

TOWN OF PERSIA



ZONING ORDINANCE

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ARTICLE 1-ENACTING CLAUSE

Pursuant to the authority by article 16 of the Town of Persia the State of New York and for each of the purposes specified therein, the Town Board of Persia, County of Cattaraugus and State of New York has ordained and does hereby enact the following ordinance regulating and restricting the location, size, and use of buildings and other structures and the use of land in the Town of Persia.

ARTICLE II- SHORT TITLE

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Persia, Cattaraugus County, New York."

ARTICLE III- INTENT AND PURPOSE

For the purpose of promoting the public health, safety, morals, comfort and general welfare: conserving and protecting property and property values; securing the most appropriate use of land; lessening or avoiding congestion in the public streets and highways, and facilitating adequate but economical provision of public improvements, all in accordance with a comprehensive plan, the Town Board finds it necessary and advisable to regulate the location, size, and use of buildings and other structures; percentages of lot area which may be occupied; set back building lines; sizes of yards, courts, and other open spaces,, and for such purpose divides the unincorporated area of the Town into districts or zones.

ARTICLE IV- RULES AND DEFINITIONS

In the construction of this ordinance, the rules and definitions contained in this section shall be observed and applied except when the context clearly indicates otherwise.

SECTION 4.1 RULES

Words used in the present tense shall include the future; and words used in the singular number shall include the plural number, and the plural, the singular. The word "shall" is mandatory; the word "may" is permissive. The word "lot" shall include the words "plot", "piece", and "parcel"; the word "building" includes all other structures of every kind regardless of similarity to buildings; the phrase "used for" shall include the phrases "arranged for", "designed for", "intended for", "maintained for", and "occupied for", and the word "person" shall include any natural individual, firm, trust, partnership, association or corporation.

The following words and terms, wherever they occur in this ordinance shall be interpreted as defined.

SECTION 4.2 DEFINITIONS

ACCESORY STRUCTURE OR USE: A use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure.

ADULT ARCADE: any place to which the public is permitted or invited wherein coin-operated or slug operated or electronically, electrically or mechanically controlled still or motion-picture machines, projectors or other mage-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images

so displayed are distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE OR ADULT VIDEO STORE:

1. An establishment which, as one of its principal or significant purposes, offer for sale or rental for any form of consideration, or which designates a portion for the display or sale of any one or more of the following:
 - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representatives which depict or describe specified sexual activities or specified anatomical areas.
 - b. Instruments, devices or paraphernalia which are primarily intended, labeled, designed, advertised or promoted for use in connection with specified sexual activities
2. An establishment may have other principal or significant business purposes that do not involve the offering for sale or rental of material depicted or describing specified sexual activities or specified anatomical areas and still be categorized as "adult bookstore" or "adult video store" if one of its principal or significant business purposes is the offering for sale or rental for consideration the above specified materials which depict or describe specified sexual activities or specified anatomical areas. For purposes of this definition, "principal or significant business purpose" shall mean 25% or more of any of the following:
 - a. The number of different, titles or kinds of such merchandise
 - b. The number of copies or pieces of such merchandise
 - c. The number of floor space devoted to the sale and/or display of such merchandise
 - d. The amount of advertising which is devoted to such merchandise, either in print or broadcast

ADULT CABARET:

1. Persons who appear in a state of nudity, or
2. Live performances which are characterized by the purpose of specified anatomical areas or specified sexual activities, or
3. Films, motion pictures, video cassettes, slides or photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT MOTEL: A hotel, motel or similar establishment which offers accommodations to the public for any public for any form of consideration: provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas: and as a sign visible from the public right of way which advertises the availability of this adult-type of photographic reproductions.

ADULT MOTION-PICTURE THEATER: An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic

reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT THEATER: A theater, concert hall, auditorium or similar establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

ADULT USE AND ENTERTAINMENT ESTABLISHMENTS (REFERRED TO HEREIN AS "ADULT-ORIENTATED BUSINESS"): An establishment, or any part thereof, which presents any of the following entertainment, exhibitions or services: topless and/or bottomless dancers, strippers, topless waitresses or waiters, busing or similar business, topless hair care or messages, service or entertainment where the servers or entertainers wear pasties or G-strings or both, adult arcade, adult bookstore or adult video stores, adult cabarets, adult motels, adult motion-picture theaters, adult theaters, escort agencies, nude model studios, and sexual encounter centers. Adult use and entertainment establishments customarily exclude minors by reason of age.

AGRICULTURE: Land, excluding necessary buildings and structures, that has as its principle use the raising or keeping of livestock or the growing of crops in the open. Also must have documentation of Agriculture status through the Town or County Assessor's office.

ALTERATIONS: As applied to a building or structure, a change or rearrangement in the structure parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

AUTOMOBILE GRAVEYARD: Any site containing three or more inoperative motor vehicles which are unlicensed and which have been permanently removed from the use for which they were originally manufactured. No automobile graveyard shall be allowed in the Town of Persia.

AUTOMOTIVE REPAIR: The repair, rebuilding or reconditioning of motor vehicles or parts thereof, including collision services, painting, and steam cleaning of vehicles.

BILLBOARD: Any structure or portion thereof situated on private premises upon which signs or advertisements containing written or pictorial information not directly related to the principal use of the land upon which it is located.

BOARD: The Town Board of Persia, County of Cattaraugus, New York.

BOARDING HOUSE: A dwelling in which more than three persons individually or as families are housed or lodged for hire with or without meals. A rooming house or a furnished rooming house shall be deemed a boarding house.

BOARD OF APPEALS: The Board of Zoning Appeals of the Town of Persia, County of Cattaraugus, New York.

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.

BUILDING HEIGHT: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

BUILDING SETBACK LINE: A line parallel to the street line at a distance from it, regulated by the front yard requirements set up in this ordinance.

CAMP: Any one or more of the following other than a hospital, place of detention or school offering general instruction.

Type 1. Any area of land or water on which are located two or more cabins, Tents, trailers, shelters, houseboats or other accommodations of a design or character suitable for seasonal or other more or less temporary living purposes, regardless of whether such structures or other accommodations actually are occupied seasonally or otherwise; or

Type 2. Any land, including any building thereon, used for any assembly of persons for what it commonly known as "day camp" purposes, and any of the foregoing establishments whether or not conducted for profit and whether or not occupied by adults or by children, either as individuals, families or groups.

CERTIFICATE OF OCCUPANCY:

- (A) Needed for any permitted building or structure
- (B) Lists usage for such building or structure
- (C) Lists numbers of people allowed for assembly, exists and capacity of allowed building or structure and allowed use for such building

CERTIFICATE OF COMPLIANCE: A certificate that states that a manufactured item (such as wood/pellet burning stoves, heating equipment) installed according to manufactured directions.

CLUB OR LODGE: A building or portion thereof or premises owned and or operated by a corporation, association, person or persons for a social, educational or recreational activity, but not primarily for profit or to render a service which is customarily carried on as a business.

CODE ENFORCEMENT OFFICER: The administrative officer appointed by the Town Board to enforce the provision in this zoning ordinance. (also known as a Building Inspector.)

COVERAGE: That percentage of the plot or lot area covered by the building area.

DEPENDENT MANUFACTURED HOME: A mobile home, which lacks a flush toilet and a bath or shower.

DUMP: A lot or land or part thereof used primarily for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind.

DWELLING: A building or portion thereof, but not including a house trailer or mobile home, designed or used exclusively for residential occupancy, including one-family dwelling units, two-family dwelling units and multiple-family dwelling units, but not including hotels, motels, boarding or lodging houses. Conventional, Modular, and Prefabricated Homes, shall be treated in the same manner.

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

- A. Conventional-A permanent single-or multiple-family dwelling unit, which is built on site using conventional "stick" construction techniques among others.
- B. Modular-A permanent single-or multiple-family dwelling unit, which is brought to the building site as two 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 a minimum of 24 feet wide.
- C. Prefabricated-A permanent single-or multiple-family dwelling unit, which is built on site from pre-cut and partially assembled building members. Prefabricated dwelling units are usually on the same construction techniques as conventional dwelling units but are generally purchased as a pre-designed and pre-cut package for assembly on site.
- D. Manufactured 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.

ESCORT: A person who, for a fee, tip or other consideration, agrees or offers to act as a date for another person; for consideration, agrees or offers to privately model lingerie for another person, for consideration agrees or offers to privately perform a striptease for another person or, for consideration but without a license granted by the State of New York, agrees or offers to provide a message for another person.

ESCORT AGENCY: A person or business association who furnishes, or offers to furnish, or advertises to furnish, escorts as one of its primary business purposes for a fee, tip or other consideration.

ESSENTIAL SERVICES: The erection, construction, alteration or maintenance by public utilities or governmental agencies of collection communication, transmission, distribution or disposal systems necessary for the furnishing of

adequate public service or for public health, safety or general welfare, but not including buildings.

FAMILY: One or more persons living together in one dwelling unit and maintaining a common household, including domestic servants and gratuitous guests, together with boarders, roomers or lodgers not in excess of the number allowed by this ordinance as an accessory use.

FARM: A plot of land including necessary structures, which is used for one or more of the following:

- A. Tillage of land to produce food or fiber to be consumed directly or indirectly by humans, domestic animals, or fowl.
- B. Grazing land and its crops to feed domestic animals or fowl.
- C. Raising of poultry in confinement for meat or eggs.
- D. Production of trees, timber, and field or greenhouse production of ornamental plants, shrubs, and flowers.

FLOATING SLAB FOUNDATION: Floating slab foundations are not considered a permanent foundation. They are shallow in nature. They cannot be used in a Residential occupancy but can be used in a garage foundation with that type of foundation. Once a slab foundation has been poured it cannot be converted to any kind of residential building.

FLOODWAY DISTRICT: All land within one hundred and fifty (150) feet, of either edge of the current flow channel of streams, rivers, and drainage-ways, which is subject to inundation by the maximum flood of reasonable regional expectancy.

FLOOR AREA: For the purpose of determining requirements for off-street parking and off-street loading, the floor area shall mean the sum of the gross horizontal areas of the several floors of the building, or portion thereof, devoted to such use, including accessory storage areas and any basement floor area devoted to retaining activities, to the production or processing of goods, or to business or professional offices.

FUEL BULK STATION: A place where crude petroleum, gasoline, naphtha, benzene, benzyl, kerosene or other flammable liquid which has a flash point at or below two hundred degrees Fahrenheit (closed cup tester) is stored for wholesale purposes where the aggregate capacity of all storage tanks is more than eight thousand (8,000) gallons, regardless of whether the fuel is stored above the ground or in mobile tank cars or trucks.

GASOLINE OR FILLING STATION: Any land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances including facilities for lubricating, washing or otherwise servicing motor vehicles, but not including major repairs, collision servicing or painting.

