeples or bell towers or any camouflaged use on flag poles
- h. Towers shall not be allowed in the R-1, R-1 WB, R-2, or R-3 Residential Districts.

**F. CO-LOCATED ANTENNAS PREFERRED.**

1. Proof of Attempts - The shared use of existing telecommunication facilities or other structures shall be preferred to the construction of new such facilities. Any application for a telecommunication facility permit or renewal thereof or modification of the conditions of a current telecommunication facility permit shall include proof in accordance with [Section 1401 G.](#) that reasonable efforts have been made to co-locate with an existing telecommunication facility or upon an existing structure.
2. Designed To Co-Locate - Any proposed tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is over 60 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.
3. Intent To Negotiate - The applicant shall submit to the Planning Board a letter of intent committing the applicant, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other personal wireless communication services (PWCS) providers in the future. Any permit issued hereunder shall commit the new tower owner and its or 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 concerning future requests for shared use of the new tower, by other personal wireless communication services (PWCS).
  - c. Allow shared use of the new tower if another PWCS provider 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 costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
4. Notification - In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing tall structure or existing tower in a neighboring municipality be considered for shared use, an applicant who proposes a new tower shall notify in writing the legislative body of each municipality that borders the Town of Ellery as well as the Chautauqua County

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Planning Board and the Chautauqua County Airport Commission. Notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to the height of the tower and its capacity for future shared use.

## **G. SPECIAL USE PERMIT APPLICATION REQUIREMENTS**

All Applications for Special Use Permits for telecommunication facilities towers and/or antennas shall make written application to the Planning Board. This application shall include:

1. Form - Tower special use application form, supplied by the Town.
2. EAF - Full Environmental Assessment form prepared in accordance with the State Environmental Quality Review Act.
3. Visual Addendum- Visual Environmental Assessment Form Addendum prepared in accordance with the State Environmental Quality Review Act.
4. Approved FAA Report - Approved FAA Report #7460.
5. Service Area / Inventory Report for New Towers-
  - a. The applicant shall provide a report which establishes to the satisfaction of the Planning Board that the applicant is required to provide service to locations which it is not able to serve through existing facilities within a one mile search radius of the proposed tower and which are located either within or outside of the Town. The search radius may be reduced to one-half mile for towers under 100 feet and one-quarter mile for towers under 60 feet. Said report shall show the specific locations and/or areas the applicant is seeking to serve which cannot be served through existing facilities.
  - b. The report shall set forth an inventory of existing facilities and/or structures with or outside of the Town which might be utilized or modified in order to provide coverage to the locations applicant is seeking to service and include a report on the possibilities and opportunities for a co-location as an alternative to a new site.
  - c. The applicant must demonstrate to the satisfaction of the Planning Board that despite good faith efforts, the proposed facility cannot be accommodated on any such existing facility or structure either within or outside of the Town due to one or more of the following reasons:
    - i. The proposed equipment would exceed the existing and reasonable potential structural capacity of existing facilities or structures within or outside of the Town considering existing and planned use for those facilities or structures.
    - ii. Proposed equipment which could not reasonably be mitigated or prevented.
    - iii. Said existing facilities or structures do not have space on which the proposed equipment can be placed so it can function effectively and reasonably and/or the applicant has not been able, following good faith efforts, to reach agreement with the owner or owners of such facilities or structures.
6. Documentation - The notification required under Section 140I shall be documented.
7. Site Plan - A site plan is required for all new telecommunication facilities, except those to be co-located or attached to a suitable existing structure and which otherwise comply with the requirements of [Section 140I](#). The site plan must be acceptable to the Planning Board in form, content, scale and detail sufficient to show, at a minimum;
  - a. The exact location of the proposed tower, and appurtenances;
  - b. The maximum height of proposed tower;
  - c. A detail of tower type (monopole, free or other);
  - d. The color or colors of the tower;
  - e. The location, type and intensity of any lighting on the tower;
  - f. A drawing showing the distance from the cell tower to the boundary lines of the premises upon which the cell tower is situated;

- g. Proof of the landowner's consent and copy of any lease agreement if the applicant does not own the property;
  - h. The location of all structures on the property and all structures on any adjacent property within SO feet of the property line, together with the distance of these structures to the tower;
  - i. Names and addresses of land owners within 1200 feet of the property;
  - j. The location, nature and extent of any proposed fencing, landscaping and screening;
  - k. The location and nature of proposed utility easements and/or access roads, with setbacks from property lines shown;
  - l. Building elevations of accessory structures or immediately adjacent buildings.
8. Propagation Studies - Before and after propagation studies prepared by a qualified radio frequency engineer demonstrating existing signal coverage contrasted with the proposed signal coverage resulting from the proposed telecommunication facility.
  9. Search Ring- A search ring prepared by a qualified radio frequency engineer and overlaid on an appropriate background map demonstrating the area within which the telecommunication facility needs to be located in order to provide proper signal strength and coverage to the target area or cell. The applicant must be prepared to explain to the Board why it selected the proposed site, discuss the availability or lack of availability of a suitable location within the search ring which would have allowed for co-located antennas and to what extent the applicant explored locating the proposed tower in a more intensive use district. Correspondence with other telecommunication companies concerning co-location is part of this requirement.
  10. Co-Location Policy - The applicant must submit a copy of its policy regarding co-location of its proposed tower with other potential applicants. Such policy should allow co-locations if new antennas and/or equipment do not exceed structural loading requirements, interfere with tower space use, or pose any technical or radio frequency interference with existing equipment.
  11. Antenna Accommodation - A report prepared by a New York State licensed professional engineer, which describes the tower's height and design, including a cross section of the structure; demonstrates the tower's compliance with applicable structural standards and describes the tower's capacity including the number and type of antennas it can accommodate. In the case of an antenna or antennas mounted on an existing structure, the report shall indicate the existing structures suitability to accept the antenna and proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings and the precise point of attachment shall be indicated.
  12. Removal of Tower - A written agreement by the applicant to remove the telecommunications facility if such facility becomes technically obsolete or ceases to be used for its originally intended purpose for 12 consecutive months.
  13. Liability Insurance - Any applicant receiving a Special use permit hereunder must, at the time of obtaining such permit, provide evidence that liability insurance is in effect that covers damages and other losses due to tower failure or other hazards related to the installation and use of said tower.
  14. Aesthetics - The Planning Board reserves the right to request reasonable additional visual and aesthetic information it deems appropriate on a case by case basis. Such additional information may include, among other things, line-of-sight drawings and/or visual simulations.
  15. Permit Evaluation - The Planning Board shall evaluate the application for a telecommunication tower Special Use permit in accordance with the criteria and requirements under this Section and all other applicable Special Use Permit requirements under the Town Zoning law.
  16. Wetlands - Wireless communication facilities shall not be located in wetlands or in



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regulated wetland buffer areas, in endangered or threatened species habitats, water bodies, historic or archaeological sites.