HOME OCCUPATION: An accessory use of a service character customarily conducted within a dwelling by the residents thereof which is clearly secondary to the use of the building for living purposes and does not change the character thereof or have any exterior evidence of such secondary use other than a small name plate and in connection therewith there is not involved the keeping of stock in trade, provided that said use does

not occupy more than one-fourth of the floor area in said principal residential building or such equivalent in accessory building(s) and that not more than one paid assistant be therein employed. Mortuary establishments, stores, eating establishments, tourist homes and manufacturing establishments of any kind shall not be deemed to be home occupations.

HOTEL, MOTEL, INN, TOURIST OR AUTO COURT: An establishment containing lodging accommodations designed for use by transients or travelers or temporary guests with no provisions in said accommodations for cooking in any individual room or suite.

JUNK YARD: A lot, land or structure or part thereof used primarily for the collection, exchange, storage, packing, disassembly and/or sale of waste, scrape metal, paper, lumber, rags or similar materials, but not including pawn shops and establishments for the sale, purchase or storage of used motor vehicles or salvaged machinery to be used for the purpose for which originally manufactured.

LODGING OR ROOMING HOUSE: A building with not more than three guest rooms where lodging is provided for compensation pursuant to previous arrangement, but not open to the public or overnight guests.

LOT: A portion or parcel of land considered as a unit, devoted to a certain use or occupied by a building or a group of buildings that are united by a common interest or use, and the customary accessories and open spaces belonging to the same.

LOT AREA: The net area contained within lot lines.

LOT COVERAGE: The area of a zoning lot occupied by the principal building or buildings and accessory buildings.

LOT DEPTH: The horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

LOT LINES: The property lines bounding a lot. The front lot line shall be the right-of-way line of the street or highway giving access to the lot. In the case of a corner lot, the owner may designate either street lot line as the front lot line.

LOT OF RECORD: Any lot which individually or as a part of a subdivision has been officially recorded in the office of the Clerk of Cattaraugus County.

LOT WIDTH: The mean horizontal distance between the side lot lines measured within the lot boundaries, or the minimum distance the side lot lines within the building area.

MAJOR STRUCTURE: Anything constructed or erected requiring more than thirty-five (35) square feet of floor area, located on the ground or attached to something having location on the ground.

MANUFACTURING: The making of goods and articles by hand or by machine process. Restricted manufacturing shall be considered to be any manufacturing or industrial processing which by the nature of the materials, equipment and process utilized

is to a considerable measure clean, quiet and free of any objectionable or hazardous element. All manufacturing permitted in any district shall comply with the performance requirements set forth herein.

MANUFACTURED HOME (mobile home): See Dwelling Unit for definition of Mobile Home.

MANUFACTURED HOME PARK OR COURT: A plot or parcel of ground, which is manifestly arranged and furnished to provide space, facilities and access for two or more manufactured homes as required herein.

MANUFACTURED HOME SPACE: A plot of ground within a manufactured home park or court designed for the accommodation of one manufactured home.

MESSAGE PARLOR: Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments or any other treatment or manipulation of the human body occurs as part of or in connection with sexual conduct or here any person providing such treatment, manipulation or service related thereto.

NON-CONFORMING USE: A building, structure or use of land existing at the time of enactment of this ordinance and which does not conform to the regulations of the district or zone in which it is situated.

NUDE MODEL STUDIO: Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other person who pay money or any other form of consideration, other than as part of a course of instruction offered by an education institution established pursuant to the laws of the State of New York.

NUDITY or STATE OF NUDITY: The appearance of specified anatomical areas.

OFF STREET LOADING AND UNLOADING SPACE: An open hard-surface area of land other than a street or a public way, the principle use of which is for the standing, loading and unloading of motor vehicles, tractors and trailers to avoid undue interferences with public streets and alleys. Such space shall not be less than ten feet in width, thirty-five feet in length and fourteen feet in height, exclusive access aisles and maneuvering space.

PERMANENT FOUNDATION: Depth of footers must be 42 inches in depth. (floating slabs are not considered a permanent foundation.)

PERSON: An individual, proprietorship, partnership, corporation, association or other legal entity.

PLANNING BOARD: The planning board of the Town of Persia, Cattaraugus County, New York.

PORN SHOP: Any establishment engaged in the sale or promotion of sexual acts or behavior as in writing, photographs and other materials depicting sexual acts or behavior designed to stimulate erotic feelings.

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

PUBLIC USE: Public parks, schools and administrative, cultural and service buildings, not including public land or buildings devoted solely to the storage and maintenance of equipment and materials.

PUBLIC UTILITY: Any person, firm, corporation or municipal department duly authorized to furnish under public regulation to the public, electricity, gas, steam, telephone, transportation or water.

QUARRY, SAND PIT, GRAVEL PIT, TOP SOIL STRIPPING: 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.

REAR YARD: A yard extending across the full width of the zoning lot and lying between the rear line of the lot and the nearest line of the principal building.

ROADSIDE STAND: A structure for the display and sale of farm and related produce, 75% of which must be produced on the premises.

SANITARY LANDFILL: A method of disposing of garbage and refuse by spreading, covering and compacting with earth.

SEASONAL RESIDENCE: Summer or winter cabins, cottages, hunting camps, farm labor housing and similar housing designed, intended and/or used for seasonal, non-permanent residential use.

SEMINUDE: A state of dress in which clothing covers no more than the specified anatomical areas, as well as portions of the body covered by supporting straps or devices.

SEMI-PUBLIC USE: Churches, parochial schools, colleges, hospitals, and other institutions of an educational, religious, charitable or philanthropic nature.

SEXUAL CONDUCT: Includes the following:

- a. The fondling or touching of human genitals, public region, buttock, or female breasts.
- b. Ultimate sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation and sodomy
- c. Masturbation, and
- d. Excretory functions as part of or in connection with any of the activities set forth in subsections A through C.

SEXUAL ENCOUNTER CENTER: An enterprise that, as one of its primary or significant business purposes, offers, for any form of consideration, activities between male and female persons and or persons of the same sex when one or more of the persons is in state of nudity or is seminude.

SIDE YARD: The part of the yard lying between the nearest line of the principal building and a side lot line and extending from the required front yard (or from the front line if there is no required front yard) to the required rear yard.

SIGN: Any advertisement, announcement, direction or communication produced in whole or part by the construction, erection, affixing or placing of a structure on any land or other structure, or produced by painting or posting on or placing any printed, lettered, figured, or colored material on any structure or surface, but not including signs placed or erected by a village, town, city, county or state agency for the purpose of showing street names, directions, regulations, or for other public purpose.

SMALL BUSINESS:

- (A) An accessory use of a service or small manufacturing nature. Buildings involved shall meet property setbacks and yard spaces.
- (B) Any buildings used as such must meet building codes for such structure.
- (C) Any small business shall not disrupt the zoning use of neighboring properties.
- (D) Small business is a special use permit requirement, in residential zones.
- (E) Small business is a permitted use in "A-F" districts
- (F) No more than one paid assistant can be employed in Residential district.

SPECIFIED ANATOMICAL AREAS:

- a. Unless completely and opaquely covered, human genitals, public region, buttocks or breasts below a point immediately above the top to the areola: and
- b. Even if completely and opaquely covered, male genitals in a discernibly turgid state.

SPECIFIED SEXUAL ACTIVITIES: Means and includes any of the following:

- a. The fondling or the erotic touching of human genitals, public region, buttocks, anus or breasts.
- b. Sex acts, normal or perverted, actual or stimulated, including intercourse, oral copulation or sodomy
- c. Masturbation, actual or simulated, or
- d. Excretory functions.

SPECIALIZED ANIMAL RAISING AND CARE: The use of land and/or buildings for the raising and care of rabbits, dogs, birds, horses or other domestic animals of a similar nature.

SPECIAL USE: Any use of land or buildings, or both, described and permitted herein, subject to the provisions of Section 11.4.

STORY: That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is not floor above, then the space between the floor and the ceiling next above it.

STREET: A public or private way, which affords the principal means of access to abutting properties.

STREET LINE: The dividing line between the street and the lot.

STRUCTURAL ALTERATIONS: Any change other than incidental repairs which would prolong the life of the supporting members of a building or structure such as bearing walls, columns, beams and girders.

STRUCTURE: Anything constructed or erected requiring more than thirty-five (35) feet of floor space, the use of which requires location on the ground or attachments to something having location on the ground.

TATOO PARLOR: Its usual and ordinary meaning.

THROUGH LOT: A lot having frontage on two parallel or approximately parallel streets and which is not a corner lot.

USE: The purpose for which land or building thereon is designed, arranged or intended, or for which it is occupied or maintained, let or leased.

VACATION OR RECREATION TRAILER: A manufactured home designed for and used for recreation on a seasonal basis only.

YARD: An open, unoccupied space on the same lot with a building situated between the street right-of-way line, and a line connecting the parts of the building setting back from and nearest to such street right-of-way line and extending to the side lines of the lot.

ZONING MAP: The map or maps incorporated into this ordinance as a part hereof, designating zoning districts.

ZONING PERMIT: The permit issued by the Building Inspector/ Code Enforcement Officer authorizing the construction, extension or use of land and/or buildings.

ARTICLE V- GENERAL PROVISIONS

Section 5.1 Interpretation

- (a) **Minimum Requirements:** The provisions of the zoning ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, morals and welfare. The Town of Persia has adopted the New York State Building Codes as the minimum requirement for the promotion of public health and safety.
- (b) **Relationship with Other Laws:** Where the conditions imposed by any provision of this zoning ordinance upon the use of land or buildings, are either more restrictive or less restrictive than comparable conditions imposed by any

other provision of this ordinance or any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive (or which impose higher standards or requirements) shall govern this would include New York State Building Codes.

- (c) **Effect on Existing Agreements:** This ordinance is not intended to abrogate any easement, covenant or any other private agreement, provided that where the regulations of this ordinance are more restrictive (or impose higher standards or requirements) than such easements, covenants or other private agreements, the requirements of this ordinance shall govern.

Section 5.2 Application of Regulations

- (a) **Application, except as herein provided:**

- (1) No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved, altered unless in conformity with the regulations herein specified for the district in which it is located.
- (2) No building shall hereafter be erected or altered to exceed the height to accommodate or house a greater number of families, to occupy a greater percentage of lot area, or to have a narrower smaller rear yards, front yards, side yards, inner and outer courts than is specified herein for the district in which such building is built.
- (3) No part of a yard or other space about any building required for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space similarly required for another building.
- (4) No lot, yard, setback, parking area or other space shall be so reduced in area, dimension or capacity as to make said area dimension or capacity less than the minimum required under this ordinance. If already less than the minimum required under this ordinance, said area, dimension or capacity shall not be further reduced.

- (b) **Responsibility:** The final responsibility for the conforming of buildings and use to the requirements of this ordinance shall rest with the owner or owners of such building or use and the property on which it is located.

Section 5.3 Lot Area and Dimension

- (a) **Contiguous Parcels:** When two or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, use contiguous and are held in one ownership, they shall be used as one zoning lot for such use.
- (b) **Lots or Parcels of Land of Record:** Any single lot or parcel of land held in one ownership, which was of record at the time of adoption of this ordinance, that does not meet the requirements for minimum lot width and area, may be utilized for a permitted use, provided that yards, courts or usable open spaces are not less than seventy-five percent of the minimum required dimensions of area.

Section 5.4 Access to Public Street

Except as otherwise provided for in this ordinance, every building shall be constructed or erected upon a lot or parcel of land which abuts upon an existing or platted street unless a permanent easement of access to a public street was of record prior to the adoption of this ordinance.

ARTICLE VI- ESTABLISHMENT OF DISTRICTS

Section 6.1 Districts

For the purpose and provisions of this ordinance, the Town of Persia is hereby divided into the following types of districts.

A-F Agricultural-Forestry District

R-I Residential District

I-I Industrial District

Section 6.2 Zoning Map

The boundaries of the aforesaid districts are hereby established as shown on the map entitled, "Zoning District Map of Persia, New York, which map accompanies and is made a part of this ordinance and shall have the same force and effect as if the zoning map, together with all of the notations, references and other information shown thereon, were fully set forth and described herein.

Section 6.3 District Boundaries

The district boundaries lines shown on the zoning map are, unless otherwise indicated, intended to follow either a highway, railroads, streets, alleys. Easements or lot lines, and where the districts designated on the map are bounded approximately by such highway, railroad, street, alley, easement or lot line shall be construed to be the boundary of the district. In the case of un-subdivided property, or in the event lot lines are not so indicated, the district boundary lines shall be determined by the use of the scale appearing on the zoning district map or by dimensions.

Section 6.4 Zoning of Streets, Alleys, Public-ways, Waterways and Right-of-Ways

Where the centerline of a street, alley, public-way, waterway or railroad right-of-way serves as a district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to the centerline.

ARTICLE VII-DISTRICT REGULATIONS

Section 7.1 Schedules of District Use Regulations

The requirements and limitations set forth in this article in tables entitled "District Use Regulations, Schedule A" and "District Use Regulations, Schedule B", with all explanatory matter therein, are hereby made a part of this ordinance and shall apply in the respective districts as indicated.

Section 7.2 District Use Regulations, Schedule A

The uses which are permitted in the specified zoning districts and for which the Code Enforcement Officer may issue a permit, and the special use requiring the approval and a permit from the Persia Town Board are set forth in the following table

entitled "District Use Regulations, Schedule A" which is Section 7.2 of this article. Uses not listed or interpreted by the Zoning Board of Appeals to be included categorically under this section shall not be permitted except by amendment to this ordinance.

A-F
AGRICULTURAL-FORSTRY DISTRICT
PERMITTED USES

Agriculture
Plant Cultivation
Forestry
Public Uses
Public Utilities
Essential Services
Accessory Uses
Single Family Residences
Two-Family Residences
Seasonal Residences or Camps
Private Recreation
Farm
Manufactured Homes

R-I
RESIDENTIAL DISTRICT
PERMITTED USES

Single Family Residences
Two-Family Residences
Parks
Public Uses
Semi-Public Uses
Essential Services
Accessory Uses
Agriculture

Special Use Permit Required-Board of Appeals permission required:

A-F
AGRICULTURAL-FORESTRY DISTRICT

Airports
Golf Courses
Cemeteries
Specialized Animal Raising and Care
Oil and Gas Wells, Tanks and Lines
Mining, Quarries for Sand and Gravel
Parks, Commercial Recreation Facilities
Sawmills
Radio and Television Towers
Rest Homes
Nursing Homes
Sanitariums
Feed and Grain Storage Facilities
Semi-Public Uses
Seasonal Farm Roadside Stands
Drive-In Theaters
Public Sanitary Land Fills
Outdoor Advertisement
Junk/Scrape Yards
Automobile Recycling
Small Businesses
Home Occupation

R-I
RESIDENTIAL DISTRICT

Multiple Dwellings
Cemeteries
Rest Homes
Nursing Homes
Sanitariums
Nursery Schools
Child Care Clinics
Medical Centers
Tourist Homes
Professional Activities
Seasonal Residences
Manufactured Homes
Small Businesses
Home Occupations

I-I
INDUSTRIAL DISTRICT
PERMITTED USES
Pumping Station

SECTION 7.3 District Use Regulation Schedule B. The lot yard, height and area requirements and limitations set forth in the following table entitled "District Use Regulations, Schedule B", which is Section 7.3 of this Article, with all explanatory matter thereon is hereby a part of this ordinance and shall apply in the respective districts as indicated.

District	Minimum Lot Area		Minimum Lot Width	Front 2/	Minimum Yard Dimensions			Maximum Height	Maximum Percentage Of Lot Coverage	Minimum Floor Area for Residential Structure Per family	
	Per Dwelling Unit	Other			SIDE Residential	non-Residential	Rear			Perm	Seasonal
Agricultural Forestry A-F	1 Acre	1 Acre	150 ft	50 ft	60 ft total 25 ft min	50 ft each side	60 ft	50 ft	25%	800 sq ft	500 sq ft
Residential R-I	20,000 sq ft for Single Family Homes 10,000 sq ft for Apartments	20,000 sq ft	100 ft	50 ft	30 ft total 10 ft min	15 ft each side	35 ft	35 ft	30%	800 sq ft	
Business B-I	Residence Not Permitted	5,000 sq ft	50 ft	20 ft	3/	3/		40 ft	50%	Residences Not Permitted	
Industrial I-I	Residence Not Permitted	30,000 sq ft	150 ft	50 ft	40 ft each side			60 ft	25%	Residence Not Permitted	
Floodway F-W	Residences Not Permitted	9 acres	450 ft	180 ft	225 ft 180 ft			40 ft	25 %	Residences Not permitted	
Floodway Fringe F-F	Subject to regulations in zone adjacent to it on zoning maps Plus supplemental regulations Article IX Section 9.15										

1/ Minimum lot area requirements in the Residential District may be reduced by 25% of either an approved combined sewage treatment system or an approved public water supply system is provided, and by 50% if both approved. If both are provided, yard dimensions may be decreased by 20%

2/ Along any U.S., State, County Highway, no residential or accessory building shall be located within 50 feet of the existing or proposed right-of-way line. (Alternate: The front yard shall be defined as being the distance from front building line to the proposed or existing right-of-way line.)

3/ Commercial uses shall not be located or conducted within 30 feet of any lot line of any other lot in a residential district.

ARTICLE VIII- NON-CONFORMING BUILDING AND USES

Section 8.1 Continuance of use

Except as otherwise provided herein, any lawfully established use of a building or land existing at the time of the enactment of this ordinance or amendment thereto may be continued although such use does not conform to the provisions of this ordinance.

Section 8.2 Discontinuance of Use

- (a) Whenever any part of a building, structure or land occupied by a non-conforming use is changed to or replaced by a use conforming to the provisions of this ordinance, such premises shall not thereafter be used or occupied by a non-conforming use.
- (b) Whenever a non-conforming use of a building or structure, or part thereof, has been discontinued, as evidenced by vacancy, for a period of twelve consecutive months, or whenever there is evident a clear intent on the part of the owner to abandon a non-conforming use, such use shall not after being discontinued or abandoned be re-established, and the use of the premises thereafter shall be in conforming with the regulations of the district.
- (c) Where no enclosed building is involved, voluntary discontinuance of a non-conforming use for a period of twelve months shall constitute abandonment, and shall not thereafter be used in a non-conforming manner.

Section 8.3 Change of Use

The non-conforming use of any building, structure or portion may be changed with the approval of the Board of Appeals, to a use of a more restrictive classification, and when so changed shall not thereafter be changed to a less restricted classification.

Section 8.4 Repairs and Alterations

Normal maintenance of a non-conforming building is permitted. However, such building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost of twenty-five (25) percent of the market value of the building unless changed to a conforming use.

Section 8.5 Extension

A non-conforming use shall not be extended, but the extension of a lawful use to any portion of a non-conforming building designed or manifestly arranged for such use, which existed prior to the enactment of this ordinance, shall not be deemed the extension of such non-conforming use.

Section 8.6 Restoration

No building damaged by fire or other causes to the extent of more than (60) percent of its value, as computed through the use of equalization rates current at the time, shall be repaired or rebuilt except in conformity with the regulations of this ordinance and the New York State Building Codes.

Section 8.7 District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provision shall also apply to any non-conforming uses existing therein.

ARTICLE IX- SUPPLEMENTAL REGULATIONS

Section 9.1 Application

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

Section 9.2 Performance Requirements

No land or building in any district shall be used or occupied in any manner so as to create any dangerous, injurious, noxious or otherwise objectionable element or condition and a zoning permit shall not be issued thereafter unless the following performance requirements are observed to the satisfaction of and approved in writing by the Town Planning Board:

- (a) Fire Hazards: Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate fire-fighting and suppression equipment and by such other safety devices as are normally used in the building of such materials.
- (b) Radioactivity or Electrical Disturbance: No activity shall emit dangerous radioactivity or electrical disturbance at any point where it may adversely affect other land uses in the Town.
- (c) Noise: Noise, which is objectionable as determined by the Planning Board, shall be muffled or otherwise controlled except that air raid sirens and related apparatus used solely for public purposes are exempt from this requirements.
- (d) Vibration: No vibration shall be permitted which is discernible without instruments on any adjoining property.
- (e) Smoke: Smoke shall not be emitted for longer than eight minutes in any hour, which is of a shade equal to or darker than #3 on the Standard Ringleman Chart as issued by the U.S. Bureau of Mines.
- (f) Odors: No malodorous gas or matter shall be permitted which is discernible on any adjoining property.
- (g) Air Pollution: No pollution of air by ash, dust, vapors or other substance shall be permitted which is harmful to health, animals, vegetation or other property, or which can cause excessive soiling.
- (h) Glare: No direct or reflected glare shall be permitted which is visible from any property outside an industrial district or from any public thoroughfare.
- (i) Erosion: No erosion by either wind or water shall be permitted which will carry objectionable substances onto neighboring properties.
- (j) Water Pollution: No pollution of water by chemicals or other substances shall be permitted which is harmful to animals or plant life as determined by the Cattaraugus County Health Department.

Section 9.3 Signs and Outdoor Advertisement Structures

With the exception of public road and highway signs, no sign or billboard shall be permitted in any district except as hereinafter provided.