17. Visual Impact - The following shall be provided to allow the Planning Board to determine the level of visual impact and the appropriateness of the facility:
  - a. Existing (before condition) color photographs of views from site 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 or visitors. The Planning Board shall determine the appropriate key viewpoints from which the site shall be photographed.
  - b. Proposed (after condition) simulations. Each of the existing condition photographs shall have the proposed wireless communication facility superimposed on it to show what would be seen from key viewpoints if the proposed facility is built.
18. Height Test - Within 30 days of filing an application for a Special Use Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least 14 days, but not more than 21 days prior to the test.
19. FCC Tower Number - The FCC Tower number shall be provided to the Town as soon as it is available.
20. Licensed Carrier - The applicant shall provide written documentation evidencing that an FCC licensed carrier will utilize the tower within sixty days of its construction.

#### **H. PERFORMANCE STANDARDS**

1. Compliance with Federal requirements - The applicant must demonstrate in writing that the telecommunication facility will be operated only at FCC designated frequencies or power levels and/or any applicable EPA technical exposure limits. The applicant further must provide a written opinion from a New York State licensed professional engineer that the installation of the antenna, including reception and transmission functions, will not interfere with the radio or television service enjoyed by adjacent residential and nonresidential properties or with public safety telecommunications.
2. Antenna Safety - Antennas shall be subject to state and federal regulations pertaining to non-ionizing radiation and other health hazards related to such facilities. The owner shall submit evidence of compliance with FCC compliance on a yearly basis. If new, more restrictive standards are adopted, the antennas shall be made to comply or continued operations may be restricted by the Planning Board. The cost of verification of compliance shall be borne by the owner and operator of the tower.
3. Tower Lighting - Towers shall not be artificially lighted or marked excepted as required by Federal Aviation Administration, the Town or other applicable laws. If lighting is required, the lighting design must minimize disturbance to the surrounding view. The towers shall be of a non-reflective finish and the color subject to Town approval unless otherwise required by the FAA. Any lighting which may be required by the FAA shall not consist of strobe lights, unless specifically mandated by FAA.
4. Tower Signage - Using any portion of a tower for signs other than warning or equipment identification is prohibited.
5. Tower Height Limitations - The maximum height of a tower is 150 feet above the ground upon which the tower is placed. The Planning Board may allow wireless communication facilities over 150 feet and less than 191 feet if an independent radio frequency consultant determines that adequate coverage would not be provided by a tower of lesser height and if the applicant can demonstrate that, based on topography of the site and surrounding area, siting of the antenna, antenna design, surrounding tree cover and structures and/or through the use of screening, that off-site views of the facility will be *de minimis*. The height limitation is waived when the antenna is mounted on an existing structure or building and is completely



camouflaged, or is located on an existing utility structure. Applicants may be required to achieve coverage objectives by using multiple existing or new structures rather than taller structures, which shall not exceed the height limitations in this Section. Any request to construct a wireless communication facility over 190 feet shall require a use variance and be submitted to the Zoning Board of Appeals.

6. Tower Building Requirements -

- a. The use of guyed towers is prohibited. Towers must be self-supporting without the use of wires, cables, beams or other means. The design shall utilize an open framework or monopole configuration. Permanent platforms or structures exclusive of antennas that increase off-site visibility are prohibited. The Planning Board may require only a monopole tower if it determines that a monopole tower best meets the purpose and intent of this Section.
- b. The base of the tower shall occupy no more than 500 square feet and the top of the tower shall be no wider than the base.
- c. Towers must be located on a parcel that meets the minimum lot size requirements for the zoning district in which the tower is located.
- d. Minimum spacing between tower locations is 1/4 mile.
- e. All electric power supply and telephone lines to new towers and accompanying facilities shall be installed underground from the existing power source.

7. Access to Towers - A road and parking area must be provided to assure adequate emergency and service access. Maximum uses of existing roads, public or private, shall be made. Specifications for new access roads shall be provided. The Town of Ellery reserves the right to approve or disapprove access roads. New access roads must be 25 feet from adjacent property lines and shall not create drainage problems for neighboring properties.

8. Setbacks for Towers -

- a. Telecommunication towers shall be set back from the lot lines a distance at least equal to 120% of the height of the tower.
- b. No telecommunication tower shall be located nearer than 500 feet or five times the height of the tower, whichever is greater, from a residential building, a school, a place of public worship, or a designated historic district or landmark.

9. Design of Antennas, Towers and Accessory Structures - Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where color is dictated by federal or state authorities such as the Federal Aviation Administration. Every antenna and tower shall be of neutral colors that are harmonious with, and that blend with, the natural features, buildings and structures surrounding such antenna and structure, provided however, that directional or panel antenna and omni-directional or whip antenna located on the exterior of a building that will also serve as an antenna tower shall be of colors that match, and cause the antenna to blend with, the exterior of the building. Accessory structures will be designed to be architecturally compatible with principle structures on the site.

10. Other Requirements and Conditions -

- a. The Planning Board may impose such other reasonable requirements or conditions to ensure that the telecommunication facilities shall be located and buffered to the maximum extent practicable and technologically feasible to maximize compatibility with surrounding land uses and minimize and adverse aesthetic impact on neighboring residents.
- b. The Planning Board may further impose any other reasonable requirements or conditions to ensure that the public health, safety and welfare are protected.

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## **I. TELECOMMUNICATION FACILITIES MAINTENANCE**

All telecommunications facilities, both predating this Article and otherwise shall fulfill the requirements of this section. The Town Zoning Enforcement Officer or Building Inspector is empowered to enforce these regulations.

1. Inspection - The owner and/or operator of the telecommunication facility shall have said facility inspected at least every two years for structural integrity by a New York State licensed professional engineer and a copy of the inspection report submitted to the Town. If such report recommends that repairs or maintenance are to be conducted, the permittee shall provide to the Planning Board a written schedule for the repair or maintenance.
2. Maintenance - All telecommunication facilities shall be maintained in good order and repair and all such work shall comply with all applicable code requirements of any governmental body issuing such rules and/or regulations.
3. Antenna Additions - Any additional antennas, reception or transmission devices or other similar receiving or transmitting device proposed for attachment to an existing facility shall require review in accordance with this Article. The intent of this requirement is to ensure the structural integrity, visual aesthetic and land use compatibility of communication towers upon which additional antennas, reception or transmission devices are to be installed.
4. Outside Storage - No outside storage of vehicles, materials or waste shall be allowed except for the limited periods when the facility is undergoing construction, repair or maintenance.