- (a) Real Estate signs not exceeding 12 square feet in area and advertising the sale, rental or lease of the premises on which the sign is located shall be permitted on any property.
- (b) Announcement or professional signs for legitimate home occupations and professional activities and name of resident signs not exceeding more than 6 square feet in area shall be permitted in any district where such activities are permitted.
- (c) Bulletin Boards and signs for a church, school, community or other public or semi-public institution building shall be permitted provided that the area of such sign does not exceed 15 square feet in area and such signs are set back a minimum of 15 feet from the established right-of-way line.
- (d) Temporary signs not exceeding 50 square feet, announcing the erection of a building, the architect, builders, etc., may be erected for the period of 60 days plus the construction period; provided, however, the same shall be removed from the premises upon completion of the building.
- (e) In a business district each business shall be permitted to erect one flat sign for the purpose of permanent advertising. The area of such sign for any single business enterprise shall be limited according to the frontage width of the building or the frontage width of the part of the building occupied by such enterprise. In computing the maximum size, each business enterprise may have a permanent sign of an area equivalent to one and one-half square feet of sign area for each lineal foot of frontage width occupied, but in no case shall exceed a maximum area of 100 square feet. A free standing pole sign of symbolical design not over 30 feet in height and not to excess of 40 square feet in sign area may also be permitted for each business provided that:
 - a. No part of such sign shall project into or over any public right-of-way.
 - b. The pole support of such sign shall not be less than 40 feet from any lot in any residential district.
- (f) In an industrial district, a sign or billboard may be erected which pertains to the specific use of the property upon which it is erected. The area of such sign shall not exceed more than 200 square feet in area, except that the Board of Zoning Appeals may approve signs of up to 200 square feet in area provided they are at least 35 feet from any street line and 50 feet from any other lot line.
- (g) Except as provided above, signs and outdoor advertising structures where permitted, shall be set back from the established right-of-way line of any street or highway at least as far as the required front yard depth for a principal use in such district. Further, no outdoor advertising sign or structure shall be located within 500 feet of another such sign or structure.

Section 9.4 Off-Street Parking and Loading Requirements

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

- (a) Each off-street parking space shall have an area of not less than 160 square feet exclusive of access drives or aisles, and shall be of useable shape and surface.

- (b) There shall be adequate provision for ingress and egress to all parking spaces. Where a lot does not abut on a private or public access drive, an access drive of not less than eight feet in width in case of a dwelling, and not less than 18 feet in width in all other cases leading to the parking area shall be required.
- (c) The number of off-street parking spaces to be provided shall not be less than the following:

USE	PARKING SPACES REQUIRED
Residential	One per Dwelling unit
Rental units, motels, hotels	One per rental room or unit
Church or School	One for each eight seats in principal gathering room
Restaurant	One for every four seats
Golf Course	Six for each hole
Private Club or Lodge	One for each ten members
Country Club	One for each five members
Theater	One for every four seats
Offices, Clinics, Wholesale Establishments, Business Services	One for every 300 sq ft of floor space
Retail Store, Personal Service Establishment	One for each 100 sq ft of floor space
Industrial uses	One for each two employees on the maximum working shift
Hospital	One for every three beds and one for Each two employees on the maximum Working shift
Sanitarium, Convalescent Home	One for every three beds and one for Each two employees on the maximum Working shift
Dance Hall, Assembly/exhibition Hall, Night Club, Café or similar Recreational Establishment	One for every 100 sq ft of floor area
Bowling Alley	Five for each alley
Mortuary, Funeral Home	One for each 75 sq ft of floor area
Public Swimming Pool	One for each 40 sq ft of pool area

- (d) Every building having a gross floor area of 10,000 square feet or more, requiring the loading or unloading of trucks, shall provide and maintain at least one off-street loading space plus one additional space for each additional 100,000 square feet of gross floor area or fractional thereof. Each loading space shall not be less than 10 feet in width, 25 feet in length and 14 feet in height.

Section 9.5 Sanitation

The dumping of garbage or rubbish shall only be permitted in locations and under conditions approved by the Town Board and the Cattaraugus County Department of Health. Any new or modified facilities for the treatment, storage or disposal of sewage, including excreta, bath, sink and laundry wastes or trade wastes, shall be provided and installed in accordance with the rules, regulations and standards of New York and Cattaraugus County Departments of

Health. Careful consideration shall be given to the location and construction of private water supplies to assure adequate protection of such supplies.

Section 9.6 Stripping of Top Soil

Without a special permit from the Board of Appeals, no person shall strip, excavate or otherwise remove top soil for sale or use other than on the premises from which the same shall be taken except in connection with the construction or alteration of a building or paved parking area on such premises and excavation or grading incidental thereto.

Grading- All faces and or openings of any piles of top soil (including Mining) shall be treated in such a manner as to leave them in a condition which minimizes the possibility of rock falls, slope failures and collapse. The type of treatment shall be compatible with the surrounding terrain and shall be based upon characteristics of the material including the grain size of the mineral, degree of consolidation, weathering characteristics, discontinuities (areas or planes of weakness) and the height and configuration of a face or opening. Such treatment shall be consistent with the land owners land-use objective.

- a. A pile of dirt or top soil which is loose or fractured and unlikely to hold a stable slope shall be stabilized by the use of controlled blasting or scaling; by the use of benches, flatter slopes or reduced face heights or by the use of artificial rock stabilization methods such as rock bolting and the application of pneumatically projected concrete.
- b. All ridges, peaks and slopes created by excavation of mineral/soil or by the disposal of spoil shall be left no steeper than the following: rock (ledge or bedrock) – 90 degrees depending upon condition and characteristics of the formation as it exist.: Talus (broken rock)- 37 degrees, or a slope of one vertical on one-quarter horizontal, unless the talus is to be covered and revegetated in which case the slope shall not exceed that which is required for fine sand, silt and clay; Coarse sand and gravel- 33 degrees, or a slope of one vertical on one and one-half horizontal; fine sand, silt and clay- 26 degrees or a slope of one vertical on two horizontal.
- c. The perimeter of pile dirt or topsoil shall be treated in a manner so as to eliminate hazards and to minimize the visual impact of the area to the minimum practical extent. Treatment to minimize the visual impact may include the use of shrubs and tree plantings and fencing.

Section 9.7 Temporary Buildings

Temporary buildings or trailers, other than buildings or trailers for living purposes, to be used in connection with construction work only, may be permitted in any district during the period that the construction work is in progress, but such temporary buildings shall be removed upon the completion of such work. Permits for temporary, non-residential buildings shall be used for a one-year period and must be renewed or discontinued.

Section 9.8 Manufactured Homes

(c) Manufactured Homes

- (1) All manufactured homes shall be installed according to New York Building Codes.

Section 9.9 Seasonal Residences

Where permitted in section 7.2 of this ordinance, any seasonal residence in the Town of Persia shall be provided with adequate water supply and sewage disposal facilities acceptable under the standards of the Cattaraugus County Health Department. Minimum floor area requirements shall comply with section 7.3.

Section 9.10 Automobile Graveyards and Junk Yards

Where permitted in section 7.2 of this ordinance and a special use with the Board of Zoning Appeals approval, all automotive graveyards and junkyards shall conform to the following requirements:

Section 9.10.1 Title

This chapter shall be known and may be cited as the “Junked Motor Vehicle Ordinance of the Town of Persia.”

Section 9.10.2 Purpose

The outdoor storage of junked motor vehicles on privately owned property within the Town of Persia is detrimental to the health, safety and general welfare of the community. The same also constitutes an attractive nuisance to children and in many ways imperils their safety. Such storage also endangers the person property of members of the community, since fuel tanks containing gasoline fumes may explode. Such storage is unsightly and depreciates all property values. The control of the outdoor storage of junked motor vehicles on privately owned properties within the Town of Persia outside of the Village of Gowanda is, therefore, regulated on the preservation of the health, safety and general welfare of the community.

Section 9.10.3 Definitions

As used in the chapter unless the context or subject matter otherwise requires:

- (a) **“Motor Vehicle”** shall mean every vehicle originally designed and intended to be operated, drawn, or driven or capable of being operated, drawn or driven upon a public highway by any power other than muscular power. For the purpose of this chapter, the term “motor vehicle” shall include, but not limited to automobiles, trucks, buses, motorcycles, snowmobiles, ATV’s, and trailers.
- (b) **“Owner of motor vehicles”** shall mean a person, firm or corporation having the property in or title to a motor vehicle, subject to a security interest in another person and also including any lessee or bailee of a motor vehicle having the use thereof under the lease or otherwise.
- (c) **“Owner of private property”** shall mean a person, firm or corporation being the owner, contract purchaser, tenant, lessee, occupant, under tenant, receiver or assignee of private property located within the Town of Persia.
- (d) **“Private premises”** or **“private property”** shall mean and include all parcels of real property not owned by any unit or government situated in the Town of Persia, whether occupied or vacant, regardless of size, topography or location.
- (e) **“Junked motor vehicle”** shall mean any motor vehicle that is old, wrecked, discarded, abandoned or dismantled or partially dismantled which is in such deteriorated condition that it cannot be legally operated upon the public highways without substantial repairs. With respect to any motor vehicle not required to be licensed or motor vehicles not usually used on public highways, the fact that such motor vehicle has remained unused for more than six months and is not in condition to be moved under its own power shall be presumptive evidence that such motor vehicle is a junked motor vehicle.

Section 9.10.4 Outdoor Storage of Junked Motor Vehicles on Private property

It shall be unlawful for any person, firm or corporation either as owner, occupant, lessee, agent, tenant, or otherwise, of property within the Town of Persia, to store or deposit, or cause or

permit to be stored or deposited, a junked motor vehicle, or part or piece thereof, on any private property within the Town of Persia unless:

- (a) Such motor vehicle is stored or deposited, on premises legally used and operated as a junkyard; or
- (b) Such motor vehicle is stored or deposited in a completely enclosed building; or
- (c) Such motor vehicle is under repair, reconstruction, or refurbishing by the owners thereof, which must actually be residing on the premises. Not more than two (2) such motor vehicles shall be permitted at any premises; such motor vehicles must be so maintained and protected so as not to create a hazard. Such motor vehicles shall not remain on the premises more than one month; or
- (d) Such motor vehicle is temporarily stored on the premises of a public garage, motor vehicle service station or body repair shop within a commercial or industrial district of the Town while awaiting repair or servicing at such place of business. Not more than five (5) such vehicles shall be permitted to be stored on any such premises at any time.