## **J. CHANGES**

It shall be the responsibility of the holder of the Special Use permit to inform the Town of Ellery of any changes in or termination of contractual agreements which affect the Special Use permit within 30 days of such change. Any material change in the conditions under which a special use permit was granted shall result in the immediate termination of the special use permit unless agreement has been obtained from the Planning Board prior to the change. These material changes include but are not limited to:

1. Changes in supporting structures (such as towers), accessory buildings or access roads.
2. A change in ownership of the facility or the property on which the facility is installed shall require notification to the Zoning Enforcement Officer by the holder of the special use permit but will not terminate such permit.
3. Cessation of use by the FCC licensed carrier that has a special use permit for use of the facility.
4. A change in the FCC licensed user of the specially permitted facility. Nothing herein shall prohibit another FCC licensed carrier from using the facility so long as that carrier provides evidence of need to use that facility and acquires a special use permit under this Section.
5. Loss of the user's FCC license to provide commercial communications services within the Town of Ellery.
6. Violation of the Town of Ellery Zoning Law, on or with regard to the facility by the holder(s) of the special use permit or the owner of the land on which the facility is installed.

## **K. COST OF STUDIES OR REPORTS**

The cost of any engineering studies or reports required by this Section or required by the Planning Board shall be borne by the owner and/or operator of the tower.

## **L. REMOVAL OF OBSOLETE/UNUSED FACILITIES**

1. The applicant shall agree, in writing, to remove the tower or antennas if the telecommunications facility becomes obsolete or ceases to be used for its intended purpose for twelve (12) consecutive months. Removal of such obsolete and/or unused towers shall take place after twelve (12) months of cessation of use. Such agreement shall also include a commitment by

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the applicant to impose a similar obligation to remove any unused and/or obsolete tower or antennas upon any person subsequently securing rights to co-locate on the tower or telecommunication facility.

2. The Town of Ellery, at its option, may cause the removal of any tower or antennas which violates any provisions of this Section or which becomes unsafe or hazardous as determined by the Zoning Enforcement Officer or Building Inspector of the Town of Ellery. The Town is authorized to petition the County Court or Supreme Court through a special proceeding to obtain an order of removal and to assess the entire cost thereof against the owner of the premises which shall be assessed and collected in the same manner as a Town tax.
3. If the removal of towers and antennas is required, accessory buildings and other structures shall also be removed unless:
  - a. *the landowner wishes to retain these structures and communicates this in writing to the Planning Board and*
  - b. *the retention of these structures will comply with the Zoning Law and*
  - c. *The Planning Board agrees that the removal of these structures is not required.*
4. Each applicant seeking a special use permit for a wireless communications facility shall provide a written contract with the Town of Ellery agreeing to be fully responsible for removal, and indemnifying the Town for the costs of removal, of antennas, accessory buildings and supporting structures such as towers when removal is required by the Town of Ellery Zoning Law.
5. A decision to require removal shall be the responsibility of the Planning Board after consulting with the Zoning Enforcement Officer and the Town Attorney. Removal shall occur within 90 days of the Planning Board's decision to require removal unless the Planning Board has agreed to an extension of that time. If not removed within the designated period, the Town shall have the right to compel removal, with all costs to be borne by the special permit holder who owns and/or previously used the facilities. Removal costs may also be recovered from the owner of the tax parcel on which the facilities are located.
6. When towers are removed, site reclamation shall be completed to the satisfaction of the Planning Board within 180 days of structure removal. Reclamation shall include landscaping, removal of structures, utility lines and accessory structures, and shall encompass the building site and buffer area controlled by the facility owner.

#### M. VIOLATIONS - PENALTIES

This Article is adopted pursuant to the zoning and planning powers granted to the Town of Ellery under Town law of the State of New York and other applicable law, rule and regulation. In the event of any violation of this Article or any permit issued hereunder, the Town may seek enforcement by any legal or equitable remedy.

Any applicant upon receipt of a Special use Permit for telecommunication facilities that fails to comply with the requirements and/or conditions of that permit may have its permit revoked and ordered to remove the telecommunications facilities within ninety (90) days of notification by the Town of such violation.

#### N. MISCELLANEOUS

1. In the event of any conflict or inconsistencies between this Section and any other provision of the Town Zoning Law or other Local Law ordinance, rule or regulation, the more restrictive requirement shall apply.
  2. The procedural requirements for a Special Use Permit for a telecommunication facility shall be as set forth in the Zoning Law for the Town of Ellery and the Town Law of the State of New York.
  3. Any decision to deny a request for authorization to place, construct or modify a telecommunication facility shall be in writing and shall be supported by substantial evidence contained in a written record.
  4. Local Law No. 1 of 2001 imposing a moratorium on telecommunication towers is hereby repealed.
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# **ARTICLE XV**

**TOWN OF ELLERY - WIND ENERGY  
CONVERSION SYSTEMS LAW**

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**ARTICLE XV**  
**TOWN OF ELLERY WIND ENERGY CONVERSION SYSTEMS LAW**

**SECTION 1501      Regulation of Wind Energy Conversion Systems**

**INTRODUCTION & PURPOSE**

The Town of Ellery has determined that a comprehensive local law regulating the placement, construction maintenance and removal of wind conversion systems in the Town of Ellery is necessary to protect the interests of the Town of Ellery and its residents.

- A. It is the purpose of this law to prevent and avoid serious detrimental health, environmental and planning conditions which threaten the Town of Ellery by allowing degradation of its significant environmental and agricultural resources and in order not to undermine the conscious and continuous determination by the Town to resolve and lessen such threats to the health, safety and welfare of the citizens of the Town of Ellery.

**AUTHORITY**

- A. The Town Board of the Town of Ellery adopts this Article under the authority granted by:
1. Article IX of the New York State Constitution, § 2(c)(6) and (10).
  2. New York Statute of Local Governments, § 10 (1), (6), and (7)
  3. New York Municipal Home Rule Law, § 10(1)(i) and (ii) and § 10 (1)(a)(6), (11), (12), and (14).
  4. The supersession authority of New York Municipal Home Rule Law, § 10 (2)(d)(3).
  5. New York Town Law§ 130(1) - (Building Code), ( 3) (Electrical Code), (5) (Fire Prevention), (7) Use of streets and highways), (7-a) Location of Driveways, (11) (Peace, good order and safety), (15) (Promotion of public welfare), (15-a) (Excavated Lands), (16) (Unsafe buildings), (19) (Trespass), and (25) (Building lines).
  6. New York Town Law§ 64(17-a) (protection of aesthetic interests) and (23) (General powers)

**FINDINGS**

The Town Board of the Town of Ellery finds and declares:

1. Wind energy is an abundant renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
  2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
  3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
  4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
  5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods.
  6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
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7. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
  8. Wind Energy Facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
  9. Construction of Wind Energy Facilities can create traffic problems and damage local roads.
  10. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

## **DEFINITIONS FOR WIND ENERGY CONVERSION SYSTEMS**

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

**AGRICULTURE OR FARM OPERATIONS** - This term shall mean “the land and on farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a commercial horse boarding operation,” as defined in New York Agriculture and Markets Law§ 301 and “timber processing,” as defined in subdivision fourteen of New York Agriculture and Markets Law§ 301. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

**COMMERCIAL WIND ENERGY SYSTEM** - A wind energy conversion system consisting of one (or more) wind turbine, one (or more) tower, and associated control or conversion electronics, which has a rated capacity greater than 250 kilowatts, and a total height of more than 150 feet, and is intended to primarily supply electrical power into a power grid for sale.

**EAF** - Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

**PLANNING BOARD** - This term shall mean the Planning Board of the Town of Ellery.

**RESIDENCE** - means any dwelling suitable for habitation existing in the Town of Ellery on the date the SEQRA for the specific application is completed, including seasonal homes, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools or other buildings used for educational purposes, churches. A residence may be part of a multi-dwelling or multipurpose building, but shall not include correctional institutions.

**SENSITIVE RECEPTORS** - means residences and other facilities where quiet is important.

**SEQRA** - The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

**SMALL WIND ENERGY CONSERVATION SYSTEM** - One or more mechanical devices such as wind chargers, windmills or wind turbines which are designed and used to convert wind energy into a form of useful energy for personal use, sale, or redistribution to others. A “Small WECS” shall have a maximum tower height that shall not exceed 120 feet and a maximum energy output that shall not exceed 100 KW.

**SITE** - The parcel(s) of land where the Wind Energy Facility is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered an agreement for said Facility or a setback agreement and received the required variance shall not be considered off site.

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**SOUND PRESSURE LEVEL** - means the level which is equaled or exceeded a stated percentage of time. An L10 - 50 dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

**TOTAL HEIGHT OF WECS** - The height of the tower and the furthest vertical extension of the WECS, including blades.

**TOWER HEIGHT (WECS)** - The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.

**TOWN** - This term shall mean the Town of Ellery.

**TOWN BOARD** - This term shall mean the Town Board of the Town of Ellery.

**WIND ENERGY CONVERSION SYSTEM**- A machine that converts the kinetic energy in the wind into a usable form of electricity (commonly known as a “wind turbine” or “windmill”). Hereinafter in this local law, a “WECS”.

**WIND ENERGY FACILITY** - Any Wind Energy Conversion System, including Commercial WECS, Small WECS, or Wind Measurement Towers, including all related infrastructure, electrical lines and substations, access roads, and accessory structures.

**WIND MEASUREMENT TOWER** - A tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

## PERMITS REQUIRED

- A. No Wind Energy Facility shall be constructed, reconstructed, modified other than repairs and general maintenance, or operated in the Town of Ellery except in compliance with this Chapter.
- B. No WECS including Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Ellery except pursuant to an application for permit approved pursuant to this Chapter and except as allowed by subdivision H of this Section.
- C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Ellery except pursuant to a Permit issued pursuant to this Chapter, except as allowed by subdivision H of this Section.
- D. Permits for small Wind Energy Facilities shall be issued by the Planning Board. Commercial facilities with 2 or more towers shall be issued by the Town Board with referral to the Planning Board. Any such application to the Planning Board shall be considered as a special use permit.
- E. Exemptions. No permit or other approval shall be required under this Chapter for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or county agricultural district shall apply for a permit in accordance with this Chapter, but shall not require a waiver of the height restriction. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.

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- F. This Chapter shall apply to all areas of the Town of Ellery.
- G. Transfer or Assignment: No transfer or assignment for the permit granted by the Town of Ellery of any wind energy facility shall occur without the Town of Ellery's prior approval of the transfer or assignment. The Town shall grant such approval upon receipt by the transferee of written acceptance of the transferors' obligations under this law together with the transferees submitting written proof that it can satisfy the technical and financial obligations of transferors with respect to the facility. Further, proof that the transferee can satisfy the financial security provision as set forth in section 9(A)(19) of this law. The issue of whether the transferee can meet the technical and financial obligations shall be at the sole discretion of the Town of Ellery. In the event of a partial transfer or assignment of the wind energy facility or permit, the transferor shall remain liable on its obligations under this law. In the event of a total transfer or assignment, the transferor shall be released from liability unless it has outstanding obligations or violations under this law. A transfer or assignment under this section shall be defined as a transfer or assignment of more than thirty percent (30%) of the ownership interest of the transferor.
- H. Notwithstanding the requirements of this Chapter, replacement in kind or modification of a Wind Energy Facility may occur without Permitting Board approval when (1) there will be no increase in Total Height; (2) no change in the location of the WECS; (3) - no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.
- I. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation on a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Chapter shall not be deemed expansions of a nonconforming use or structure.

## **APPLICATIONS FOR COMMERCIAL WIND ENERGY CONVERSION SYSTEMS**

- A. An applicant for a Permit shall submit at least ten (10) full copies of an application, prepared by a Professional Engineer licensed to practice in New York State. The Professional Engineer shall certify, in writing, that the application meets all engineering requirements of this local law and shall specifically certify to the Town of Ellery that:
1. The tower design is sufficient to withstand wind-load requirements for structures as established by the *New York State Uniform Fire Prevention and Building Code* or *New York State Uniform Construction Code*, whichever is more stringent.
  2. That the electrical system design is in compliance with accepted engineering practices and with the appropriate provisions of the *National Electric Code*.
  3. That the rotor over-speed control system is in compliance with accepted engineering practices.

The application shall also include:

4. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
5. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
6. Address, or other property identification, of each proposed tower location, including Tax Map section, block, and lot number.

7. A description of the project, including the number and maximum rated capacity of each WECS.
8. A plot plan or plans bearing the name of the project prepared by, and bearing the seal of, a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
  - (a) Property lines and physical dimensions of the Site, showing all easements and rights-of-way and existing utility systems.
  - (b) Location, approximate dimensions, and types of major existing structures, including all residences, and uses on Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the Site.
  - (c) Location of the tower(s) on the Site and the total height, including blades, rotor diameter and ground clearance.
  - (d) Location of all above and below, ground utility lines on the Site or within one and one half radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
  - (e) The location and dimensions of all existing structures and uses on Site within 675 feet of the WECS.
  - (f) To demonstrate compliance with the setback requirements of this Chapter, circles drawn around each proposed tower location equal to:
    - (i) *One and a half times the tower height radius;*
    - (ii) *Five-hundred foot radius; and*
    - (iii) *Two-thousand foot radius.*
  - (g) Location of residential structures within two thousand feet of each proposed tower. The distance from the center of the tower to any off site residence within two thousand feet shall be noted.
  - (h) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
  - (i) The date of the plan, a north arrow and the scale of the plan shall be shown.
9. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors, including blades, rotor diameter and ground clearance. The area of the base of each tower and depths of components of the base below ground level shall be indicated. One drawing may be submitted for each WECS of the same type and Total Height.
10. Landscaping Plan depicting existing natural land features, trees, forest cover and vegetation and describing all proposed changes to existing features, the area to be cleared and the specimens proposed to be added, and their locations.
11. A lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
12. A construction access plan prepared by a Professional Engineer licensed to practice in New York State, approved in advance by the Town, which access plan shall include the following:



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- (a) Identification of all roads including seasonal roads, and rights of way within the Town to be used for site access during construction and a plan for marked detours where necessary so traffic to residences and businesses can continue unobstructed.
  - (b) Estimate of the number of vehicle trips over each road by vehicle type and gross weight.
  - (c) Indicate any areas where clearing of trees, road widening or realignment is necessary.
  - (d) The Engineer shall provide an analysis of potential road damage and an estimate of the cost to maintain and repair or rebuild all affected roads.
  - (e) A video of the current condition of all roads to be used for construction access.
13. Digital elevation model-based project visibility map showing the impact of topography upon visibility of the WECS from other locations to a distance radius of three (3) miles from the center of the WECS site. Scale used shall depict 3-mile radius and no smaller than 6 inches, and the base map shall be a published topographic map showing cultural features.
14. No fewer than four (4), and no more than the number of proposed individual wind turbines plus three, color photos, no smaller than 8" x 10", taken from locations within a three (3) mile radius from the location of the proposed WECS. The location from which the photos are to be taken shall be selected by the Town, and computer-enhanced to simulate the appearance of the as-built above ground facilities as they would appear from these locations.
15. List of property owners with their mailing addresses, within 500 feet of the boundaries of the Site. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
16. Information relating to the construction/installation of the wind energy conversion facility as follows:
- (a) an estimated timetable for each phase of construction.
  - (b) a Full Environmental Assessment Form ("EAF") and Visual EAF Addendum Form prepared in accordance with the State Environmental Quality Review Act. The Environmental Assessment Form must be reviewed by the Town or qualified individual as Lead Agency, with input from a licensed Environmental Engineering firm in accordance with all applicable and appropriate processes and procedures contained in the New York State Environmental Quality and Review Act (SEQRA).
17. For each proposed WECS, include make, model, picture, and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants, and coolants. Also included shall be the manufacturer's dimensional drawings as well as installation and operation instructions.
18. Documentation of the proposed intent and capacity of energy generation as well as a justification for the height of any WECS and justification for any clearing required.
19. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement ("DEIS") prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:
- (a) Model and describe the zones where shadow flicker and blade glint will likely be present within the project boundary and a two-mile radius beyond the project boundary. Include the topography, existing residences, wind speeds and directions and existing vegetation and roadways. The model shall represent the most probable scenarios of wind constancy, sunshine consistency, and wind directions and speeds.



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- (b) A visual impact study of the proposed WECS as installed, which shall include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - (c) A description of the general geographic areas that would be acceptable for wind projects within the Town of Ellery; furthermore, demonstration that the proposed site is the most appropriate site within the immediate areas for the location of the wind energy deriving tower facility.
  - (d) Digital elevation model-based project Visibility map showing the impact of visibility of the project from other locations, to a distance radius of three (3) miles from the center of the project. The base map used shall be a published topographic map showing natural and structural or built features.
  - (e) Report showing soil logs, soil profile analysis, and storm water run-off calculations for the area being disturbed.
  - (f) Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive runoff, and flooding of other properties, as applicable. There should be pre construction and post-construction drainage calculations for the site done by a certified engineer and certified to by said engineer. From this the engineer must show how there will be no increase in runoff from the site.
  - (g) If any license, approval, permit, certificate or any type of registration or similar type of endorsement is required from any other agency, the applicant shall notify the Board of such requirement and the Board shall coordinate the review as deemed appropriate.
  - (h) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed site which shall include fire hazard protection: The applicant shall submit a Fire Control and Prevention Program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:
    - (1) *Fireproof or fire resistant building materials.*
    - (2) *Buffers or fire retardant landscaping.*
    - (3) *Availability of water.*
    - (4) *An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment-without regular human occupancy.*
    - (5) *Provision of training and firefighting equipment for local fire protection personnel.*
  - (i) Noise report. A noise report shall be furnished which shall include the following:
    - (1) A description and map of the project's noise producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
    - (2) A description and map of the noise sensitive environment, including any Sensitive Receptors, within two (2) miles of the proposed facilities.
    - (3) A survey and report prepared and certified by a qualified engineer, that analyzes the pre existing ambient noise regime (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut in) turbulence measurements, distance from the turbines, location of Sensitive Receptors relative to wind direction; and analyses at affected sensitive receptors located within two (2) miles of the proposed project site.
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- (4) A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and operation workers, and estimates of expected noise levels at Sensitive Receptor locations.
  - (5) A description and map of the cumulative noise impacts.
  - (6) A description of the projects proposed noise control features, including specific measures proposed to protect workers, and specific measures; proposed to mitigate noise impacts for Sensitive Receptors consistent with levels in this ordinance.
  - (7) Identification of any problem areas.
  - (8) Manufacturers' noise design and field testing data, both audible (dBA), and low frequency (deep bass vibration), for all proposed structures.

A report that outlines issues and considerations for individuals that use hearing aids.

- 20. Ice throw calculations: A report from a professional Engineer licensed to practice in New York State that calculates the maximum distance that ice from the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
- 21. Blade throw calculations: A report from a Professional Engineer licensed to practice in New York State that: calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
- 22. Catastrophic tower failure: A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions.)
- 23. FAA notification: A copy of written notification to the Federal Aviation Administration.
- 24. Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- 25. Notification to microwave communications link operators: An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- 26. Floodplain: An application that includes any wind turbine which is located within a 100-year floodplain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by a detailed report which shall address the potential for wind erosion, water erosion, sedimentation and flooding, and which shall propose mitigation measures for such impacts.
- 27. Other information: Such additional information as may be reasonably required by any engineer hired by the Permitting Board.
- 28. A geotechnical report shall be furnished which shall at a minimum include the following:
  - (a) Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing. No permit will be issued for any site which is, or which in the past was, used for solid or hazardous waste disposal.
  - (b) Foundation design criteria for all proposed structures.
  - (c) Slope stability analysis.
  - (d) Grading criteria for ground preparation, cuts and fills, and soil compaction.
- 29. The applicant shall submit an Erosion Control Plan. If the proposed project disturbs over 1 acre, the applicant must comply with the New York State Department of Environmental

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Conversion SPDES General Permit for Stormwater Discharges from Construction Activity (Permit # GP-02-01). A copy of the Notice of Intent (N.O.I.) and Storm water Pollution Prevention Plan (SWPPP) as required by the General Permit must be filed with the Town of Ellery prior to construction. Per the General Permit, construction cannot begin until the required time period for NYS DEC review has passed.