Section 9.10.5 Duties of Code Enforcement Officer

If the provisions of the forgoing sections are believed to be violated, the Code Enforcement Officer shall serve a written notice; either personally, registered or certified mail, upon the owner, occupant or person having charge of such property to comply with the requirements of this section. If the Code Enforcement Officer is unable to ascertain the ownership of such private property by any other means, he may determine ownership of any such parcel of land in the Town of Persia, from the current assessment roll of the Town, and may serve written notice upon the owner thereof by mailing such notice by certified mail to the owner at the address listed on the current assessment roll. If the Code Enforcement Officer is unable to determine the ownership or address of the owner of said private property, such notification may be made by publishing same in the official newspaper of the Town once each week for two consecutive weeks.

Minimum requirements established are:

- (a) The permittee must personally manage or be responsible for the management of the activity or business for which the permit is granted.
- (b) The permittee must maintain an office with a sufficient number of employees on the premises to assure the proper and safe conduct of such activity or business, to minimize the fire hazard there-from and to prevent improper trespass thereon by children and others.
- (c) The permittee must erect and maintain in good condition a solid six foot fence of wood or of other acceptable material, adequate to prohibit the entrance of children and others into the area of the activity or business and to contain within such fence the materials dealt in by the permittee and if such area abuts a residential area or public street or highway, such fence shall be at least fifty feet from the boundary line or right-of-way thereof. All the materials dealt in by the permittee shall be kept within such fence at all times.
- (d) When the area is not supervised by the permittee or his employees, the fence shall be locked at a secure gate in a secure manner.
- (e) The area of the permittee's activity or business shall not be used as a dump area or as a place for the burning and disposal of junk or trash.

- (f) The Town Police, the Town Clerk, or the Town Board or any of its representatives shall be granted access to the area of the activity or business of the permittee at all reasonable hours to inspect the same for compliance herewith.
- (g) No person shall keep or maintain more than one junkyard at a single location by virtue of one permit.
- (h) Open fires may be prohibited at the discretion of the Town Board and unattended fires are prohibited on any premises covered under the provision of the zoning ordinance.
- (i) The autos, parts and materials dealt in by the permittee shall be disassembled or dismantled by means other than burning. They shall be piled or arranged in neat rows so as to permit easy, clear passage through the area.
- (j) There shall be maintained at each such place of activity or business for which a permit is issued at least one (1) fire extinguisher of approved design and capacity for each 40,000 square feet of area. Each such fire extinguisher shall be hung or mounted in a conspicuous place, clearly marked and available.

Section 9.10.6 Hearing Before Board of Trustees

Has been removed and renamed Board of Appeals.

Section 9.10.7 Penalty

A violation of this Motor Vehicle/ Junk Car section or any provision or part thereof by any person, firm or corporation is hereby declared to be a violation of the Penal Law, punishable by a fine not exceeding Two Hundred Fifty Dollars \$250 per week for first time offense. Second offense will punishable by a fine of \$500 per week and 15 days of jail time. Third offense is punishable by a fine of \$1000 per week and 15 days of jail time. Any person who shall resist or obstruct the duly authorized agents, servants, officers and employees of the Town of Persia in the removal and destruction of a junked motor vehicle by order of the Town of Persia shall be subject to the fines and penalties provided herein. The clean-up time is progressive by the amount of vehicles on said premises, two vehicles will be allowed one week, four vehicles two weeks, etc., at no time will any person be allowed more than one month for clean-up. After the month has passed the fines will be each week that the clean-up has not been completed.

Section 9.10.8 Alternative Procedures

Notwithstanding any other provisions of this ordinance, the Town of Persia may serve such notices, hold such hearings and do such other things as are set forth in § V and VI thereof and may at the same time, or at any other time, without prior notice, proceed under § VII hereof, concerning the imposition of penalties.

Section 9.11 Accessory Buildings

Accessory buildings may be permitted provided they do not occupy more than the stated percentage of the required yard; equivalent open space is left elsewhere on the lot; they are located within the stated lot dimensions; and they are not erected within five feet of any lot line, and complying with front set back line. Storage sheds of 140 square feet, or less, do not require a building permit. Anything bigger than 140 square feet will be considered the same as a Garage/Barn for permit purposes.

Section 9.12 More Than One Principle Structure

More than one structure housing and permitted or permissible principal use may be erected on a single lot, provided that yard and other requirements of this ordinance shall be met for each structure as if they were individual lots.

Section 9.13 Exceptions to Height Regulations

The height limitations contained in the schedule of district regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, silos, grain elevators, radio or television towers or any appurtenances usually required to be placed above the roof level and not intended for human occupancy.

ARTICLE X – ADMINISTRATION AND ENFORCEMENT

Section 10.1 Enforcement

A Code Enforcement Officer who shall be appointed annually by the Town Board shall enforce this ordinance. The powers and duties of the Code Enforcement Officer shall be:

- (a) Examine and approve applications pertaining to the use of land, buildings or structures when the applications conform to the provisions of this ordinance and the New York State Building Codes.
- (b) Issue all zoning permits and keeps permanent records thereof.
- (c) Conduct such inspections of buildings, structures and uses of land as are necessary to determine compliance with the provisions of this zoning ordinance and the New York State Building Codes.
- (d) Receive, file and forward for appropriate action all applications for special uses, variations and amendments to this ordinance, which may be filed in the zoning office.
- (e) Maintain permanent and current records of the zoning ordinance, including all maps, amendments, special uses and variations, to be filed in the Town Clerk's office.
- (f) Collect, receipt and account for all fees chargeable under the provisions of this ordinance and turn over all monies collected to the Town Clerk for the Town General Fund.

Section 10.2 Zoning Permit

Except as provided herein, it shall be unlawful for an owner to use or to permit the use of any major structure or land or part thereof, hereafter erected, altered, converted or enlarged, wholly or partly, until an application is made to, and a zoning permit (building permit) issued by the Code Enforcement Officer. It shall be the duty of the Code Enforcement Officer to issue a zoning permit within fifteen (15) days after a written request for the same has been made, provided he is satisfied that the proposed use, change, construction, enlargement or alteration fully conforms with all the requirements of this ordinance and the New York State Building Codes. Where the approval of the Cattaraugus County Health Department or other authority is required, the zoning permit specified in this subdivision shall not be issued until such approval has been granted in writing.

Appeal from the decision of the Code Enforcement Officer may be made to the Zoning Board of Appeals as provided in Article XI.

A zoning permit hereafter granted under the provisions of this ordinance shall be started with in one year of issue and expire two (2) years from the date of issuance unless the proposed structure or change in use has been completed.

Section 10.3 Zoning Permit Non-Conforming

A zoning permit shall be required for all lawful non-conforming uses of land and buildings created by the adoption of this ordinance and applications for such permits shall be filed with the Code Enforcement Officer within one year after the effective date of this ordinance. It shall be the duty of the Code Enforcement Officer to issue such permits free of charge, but failure to apply within the specified time or refusal of the Code Enforcement Officer to issue such permits shall be evidence that the said non-conforming use was illegal or did not lawfully exist on the effective date of this ordinance.

Section 10.4 Zoning Permit Fees

A fee, in accordance with the following schedule of amounts, shall be chargeable and shall accompany each application for a zoning permit. Such Fees shall be paid into the General Fund of the Town of Persia if the application is approved or returned to the applicant if the application is denied.

Single Family Dwelling (including seasonal)		\$.10 per Square Foot
Multiple Family Dwelling per unit (including seasonal)		\$.10 per Sq. Foot plus \$100
Residential Dwellings Land Use not involving structures		
Except agriculture		\$25
Commercial	121 – 1500 sq ft	\$100
Addition to Commercial	1500- and up sq ft	\$150
Industrial and Additions to Industrial		
Pole Barn or Garages		\$40
Swimming Pools	above ground	\$40
	in ground	\$50
Installation of Heating Units and Chimneys		\$40
Certificate of Occupancy	(included in all fees)	
Certificate of Compliance	(included in all fees)	
Vacation or Recreation Trailer (every two years)		\$35
Junk Yard Permit	(yearly)	\$60
Demolition Permit		\$30

Section 10.5 Electrical Inspections

Any change/upgrade to electrical services for any structure/building must have a third-party electrical inspection completed as part of any building permit.

ARTICLE XI – ZONING BOARD OF APPEALS

Section 11.1 Organization and Procedure

Upon the adoption of this ordinance, the Town of Persia pursuant to the provisions of the Town Law application thereto, shall appoint a Zoning Board of Appeals consisting of five members. The terms of office shall be five years, except that the five members first appointed shall serve for the terms of one, two, three, four, and five years. Such Board of Appeals, subject to the provisions of Town Law, shall determine its own rules of procedure. The members of the Board of Appeals shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. No member of the Board of Appeals shall hold other elective or appointive office in the Town of Persia Government.

Section 11.2 Powers and Duties

With due consideration for the purpose and intent of the zoning ordinance, the Zoning Board of Appeals shall:

- a. Hear and determine appeals from and review any order, requirement, decisions, or determination made by the Code Enforcement Officer charged with the enforcement of this ordinance.
- b. Hear and decide all matters referred to it, or upon which it is required to pass under this ordinance.
- c. Hear and pass upon applications for variations when a property owner or its agent shows that a strict application of the terms of this ordinance relating to the use, construction or alteration of buildings or structures, or the use of land imposes upon him hardships which is unique to the premises in question but not applying generally to other premises in the same district.
- d. Hold Public hearings and recommend or disapprove the application for a special use permit and forward it to the Persia Town Board for further action.
- e. Hold public hearings and submit to the Town Board a report and recommendations on each proposed ordinance for the amendment, supplement, change or appeal of the Zoning ordinance as set forth herein.

Section 11.3 Applications and Appeals

An application or appeal to the Board of Appeals may be taken by any person affected by any decision of the Code Enforcement Officer with respect to the zoning provisions of this ordinance. The procedure for such application or appeal and the responsibilities of the Board of Appeals in such action shall be prescribed in the applicable sections of the Town Law of New York State.

Section 11.4 Special Use Permit

The Zoning Board will recommend or disapprove of the findings of their decision and forward it to the Persia Town Board for a special use permit for any of the special uses listed in section 7.2 of this ordinance, provided such special requirements enumerated elsewhere herein. Applications for special use permits shall be accompanied by an application for the necessary zoning permit, the prescribed fees and such preliminary plans and lot layouts as the Code Enforcement Officer may deem necessary.

General Standards

- a. A special use permit shall only be granted when the proposed use is of such character, size, and location that in general it will be in harmony with the orderly development of the district in which the property is situated and will not be determined to the orderly development of adjacent districts.
- b. A permit for special use in a residential district shall only be granted when it is clearly obvious that the special use will not impair the use, enjoyment, and value of adjacent residential properties and that any vehicular traffic generated therewith will not be hazardous or otherwise detrimental to the prevailing residential character of the neighborhood.
- c. A permit for a special use in a commercial or industrial district shall only be granted when it is clearly obvious that such use will be harmonious with the district in which its location is sought and will not create undue pedestrian or

Vehicular traffic hazards or any display of signs, noise, fumes, or lights that will hinder the normal development of the district or impair the use, enjoyment and value of adjacent land and buildings. Upon finding that such general standards and the special standards set forth herein have been fully met, the Persia Town Board may issue such special use permit and in so doing may impose any conditions that it may deem necessary to accomplish the reasonable application of said standards.