#### **APPLICATION REVIEW PROCESS FOR COMMERCIAL WIND ENERGY CONVERSION SYSTEMS**

- A. Applicants may request a pre-application meeting with the Permitting Board, or with any consultants retained by the Permitting Board for application review.
- B. Ten (10) copies of the application shall be submitted to the Town Clerk at least ten days before a regularly scheduled meeting. Payment of all application fees shall be made at the time of application submission.
- C. Town staff and Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application.
- D. If the application is deemed incomplete, the Permitting Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Permitting Board, the Town Clerk shall transmit the application to the Town Board. The applicant shall post the completed application and any accepted environmental impact statements on the Internet.
- F. The Permitting Board shall hold at least one public hearing on the application within 62 days after receipt by the Town Board of a completed application and completed SEQRA, full EIS or DEIS, as the case maybe. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed Site and published in the Town's official newspaper, no less than ten or more than twenty days before any hearing, but, where any hearing is adjourned by the Permitting Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses. The application shall be made available for public review during those hours that the office of the Town Clerk is open for business.
- G. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board shall issue a positive declaration of environmental significance.
- H. Notice of the project shall also be given, when applicable, to (1) the Chautauqua County Planning Board, if required by General Municipal Law §§ 239-1 and 239-m, and (2) to adjoining Towns under Town Law§ 264.
- I. SEQRA Review. Applications of WECS are deemed Type I projects under SEQRA. The Town shall conduct its SEQRA review in conjunction with other agencies, and the record of review by said agencies shall be part of the record of the Town's proceedings. The Permitting Board may hire a professional Engineer or consultant to assist in the review of an application at the applicant's expense. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact

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statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.

- J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process within 62 days, the Town Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Chapter.

## **STANDARDS FOR COMMERCIAL WECS**

- A. The following standards shall apply to all WECS and related infrastructure, unless specifically waived by the Town Board as part of a permit.
1. Wiring: All wiring between the wind turbines and the wind energy facility substation shall be underground in accordance with regulations for burial as set forth by the New York State Department of Agriculture and Markets. Notwithstanding the foregoing, all wiring shall be buried a minimum of eight feet below the ground surface. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.
  2. All transmission lines from wind energy conversion systems to on site substations shall be underground as provided in subparagraph 1 above. The Town Board shall have the authority to waive this requirement if the owner of the property upon which the transmission line will be sited consents to aboveground transmission lines or if the Town Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
  3. Any construction or ground disturbance involving agricultural land shall be done in accordance with the New York State Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.
  4. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the telecommunications provisions of the Town of Ellery Code. Application may be jointly submitted for WECS and telecommunications facilities.
  5. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
  6. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the permit. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and direction lights at the ground.
  7. All applicants shall use measures to reduce the visual of WECSs to the extent possible. WECSs shall use monopole construction. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout a Site, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
  8. Self-supporting structures: All structures shall be of mono-pole construction (single pole). No lattice structures or guy wire supported structures shall be permitted.
  9. All WECS systems shall be operated such that no disruptive electromagnetic interference is caused. If it is demonstrated that a system is causing interference, the system operator shall



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- promptly mitigate the interference or cease operation.
10. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
  11. WECS shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible. Existing roadways shall be used for access to the site whenever possible. All applicants shall use measures to reduce the visual of WECSs to the extent possible. WECSs shall use monopole construction. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout a Site, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
  12. No individual WECS shall be installed in any location where there is a recognized migratory flight path for birds or at a location where birds commonly congregate, unless applicant can demonstrate that the operation of the wind energy-deriving tower will not have a significant impact on either migrating or resident birds.
  13. WECS and related infrastructure shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations. Transmission facilities and/or buildings shall be located behind ridges or vegetation to screen from visibility.
  14. Storm-water run-off and erosion control, both during construction and thereafter, shall be managed in a manner consistent with all applicable state and Federal laws and regulations and with the Erosion Control Plan provided for in §7 of this local law. Before the Town of Ellery shall issue a grading or building permit for the WECS, the applicant shall submit an Erosion Control Plan to the Board for its review and approval. The Plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation. If the proposed project disturbs over 1 acre, the applicant must comply with the New York State Department of Environmental Conservation SPDES General Permit for Storm water Discharges from Construction Activity (Permit NO. GP-02-01). A copy of the Notice of Intent (N.O.I.) and Storm water Pollution Prevention Plan (SWPPP) as required by the General Permit must be filed with the Town of Ellington prior to construction. Per the General Permit, construction cannot begin until the required time period for NYS DEC review has passed.
  15. The maximum Total Height of any WECS shall be 420 feet.
  16. The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
  17. Construction of the WECS shall be limited to the hours of 7 a.m. to 8 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.
  18. Appropriate landscape and screening is required to keep the site in a neat and orderly fashion. Appropriate screening is required to screen accessory structures
  19. The Town of Ellery shall be named as an additional insured under the general liability policy of the applicant, the amount of which insurance shall be no less than an amount to be determined by the Town Board from time to time before commencement of site preparation and during and after construction of the WECS given the nature and scope of the project proposed and constructed by the applicant.
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## REQUIRED SAFETY MEASURES FOR COMMERCIAL WECS

1. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or over speed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding and excessive pressure on the tower structure, rotor blades, and turbine components.
2. All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
3. If the property owner submits a written request that fencing be required, an eight-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual application as safety needs dictate.
4. No Wind Energy Facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
5. No Wind Energy Facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personnel communication systems would produce electromagnetic interference with signal transmission or reception.
6. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hours per day, 7 days a week coverage.
7. Notice and Safety Considerations.
  - (1) Signs.
    - (a) Caution signs shall be placed at the setback limits warning of ice and blade throws. Signs shall be placed at 100 foot intervals and be 4 to 6 feet high (at eye level). Said signs shall be a minimum of one foot square and no larger than two square feet in size and shall have the words "CAUTION: FALLING OBJECTS" printed thereon. In addition, the owner's name and address shall be printed thereon.
    - (b) There shall be no other signs affixed to the windmill, accessory buildings or enclosure.
  - (2) Fencing. Access to the tower shall be limited either by means of a fence six (6) foot high around the tower base with a locking gate or by limiting tower climbing apparatus to no lower than twelve (12) feet from the ground.
  - (3) Limit Tip Speed. No wind turbines shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
8. The Town Board may require additional signs based on safety needs.
9. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level

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- at the base of the structure for freestanding single pole.
10. The minimum distance between the ground and any part of the rotor or blade systems shall be thirty (30) feet.
  11. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when operator personnel are not present.
  12. Accurate maps of the underground facilities shall be filed with the town and with "Dig Safety New York (1-800-962-7962)" or its successor. Building permit applications shall be accompanied by a one line drawing identifying the electrical components of the wind system to be installed in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. The application shall include a statement from a New York State registered professional engineer indicating that the electrical system conforms to good engineering practices and complies with the National Electrical Code. The manufacturer normally supplies this certification. All equipment and material shall be used or installed in accordance with such drawings and diagrams. Where the electrical components of an installation vary from the manufacturer's standard design or specifications, the proposed modifications shall be reviewed and certified by a New York State registered professional engineer for compliance with requirements of the National Electrical Code and good engineering practices.

#### **TRAFFIC ROUTES FOR COMMERCIAL WECS**

- A. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include:
    - (1) minimizing traffic impacts from construction and delivery vehicles;
    - (2) minimizing WECS related traffic during times of school bus activity;
    - (3) minimizing wear and tear on local roads; and
    - (4) minimizing impacts on local business operations. Permit condition may require remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public, and all applicable state, county, and municipal highway authorities and superintendents whose roads are included in the WECS traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the dates and time periods of expected use of designated traffic routes.
  - B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. The applicant shall deposit an amount to be agreed upon by applicant and the Town, with guidance from the Town's consultants and experts and the engineering report, in an escrow account to be used by the Town, in their discretion for road repairs. Said account will be maintained for one (1) year after completion of the construction. Any unused funds will be returned to the applicant. The applicant is to provide a written guarantee to the Town that it will provide additional funds as needed to insure that all roads are in as good condition as prior to construction, in the event that such funds are exhausted and additional work is still required.
  - C. If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.
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## **NOISE CONTROL REQUIREMENTS FOR COMMERCIAL WECS**

- A. The statistical sound pressure level generated by a WECS shall not exceed L10 - 50 dBA measured at the closest exterior wall of any residence existing at the time of completing the SEQRA review of the application. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification by an engineer acceptable to the Town shall be provided before and after construction demonstrating compliance with this requirement.
- B. In the event audible noise due to WECS operations contains a steady pure tone such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8.) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
- C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than six (6) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing Sensitive Receptors. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.
- D. Any noise level falling between two whole decibels shall be the lower of the two.
- E. Each WECS shall be setback from Site boundaries, measured from the center of the WECS, a minimum distance of:
  - 1. Setbacks from adjacent property lines, rights-of way, easements, public ways or power lines (not to include individual residential feed line) shall be one and one-half times the maximum structure height or 114 times the maximum engineer-calculated ice or blade throw distance to the maximum point of impact, whichever is greater.
  - 2. 1,000 feet from the nearest off-site residence existing at the time of application, measured from the exterior of such residence.
  - 3. 100 feet from the state identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the Town Board, based on topography, land cover, land uses, and other factors that influence the flight patterns of resident birds.
  - 4. 500 feet from existing gas wells, unless waived in writing by the property owner and well owner.
- F. The Town Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.
- G. The applicant shall submit a noise complaint and investigation process. The Town Board shall determine the adequacy of the noise complaint and investigation process.

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**WAIVERS OF NOISE AND SETBACK REQUIREMENTS FOR COMMERCIAL WECS**

- A. Notwithstanding the provisions set forth in this Chapter, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement for a period of 25 years or the life of the permit, whichever is longer, that the adjacent landowner agrees to the elimination of the setback.
- B. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easements, shall be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

**ISSUANCE OF PERMIT FOR COMMERCIAL WECS**

- A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Chapter and the record of the SEQRA review, issue a written decision setting forth the reasons for approval, conditions of approval, or disapproval.
- B. If approved, the Town Board will authorize Town staff to issue a Permit for each WECS upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Chapter.
- C. If construction of any approved WECS is not substantially commenced within two years of the issuance of the permit, the permit shall expire.

**APPLICATION AND DEVELOPMENT FEES AND COSTS FOR COMMERCIAL WECS**

- [1] Application fee: The applicant shall pay all costs associated with the Town of Ellery's review and processing of the application. The applicant shall submit a deposit with the application in an amount determined by resolution by the Town Board. The Town of Ellery may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.
  - [2] Development fees to be paid: A one-time or periodic fee and a requirement to provide public works or services may be imposed as a condition of a WECS permit. Such fees must be related to the public need created by the wind energy development. The purposes for which the permit fee may be used, but are not limited to, are providing roads required by the wind energy development, providing fire protection services, and establishing and operating a monitoring system.
  - [3] Payment in lieu of taxes (host community agreement): Prior to a building permit being issued, the applicant is required to negotiate a Payment in Lieu of Taxes (Host Community) agreement with the Town of Ellery.
  - [4] Proof of insurance: Prior to the issuance of a building permit, the applicant shall have provided the Town Clerk with proof of the insurance required by this Chapter.
  - [5] The Town of Ellery reserves the right to, by Local Law, provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) Section 487 shall be applicable within its jurisdiction.
  - [6] Bonds: Prior to issuance of a building permit, the applicant shall have provided the Town Clerk with all bonds required by this Chapter.
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## MONITORING OF COMMERCIAL WECS

- (1) Right to enter premises for monitoring: Upon reasonable notice, Town of Ellery officials or their designated representatives may enter a Site on which a commercial wind energy facility permit has been granted for the purpose of compliance with any permit requirements. Twenty-four hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
- (2) Avian/bat impact study plan: the applicant shall submit a plan for monitoring the avian impact of the commercial wind energy facility to the Town Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall agree to submit a report to the Town Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet of the commercial wind energy facility.
- (3) Periodic reporting required: The applicant shall agree to submit periodic monitoring reports to the Town Board. The report shall contain data on the operations and environmental impacts, and shall be in the form prescribed by the Town Board.
- (4) Power production report required: The applicant shall agree to submit a quarterly power production report to the Town Board. The power production report shall cover the preceding calendar quarter, and shall be in the form prescribed by the Planning Board and shall include actual power production in kilowatt hours for each commercial wind energy facility.
- (5) Inspections: Unless waived by the Town Board, wind turbines or poles over 150 feet in height shall be inspected annually by a New York State Licensed Professional Engineer that has been approved by the Town or at any other time upon a determination by the Town's Code Enforcement Office that the wind turbine, tower or pole may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- (6) General complaint process:
  - (a) During construction, the Town of Ellery Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
  - (b) Post construction: After construction is complete, the permit holder shall establish a contact person including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of complaint from the Town of Ellery Code Enforcement Officer, the permit holder/contact person shall have 7 working days to reply to the Town in writing.
- (7) All requirements detailed in this Section shall remain in force for the life of the permit.

## ABATEMENT OF COMMERCIAL WECS

- A. Public nuisance: Every unsafe commercial wind energy facility and every inoperable commercial wind energy facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. If any WECS remains non-functional or inoperative for a continuous period of 12 months, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.
- B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEDA, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual WECS, if requested, necessary to prove the information. Failure to provide any such report within 60 days of the mailing of a written request for such information mailed to the owner of the WECS at the address of the contact person as provided pursuant to §16 by certified mail, return receipt requested shall create an irrebuttable presumption of non-function or inoperation.