Furthermore, it may deny any such application, which is in its judgement in not accordance with said general or special standards.

Said Board may require, as a condition of the issuance of any special use permit, that it shall be periodically renewed, or said Board may issue a temporary special use permit subject to adequate guarantees that the use covered will be terminated at the end of the period specified or such extension thereof as may be granted by said Board, provided that any such renewal issuance of the special permit involved and shall be in conformity with aforesaid general and special standards.

ARTICLE XIII – AMENDMENTS

Section 12.1 Amendments

All amendments to this ordinance shall be in accordance with the provisions of the Twon Law of New York State applicable hereto.

Any proposed amendments shall be submitted to the Town Planning Board, if any, for a report and recommendations prior to the required public hearing and the final action thereon by the Town Board.

ARTICLE XIII – REFERRAL

Section 13.1 Mandatory Referral

In accordance with the Laws of New York State, all proposed zoning regulations, and special permits, exceptions, variances or amendments thereto, which would change the district classification of or the regulations applying to real property lying within a distance of five hundred feet from the boundary of any city, village or town , or from any county or state park-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines, or from the boundary of any county or state owned land on which a public building or institution is situated, shall be referred to the Cattaraugus County Planning Board for their review and comment prior to their adoption by the appropriate legislative authority.

ARTICLE XIV – VIOLATIONS AND PENALTIES

Section 14.1 Building Violations and Penalties

Any person violating any provision of this ordinance for building shall be guilty of a misdemeanor and shall be liable for any such violation of the penalty, therefore. For each violation, the person committing same shall be subject to a fine of not less than \$50 or more than \$150. Each week of continued violation shall constitute separate additional violation.

The Code Enforcement Officer upon his becoming aware thereof shall serve notice of violation of the ordinance on the person or entity committing the same.

In addition to the above provided remedies, the Town Board may institute any appropriate action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this ordinance.

ARTICLE XV – SEPARABILITY

Section 15.1 Separability

If any part or provision of this ordinance or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have rendered of this ordinance or the application thereof to other persons or circumstances and the Town Board hereby declares that it would have enacted this ordinance or the remainder thereof had the invalidity of such provisions or application thereof been apparent.

ARTICLE XVI – EFFECTIVE DATE

Section 16.1 Effective Date

This ordinance shall take effect ten days after legal publication.

ARTICLE XVII – TELECOMMUNICATIONS FACILITIES

Section 17.1 Telecommunications Facilities

- (a) A telecommunication facility is any commercial equipment used in connection with the provision of wireless communication services, including cellular telephone services, radio and television broadcast services and private radio communication services, which are regulated by the Federal Communications Commission both in accordance with the Telecommunications Act of 1996 and other Federal Laws. A telecommunication Facility shall include antenna(s), principal and accessory telecommunication equipment and supporting masts, monopoles and structures, building and appurtenances servicing same.
- (b) A telecommunication facility is permitted in any district only if specifically permitted by a Special Use Permit granted by the Planning Board pursuant to section 11.4 of this law.
- (c) No Special Use Permit or modification of the condition of a currant Special Use Permit relating to a Telecommunication Facility shall be authorized by the Planning Board unless it finds that such Telecommunication Facility:
 - (1) Is necessary to meet currant expected demands for the services supported by the Telecommunication Facility for that applicant's network.
 - (2) Conforms to all applicable regulations promulgated by the Federal Communications Commission.

- (3) Is designed and constructed in a manner which minimizes its visual impact to the extent practical.
 - (4) Complies with all other requirements of this law.
 - (5) Is an appropriate site within the technically feasible area for the location of the Telecommunication Facility.
- (d) The shared use of existing Telecommunication Facilities or other structures shall be preferred to the construction of a new facility. Any application for a Special Use Permit shall include proof that reasonable efforts have been to co-locate with an existing Telecommunications Facility or upon an existing structure.
 - (1) All new applicants shall permit and allow the co-location of two other Telecommunications Services on their Facilities.
 - (2) The applicant must demonstrate that the proposed Telecommunication Facility cannot be accommodated on all existing sites due to one or more of the following reasons:
 - (a) The planned equipment would exceed the structural capacity of existing and approved telecommunication facilities or other structure, considering existing and planned use of these facilities.
 - (b) The placed equipment would cause radio frequency interference with other existing or planned equipment, which cannot reasonably be prevented.
 - (c) Existing or approved telecommunication facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably.
- (b) Each proposed Telecommunication Facility shall meet the following design requirements:
 - (1) The facility shall not be located within 500 feet, or the height of the facility plus 50 feet, whichever is greater, of a building or public highway.
 - (2) The facility shall have the least possible visual effect on the environment and must be constructed in a neutral color and be designed to blend in with the surrounding landscape and uses.
 - (3) Each facility will have no trespassing/high voltage signs posted conspicuously on the site.
 - (4) There shall be no permanent climbing pegs within 30 feet of the ground on any tower.
 - (5) There shall be a 6-foot chain link fence topped with barbwire installed around the facility. The facility and the fence shall be bonded and grounded so as to be electronically and continuously grounded.
 - (6) There shall be posted signs with every telecommunication company who uses this facility, the telecommunication's company's name, address, and telephone number.
- (c) Any application for a Special Use Permit or modification of the conditions of a current Special Use Permit relating to a Telecommunication Facility shall include:
 - (1) A safety analysis of the electromagnetic environment surrounding the proposed site. A qualified electromagnetic engineering specialist or health professional qualified to produce such analysis shall prepare the safety analysis. The safety analysis must demonstrate that the general public

electromagnetic exposure does not exceed the standards set by Federal Regulations.

- (2) A completed Visual Environment Assessment Form (Visual EAF) and a landscape plan, with particular attention given to the visibility of the facility from key viewpoints identified in the Visual EAF, existing tree lines and proposed elevations. The Planning Board, upon its review, may request additional visual and aesthetic information as 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 recommended by the Planning Board.
 - (3) A report, prepared by a New York State licensed professional engineer, which, in the case of a tower describes its 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's mounted on an existing structure, the report shall indicate the existing structure's suitability to accept the antenna, and proposed method of affixing the antenna(s) to the structure. Complete details of all fixtures and couplings, and the point of attachment shall be indicated on a design plan.
 - (4) An agreement by the applicant, in writing, to remove the towers, etc., antenna(s) and accessory structures if such facility becomes technically obsolete or ceases to be used for its originally intended purpose for six consecutive months, as determined by the Code Enforcement Officer's written determination.
 - (5) The applicant at the time of obtaining a Building Permit must provide a financial security bond for the removal of the Telecommunication Facility with the Town Assignee, in the amount of fifty thousand dollars (\$50,000).
 - (6) Applicant must submit a letter of intent stating the applicant intends to lease excess space on the facility to other potential users at reasonable terms. The Planning Board may modify this condition if the facility is attached to an existing structure.
 - (7) All applications for Special Use Permit must be accompanied with an administrative fee in the amount of two thousand five hundred dollars (\$2,500) to offset the cost of processing the request.
- (d) All Telecommunication Facilities in the Town of Persia shall fulfill the requirements of this section. The Town Code Enforcement Officer is empowered to enforce the regulations:
- (1) The facility shall be inspected at least every fifth year for structural integrity by a New York State licensed professional engineer, retained by the Facility owner and/or operator(s), and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer within fifteen days of completion.
 - (2) Any work to augment or repair the facility shall comply with applicable code requirements and a building permit shall be obtained to conduct such work when required by the code.
 - (3) The facility will be lighted by obstruction lights according to FAA standards, but will not employ strobe lights after sunset.
 - (4) Any additional antennas, reception or transmission dishes, or similar receiving or transmitting devices proposed for attachment to an existing

facility shall require a Special Use Permit in accordance with this section. The intent of this requirement is to ensure the structural integrity, visual aesthetics, and land use compatibility of communication towers upon additional antennas, communication towers upon which additional antennas, communication dishes, etc., are to be installed. The application for approval to install additional antennas, dishes, or similar receiving devices shall include certification from a New York State licensed professional engineer, retained by the facility owner and/or operator(s), indicating that the additional device or devices installed will not adversely affect the structural integrity of the facility. A visual impact analysis shall include as part of the application for approval to install one or more additional communication devices to an existing facility.

- (5) The use of any portion of a facility for signs or advertising purposes, including company name, banners, streamers, etc., is prohibited.
- (6) No outside storage of vehicles, materials or waste shall be allowed, except for limited periods when the facility is undergoing additions, repairs or renovations.
- (7) The facility shall be maintained in good order and repair at all times according to Federal, State and Town requirements.

ARTICLE XVIII – FENCES

Section 18.1 Fences; Visibility at Intersections/ Corner Lots

- (a) Fences, walls or other structures in Residential District (R-I), Agriculture-Forestry Districts.
 - (1) No fence, wall or other structure shall exceed eight (8) feet in height in the rear yard and no more than six (6) feet in the front and side yards.
 - (2) No fence can be constructed without space for repair without entering someone else's property.
 - (3) The decorative side of the fence, wall or structure shall face out away from the principal building or structure.
 - (4) No decorative or stockade fence, wall or structure shall be erected on any lot without a building permit issued by the Code Enforcement Officer after review and recommendation by the Planning Board. Failure of the Planning Board to make a report after referral shall be deemed to be an approval of the application.
 - (5) The Code Enforcement Officer may require the applicant to submit plans and specifications and a survey map of the premises of any proposed fence, wall or structure in such detail as may be reasonably necessary for consideration by the Planning Board and the Code Enforcement Officer.
- (b) Barbed wire fences. No Barbed wire fences shall be erected or used in a residential district.
- (c) Visibility at intersections/Corner Lots. On corner lots, no fence, wall, hedge or other structure or planting interfering with visibility from motor vehicles shall be erected, placed, maintained, continued or permitted within the triangle area formed by the intersection street lines and a straight line adjoining said street lines at points which

are thirty (30) feet distance from the point of intersection measured along said street lines.

ARTICLE XIX – ADULT USE AND ENTERTAINMENT ESTABLISHMENTS

Section 19.1 DEFINITIONS

See definitions in the front of this ordinance.

Section 19.2 REGULATIONS

(a) **LEGISLATIVE INTENT.** It is the purpose of this section to regulate the creation, opening, commencement and/or operation of adult use and entertainment establishment, as herein defined, in order to achieve the following:

- (1) To preserve the character and the quality of life in the Town of Persia's neighborhoods and business areas.
- (2) To control such documented harmful and adverse secondary effects of adult uses on the surrounding areas such as decreased property values: attraction of transients, parking and traffic problems, increased crime, loss of business for surrounding non-adult business, and deterioration of neighborhoods.
- (3) To restrict minors' access or exposure to adult uses.
- (4) To maintain the general welfare and safety for the Town of Persia's residents.

(b) **PURPOSES AND CONSIDERATIONS**

- (1) In the execution of this section, it is recognized that there are some uses which, by their very nature, have serious objectionable characteristics. The objectionable deleterious effects on adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods or land use.
- (2) It is further declared that the location of these uses in regard to areas where Persia's youth may regularly assemble and the general atmosphere encompassing their operation is of great concern to the town of Persia.
- (3) The intent of this section is to provide adult entertainment uses without compromising the character of the neighborhood.
- (4) This will be achieved through lighting being reflected away from abutting roadways and adjoining properties, and limiting these facilities to large parcels of property in order to maintain the visual and aesthetic environment, as well as provide adequate distances to protect neighborhoods from noise, obnoxious traffic, light and other deleterious impacts. It is further declared that the location of these uses in regard to areas where Persia's youth may regularly assemble and the general atmosphere encompassing their operation is of great concern.

C. RESTRICTED USES SHALL BE AS FOLLOWS:

- (1) Adult use and entertainment establishments (aka adult-orientated businesses)
- (2) Adult arcade
- (3) Adult bookstore or adult video store
- (4) Adult cabaret
- (5) Adult motel
- (6) Adult motion-picture theater
- (7) Adult theater

- (8) Escort agency
- (9) Massage parlor
- (10) Nude model studio
- (11) Porn shop
- (12) Sexual encounter center
- (13) Tattoo parlor

D. SPECIAL REQUIREMENTS

No person shall cause or permit the use, occupancy or establishment of any land, building or structures as or for a restricted use, as enumerated in subsection C above and defined herein unless such person shall have obtained therefore, a special permit in accordance with the town of Persia's zoning requirements and site plan review and approval and subject to any special standards as may hereinafter be required.

E. REGULATION OF RESTRICTED USES

Restricted uses, as enumerated in subsection C above and defined herein, are to be restricted and regulated as to their location in the following manner, in addition to and subject to any other requirements of the zoning ordinance of the Town of Persia. The special requirements itemized in this subsection are intended to accomplish the primary purposes of ensuring that any objectionable characteristics of these uses will not have a deleterious effect on adjacent areas and restricting their accessibility by and exposure to minors.

(1) Location

- a. Restricted use shall not be located
 - 1. Within a five-hundred foot radius of any zoned for residential use.
 - 2. Within a one-fourth mile radius of another such use.
 - 3. Within a one-thousand foot radius of any school grounds, day-care facility, library, church, or other place of religious worship, park, playground, playing field or any place of business which regularly has minors on the premises.
 - 4. Within one-thousand foot radius of any public pathway, walkway or walking path upon which minors are likely to travel.
 - b. The above distances of separation shall be measured from the nearest exterior wall of the structure containing the adult, use and entertainment establishment.
- (2) Any purpose adult-oriented business shall meet all other development standards and requirements of the Code of Town of Persia, including but not limited to lot and bulk regulations, façade and screening regulations. In the event of any conflict between requirements of any other provisions of this chapter, including but not limited to bulk regulations, and the special requirements set forth herein, the special requirements of this regulation shall apply.
 - (3) No adult-orientated business shall be permitted in any building where the majority of the floor area of the building is in residential use, including nonconforming residential use.
 - (4) In addition to the required parking spaces, one parking space for each permitted occupancy of the space devoted to the use shall be provided.
 - (5) Any lighting shall be arranged as to reflect the light away from the adjoining properties and a butting roadway.

- (6) Hours of operation shall be no earlier than 7:00 am and no later than 11:00 pm.
- (7) No person under the age of 18 years of age shall be permitted into the premises or onto the property of an adult-orientated business.
- (8) All yard setbacks shall be 200 feet.
- (9) No amplifiers or loudspeakers of any type shall be installed outside the building
- (10) All such uses shall be subject to a special use permit and site plan approval, the Town of Persia's Board and Planning Board may impose certain terms and conditions upon the granting of the site plan approval as they deem reasonable and appropriate to further the aims of this section.
- (11) There shall be a fifty-foot landscaped area along the entire highway frontage, except for necessary drives and sidewalks.
- (12) No site improvements shall take place within 50 feet of any adjoining residential property. (parking, lighting, etc.)
- (13) These special regulations are itemized in this subsection to accomplish the primary purposes of preventing a concentration of these uses in any one area and restricting the accessibility.
- (14) No adult-orientated business shall be operated in a manner that permits or allows the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from the public walkways, right of ways or similar areas.

F. LIMITS ON RESTRICTED USES.

No more than one restricted use, an enumerated in subsection C above shall be located on any one parcel.

G. PERMITTED ZONING DISTRICTS.

All adult use and entertainment establishments as defined herein may only be created, opened, commenced or operated as delineated with the Planning Board, and are subject to the restrictions, regulations, permits and approvals set forth herein.

H. DISPLAY PROHIBITED

All adult uses and entertainment establishments shall be conducted in an enclosed building. It shall be a violation to display or exhibit (in the open air, through a window, or by means of a sign, depiction or decoration), or to allow to be displayed or exhibited, any specified anatomical area or specified sexual activity.

I. PENALTIES FOR OFFENSES

Any person, firm, corporation or entity found to be violating any provision(s) of this section shall be guilty of a violation and subject to the penalties for offenses under Article XIV building violations/penalties of this ordinance.

Section 19.3 SEVERABILITY

It is hereby declared to be the intent of the Persia Town Board that:

- (a) If a court of competent jurisdiction finds any provision(s) of this local law invalid, in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of the law shall continue to be separated and fully effective.

- (b) If a court of competent jurisdiction finds the application of any provision of this local law to any building, other structure or tract of land to be invalid, in whole or in part, the effect of such decisions shall be limited to the person, property or situation involved in the controversy, and the application of any such provisions to any other person, property or situation shall not be effected.

Article XX Wind Energy Facilities

Section 20: PURPOSE:

The Town of Persia adopts this Local Law to promote the effective and efficient use of the Town's wind energy resource through wind energy conversion systems (WECS), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

Section 20.1 PERMIT REQUIRED:

- a. No wind energy facility shall be constructed, reconstructed, modified, or operated in the Town of Persia except in compliance with this Article.
- b. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Persia EXCEPT IN A Wind Overlay Zone, pursuant to an application for rezoning and special use permit approved pursuant to this article
- c. No wind measurement tower shall be constructed, reconstructed, modified, or operated in the Town of Persia except pursuant to a special use permit issued pursuant to this article.
- d. Notwithstanding any other provision of this Zoning code, Special Use Permit for WECS shall be issued by the Town Board.
- e. This article shall apply to all of the areas in the Town of Persia.
- f. Exemptions. No permit or other approval shall be required under this code for WECS utilized solely for agriculture operations in a state or county agricultural district, as long as the facility is set back at least one and half times its total height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in total height utilized solely for agricultural operations in a state or county agricultural district shall apply for a special use permit in accordance with the regulations for small wind energy conversion systems, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.
- g. Transfer. No transfer of any wind energy facility or special use permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligation nor of any other party under this article.

- h. Notwithstanding the requirements of this section, replacement in kind or modification of a wind energy facility may occur without Town Board approval when (1) there will be no increase in total height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

Section 20.2 DEFINITIONS:

AGRICULTURAL OR FARM OPERATIONS- means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a “commercial horse boarding operation”, and “timber processing” as defined New York Agricultural 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.

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.

RESIDENCE- means any dwelling suitable for habitation existing in the Town of Persia on the date 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. A residence may be part of a multi-dwelling or multipurpose, but shall not include correctional institutions.

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

SOUND PRESSURE LEVEL- means the level which is equaled or exceeded a stated percentage of time. An L(10)-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.

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 purpose 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 be considered off-site.\

TOTAL HEIGHT- the height of the tower and the furthest vertical extension of the WECS.

WIND ENERGY CONVERSION SYTEM (WECS)- a machine that converts the kinetic energy in the wind into usable form (commonly known as a “wind turbine” or “windmill”).

WIND ENERGY FACILITY- any Wind Energy Conversion Systems, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures. Small Wind Energy Conversion Systems are not included in this definition.

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

WIND OVERLAY DISTRICT/ZONE- a district or zone which encompasses one or more underlying zones and establishes requirements for Wind Energy Facilities.

Section 20.3 APPLICABILITY:

- A. The requirement of this article shall apply to all wind energy facilities proposed, operated, modified, or constructed after the effective date of this local law.
- B. Wind energy facilities may be either principal or accessory uses. A different existing use or an existing structure on the same site shall not preclude the installation of a wind energy facility or a part of such facility on such site. Wind energy facilities constructed and installed in accordance with this article shall not be deemed expansions of a nonconforming use or structure.

Section 20.4 CREATION OF WIND OVERLAY ZONES:

- a. Wind overlay zones may be created in an agriculture zone in the Town of Persia.
- b. Initial requests for Wind Overlay Zone shall be submitted with the application for a WECS Special Use Permit. No wind overlay zone may be initially created without specific requests for WECS.
- c. Once a Wind Overlay Zone has been created, new WECS or accessory structures or facilities may be added in that zone by grant of a Special Use Permit pursuant to the requirements of this article.

Section 20.5 APPLICATIONS FOR WIND ENERGY CONVERSION SYSTEMS:

- a. A joint application for creation of a wind overlay zone and special use permit for individual WECS shall include the following:
 - 1. Name, address, 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 representatives.
 - 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 owner is familiar with the proposed applications and, (ii) authorizing the submission of the application.
 - 3. Address, or other property identification, of each proposed tower location, including tax map section, block, and lot number
 - 4. A description of the project, including the number and maximum rated capacity of each WECS.
 - 5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
 - 1. Property lines and physical dimensions of the site;
 - 2. Location, approximate dimensions and types of major existing structures, including all residences, and uses on site, public roads, and adjoining

properties within five hundred (500) feet of the boundaries of the proposed Wind Overlay Zone.