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## DECOMMISSIONING BOND OR FUND FOR COMMERCIAL WECS

The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of non functional towers and appurtenant facilities, in an amount to be determined by the Town from time to time, for the period of the life of the facility and until its removal. This fund may consist of a letter of credit from a State of New York-licensed financial institution acceptable to The Town Board as to amount, content and issuer. Shall the Town Board at any time determine after notice to applicant, or successors, and an opportunity to be heard, that the issuer of a letter of credit or bond or the holder of a fund is not financially stable, then the Town Board may require the issuance of a replacement bond or letter of credit or the establishment of a new fund reasonably satisfactory to the Town Board. All costs of the financial security shall be borne by the applicant. Proof of the existence of such fund or bond shall be provided to the Town before commencement of land clearing.

## PERMIT REVOCATION FOR COMMERCIAL WECS

- A. Testing fund. A Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Article and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days (except in the case of a failure to maintain the insurance coverage required under this Chapter, which violation shall be remedied within 5 days) after written notice from the Town Board. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this Chapter, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance,
  - (1) order either remedial action within a particular timeframe, or
  - (2) order revocation of the Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted pursuant to the provisions of Section 18 of this Chapter to remove the WECS.

## LIMITATIONS ON APPROVALS/EASEMENTS ON TOWN PROPERTY FOR COMMERCIAL WECS

- A. Nothing in this Chapter shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Chapter shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

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- B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Chapter.

## **FINDINGS FOR COMMERCIAL WECS**

The Town Board acknowledges that prior to construction of a WECS, a wind Site assessment is often conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as anemometer (“Met”) towers.

## **APPLICATIONS OF WIND MEASUREMENT TOWERS FOR COMMERCIAL WECS**

- A. An application for a Wind Measurement Tower shall include:
1. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  2. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner
    - (i) confirming that the property owner is familiar with the proposed applications and
    - (ii) authorizing the submission of the application.
  3. Address of each proposed tower Site, including Tax Map section, block, and lot number.
  4. Site plan.
  5. Decommissioning Plan, based on the criteria in this Article for WECS, including a security bond or cash for removal, as provided in Section 18 of this Chapter.

## **STANDARDS FOR WIND MEASUREMENT TOWERS FOR COMMERCIAL WECS**

- A. The distance between a Wind Measurement Tower and the property line shall be at least the Total Height of the tower. Sites can include more than one piece of property and this requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the written consent of those property owners, acknowledged in the manner provided for the recordation of a deed.
- B. No wind measurement tower shall exceed 420 feet in height from the ground elevation to the highest point on the tower.
- C. Permits for Wind Measurement Towers may be issued by the Town Board for a period of up to two years. Permits may be renewed one time for an additional 2 year period if the Facility is in compliance with the conditions of the existing Permit. All provisions of the original permit shall continue in effect unless modified by the Town Board.

## **SMALL WIND ENERGY CONVERSION SYSTEMS**

Purpose and Intent: The purpose of this Article is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

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## APPLICATIONS FOR SMALL WECS

Applications for Small WECS permits shall include:

1. Name, address, and telephone number of the applicant. If the applicant will be represented by, an agent, the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner
  - (i) confirming that the property owner is familiar with the proposed applications and
  - (ii) authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block, and lot number.
4. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
7. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
8. A visual analysis of the Small WECS, as it is to be installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
9. A Short Form Environmental Assessment Form.

## DEVELOPMENT STANDARDS

All Small WECS shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot a minimum of two acres in size, however, this requirement can be met by multiple owners submitting a joint application.
2. Only one small wind energy system tower per 10 acres under one ownership shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Chapter.
3. Small Wind energy systems may be used primarily to reduce the on-Site consumption of electricity.
4. Tower heights may be allowed as follows:
  - a. WECS shall have a fall zone distant from the property lines equal to 1.5 times the height measured from the ground to the highest point of the system, including blades.
  - b. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

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5. The maximum turbine power output is limited to 100 kW.
  6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
  7. The system shall be designed and located in such a manner to minimize adverse visual impacts to the greatest extent feasible.
  8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
  9. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
  10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
  11. A least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names; logo, or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
  12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
    - a. Tower-climbing apparatus located no closer than 12 feet from the ground.
    - b. A locked anti-climb device installed on the tower.
    - c. A locked, protective fence at least six feet in height that encloses the tower.
  13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.
  14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re vegetated to the pre-existing natural condition after completion of installation.
  15. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
  16. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
  17. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.



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## NOISE AND SETBACK REQUIREMENTS FOR SMALL WECS

A Small Wind Energy System shall comply with the following standards:

1. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.
2. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

## ABANDONMENT OF USE

- A. A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town.
- B. All small WECS shall be maintained in good condition and in accordance with all requirements of this section.

## MISCELLANEOUS

**A. FEES:** There shall be non-refundable Application fees as follows:

1. WECS Permit: \$300 per megawatt of rated maximum capacity.
2. Wind Measurement Towers Permit: \$20 per tower.
3. Wind Measurement Tower Permit renewals: \$20 per Wind Measurement Tower.
4. The cost of all legal notices and mailings shall be assessed to and promptly paid by the applicant.
5. No building permit shall be issued until the Town has been paid the fees set forth in subparagraphs "1" through "4" above and paragraph "B" below.
6. Fees for small WECS special use and building permits shall be as per the Town of Ellery fee schedule.

**B. BUILDING PERMITS:**

1. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be increased by administrative costs which shall be \$100 per permit request, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In any event, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans or certifications, or to conduct inspections as agreed by the parties.
  2. The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.
  - C. Nothing in this Article shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.
  - D. The Town Board may amend these fees, by resolution, after a properly noticed public hearing.
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## **ENFORCEMENT, PENALTIES AND REMEDIES FOR VIOLATIONS**

- A. In addition to the Code Enforcement Officer, the Town Board may appoint such Town staff or outside consultants as it sees fit to enforce this local law.
- B. Any person owning, controlling, or managing any building, structure, or land who shall undertake the construction, use, operation or maintenance of a Wind Energy Facility in violation of this Article or in noncompliance with this local law or with the terms and conditions of any permit issued pursuant to this local law, or any order of the enforcement officer, and any person who shall assist in *so* doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment for a first offense, for a Second offense (both within a period of five years), a fine not less than \$350 nor more than \$700, or imprisonment not to exceed six months, or both, and for a Third or more offense (all of which occurred within five years), a fine not less than \$700 nor more than \$1,000, or imprisonment not to exceed six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amounts set forth herein for each violation and each week said violation continues shall be deemed a separate violation.
- C. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving, and/or use, and to restrain, correct, or abate such violation, to prevent the illegal act.

## **SEVERABILITY**

Should any provision of this supplemental section be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this supplemental section as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.