3. Location and elevation of each proposed WECS.
4. Location of all above ground utility lines on the site or within one radius of the total height of the WECS. Transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
5. Location and size of structures above 35 feet within the five-hundred foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
6. The zoning designations of the subject and adjacent properties as set forth on the Town of Persia Zoning map
7. Proposed boundaries of the Wind Overlay Zone.
8. To demonstrate compliance with the setback requirements of this article, circles drawn around each proposed tower location equal to:
 - i. One and a half times the height radius.
 - ii. Five-hundred foot radius.
 - iii. One-thousand foot radius.
9. The location of the residential structures within one-thousand two-hundred feet of each proposed tower. The distance from the center of the tower to any off-site residence within one-thousand feet shall be noted.
10. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units or fencing.
6. Vertical drawing of the WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.
7. Landscaping plan depicting vegetation describing the area to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
8. Lighting plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the FAA to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
9. List of property owners, with their mailing addresses, within 500 feet of the boundaries of the proposed Wind Overlay Zone. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
10. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and

restoration; 5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the site restored, which shall include removal of all structures and debris to a depth of three (3) feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner. The plan shall include the decommissioning bond required by this article.

11. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process shall use an independent mediator or arbitrator and include a time limit for acting on the complaint. The applicant shall make every reasonable effort to resolve any complaint.
12. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:
 - (1) A construction schedule describing commencement and completion dates; and
 - (2) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
13. Completed Part 1 of the full EAF.
14. Applications for wind energy permits for wind measurement towers subject to this article may be jointly submitted with the WECS.
15. For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include manufacturer's material safety data sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
16. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board shall issue a positive declaration of environmental significance.
17. If a positive declaration of the environmental significance is determined by the SEQRA lead agency, the following information shall be included in the draft environmental impact statement (DEIS) prepared for a wind energy facility. Otherwise, the following studies shall be submitted with the application:
 - a. Shadow flicker: The applicant shall include a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.
 - b. Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points.

Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

- c. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed zone.
 - d. Noise Analysis: a noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall provide preexisting ambient noise levels and include low frequency noise.
 - e. Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on values of properties adjoining WECS sites, including properties across public roads from the site.
 - f. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.
18. Tower design information sufficient to demonstrate compliance with wind-loading requirements.
19. Analysis of potential ice-throwing and damage from blade throw impacts.
20. A statement, signed under penalties of perjury that the information contained in the application is true and accurate.

Section 20.6 APPLICATION REVIEW PROCESS:

- A. Applicants may request a pre-application meeting with the Town Board, or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meeting Law.
- B. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of the application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- C. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this article is included in the application.
- D. If the application is deemed incomplete, the Town Board or its designee reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town

Board. The applicant shall post the completed application and any accepted environmental impact statements on the internet. The application shall be referred to the Planning Board in accordance with this code.

- F. The Town Board shall hold at least one public hearing on the application. Notice will be mailed to all property owners within 500 feet of the boundaries of the proposed Wind Overlay Zone, published in the designated Town's newspaper, no less than ten days nor more than twenty days before the hearing. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- G. The public hearing may be combined with a public hearing on any Environmental Impact Statement or requested variances.
- H. SEQRA review: Applications for WECS are deemed Type I projects under SEQRA. The Town shall conduct its SEQRA review in conjunction with other agencies, and the record of review by said agencies shall be part of the record of the Town's proceedings. The Town may require an escrow agreement for the engineering and legal review of the applicants and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which statement may also serve as the Town's decision on the application.
- I. 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, the Town Board may approve, approve with conditions, or deny the application, in accordance with the standards in this article.

Section 20.7 STANDARDS FOR WECS:

- A. The following standards shall apply to all WECS, unless specifically waived by the Town Board as part of the permit.
 - 1. All power transmissions lines from the tower to any building or other structure shall be located underground to the maximum extent possible.
 - 2. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the telecommunications provisions of the Town Zoning Code. Applications may be jointly submitted for WECS and telecommunication facilities.
 - 3. No advertisement signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
 - 4. Lighting of tower: no tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the site plan. Security lighting shall be designated to minimize light pollution, including the use of light hoods, low glare fixture, and directing lights at the ground.
 - 5. All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be

furnished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the zone, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

6. The use of guy wires is prohibited.

7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along major axis of an existing microwave communication link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties.

Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.

8. All solid waste and hazardous waste and construction debris shall be removed from the site and managed in a manner consistent with all appropriate rules and regulations.

9. WECSs shall be designed to minimize the impacts land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority whenever possible.

10. WECS shall be located in a manner that minimizes significant impacts on rare animal species in the vicinity, particularly bird and bat species.

11. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.

12. Storm water run-off and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.

13. The maximum total height of any WECS shall be 420 feet.

14. Construction of the WECS shall be limited to the hours 8 am to 8 pm except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.

15. Substations required to serve WECS are an essential public service under the zoning code. Substations shall be screened from public view.

16. The Town of Persia 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 the amount to be determined by the Town Board given the nature and scope of the project proposed by the applicant.

17. Any construction or ground disturbance involving agricultural land shall be done according to the NYS Department of Agriculture and Markets' publication titled guidelines for Agricultural Mitigation for Wind Power Projects.

Section 20.8 REQUIRED SAFETY MEASURES:

- a. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- b. Unless the property owner submits a written request that no fencing be required, a six foot high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate. The entrances to entrance roads shall be gated and kept locked.
- c. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hours, 7 day a week coverage. The Town Board may require additional signs base on safety signs.
- d. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole.
- e. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.
- f. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- g. Accurate maps of the underground facilities shall be filed with the Town and with "Dig Safely New York (1-800-962-7962)" or its successor.

Section 20.9 TRAFFIC ROUTES:

- a. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors establishing such corridors shall include (1) minimize traffic impacts from construction and delivery vehicles; (2) minimize WECS related traffic during school bus activity; (3) minimize wear and tear on local roads; and (4) minimize impacts on local on local business operations. Permit conditions may require remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public, and all applicable state, county, and municipal highway authorities and superintendents whose roads are included in the WECS traffic route plans. 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 road trips, and the dates and time periods of the expected use of designated traffic routes.

- b. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in the amount, determined by the Town Board, sufficient to compensate for any damage to local roads.
- c. If the applicant uses any seasonal use highways in the off-season, it shall be solely responsible for the maintenance of said highway including but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.

Section 20.10 SETBACKS FOR WIND ENERGY CONVERSION SYSTEMS:

- a. The statistical sound pressure generated by a WECS shall not exceed L(10)-50 dba measured at any residence at any existing at the time of completing the SEQRA review of the application. If the ambient sound pressure level exceeds 48 dba, the standard shall be ambient dba plus 5 dba. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- b. In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standard for audible noise set back in subparagraph 1) of this subsection shall be reduced by five dba. A pure tone is defined to exist if the one-third octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by five dba for center frequencies of five hundred Hz and above, by eight dba for center frequencies between one hundred and sixty Hz and four hundred Hz, or by fifteen dba for center frequencies less than or equal to one hundred and twenty five Hz.
- c. In the event the ambient noise level (exclusive of the development in question exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dba, which is exceeded for more than five minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected residences, schools, hospitals, churches and public libraries. Ambient noise levels 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 wind velocities at the proposed project site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty mph at the ambient noise measurement location.
- d. Any noise level falling between two whole decibels shall be the lower of the two.
- e. Each WECS shall be setback from site boundaries, measured from the center of the WECS, a minimum distance of:
 - 1. 500 feet from the nearest property line.

2. 500 feet from the nearest public road.
3. 1,200 feet from the nearest off-site residence existing at the time of the application, measured from the exterior of such residence.
4. One and a half times the total height of the WECS from any non-WECS structure or any above ground utilities.
5. 100 feet from state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds.
6. 500 feet from gas wells.
7. 1200 feet or 200% of the total height, whichever is greater, from the boundaries of the county's existing or proposed trails, trail facilities, and recreational areas.

Section 20.11 NOISE AND SETBACK EASEMENT:

- a. In the event the noise levels resulting from a WECS exceed the criteria established in this article, or setback requirement is not met, a waiver will be granted from such requirement by the Town Board in the following circumstances:
 1. Written consent from the affected property owners has been obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this article, and that they wish to be part of the site as defined herein, and that consent is granted to (1) allow noise levels to exceed the maximum limits allowed or (2) all setbacks less than required; and
 2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without 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.
 3. In any case where written consent is not obtained a variance from the Zoning Board of Appeals shall be required.

Section 20.12 CREATION OF WIND OVERLAY ZONES AND ISSUANCE OF SPECIAL USE PERMITS:

- a. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this article and the record of the SEQRA review, issue a written decision with the reason for approval, conditions of approval or disapproval fully stated.

- b. If approved, the Town Board will direct the Town Clerk to modify the Official map to reflect the creation of the wind overlay zones, and direct Town staff to issue a Special Use Permit for each WECSs upon satisfaction of all conditions for said permit, and direct the building inspector to issue a building permit, upon compliance with New York State Building Codes and the other conditions of this article.
- c. The decision of the Town Board shall be filed within five days in the Office of the Town Clerk and a copy mailed to the applicant.
- d. If any approved WECS is not substantially commenced within two years of issuance of the permit, the special use permit shall expire.

Section 20.13 ABATEMENT:

- a. If any WECS remains non-functional or inoperative for a continuous period of one year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.
- b. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.
- c. Decommissioning Bond or Fund: the applicant, or successors, shall continuously maintain a fund or bond payable to the Town of Persia for the removal of non-functional towers and appurtenant facilities in an amount to be determined by the Town for the period of the life of the facility. This fund may consist of a letter of credit from the State of New York-licensed financial institution. All cost of the financial security shall be borne by the applicant.

Section 20.14 LIMITATIONS ON APPROVALS; EASEMENT ON TOWN PROPERTY:

- a. Nothing in this article 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 article shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

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

Section 20.15 PERMIT REVOCATION:

- a. Testing fund. A special use permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this 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 permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after the 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.
- c. Notwithstanding any other abatement provisions under this article, and consistent with the section titled abatement and section titled permit revocation, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the special use permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the decommissioning plan to remove the WECS.

WIND MEASUREMENT TOWERS

Section 20.16 WIND SITE ASSESSMENT:

The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular sites. Installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted as a special use.

Section 20.17 APPLICATIONS FOR WIND MEASUREMENT TOWERS:

- a. An application for a wind measurement tower shall include:
 1. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall provide the same information as above, must also have an original signature of the applicant authorizing the representation.
 2. Name, address, 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 application 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 criteria in this article for WECS, including a security bond or cash for removal.

Section 20.18 STANDARDS FOR WIND MEASUREMENT TOWER:

- a. The distance between a wind measurement tower and the property line shall be at least the total height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- b. Special use permits for wind measurement may be issued by the Town Board for a period of up to two years. Permits may be renewed if the facility is in compliance with the conditions of the special use permit.

MISCELANEOUS

Section 20.19 FEES:

- a. In addition to the office of Zoning and Code Enforcement fee schedule adopted by the Town of Persia Town Board, and as hereafter amended, there shall be non-refunded application fees as follows:
 1. Wind Overlay Zone rezoning: \$500 per zone.
 2. WECS Special Use Permit: \$50 per megawatt of rated maximum capacity.
 3. Wind Measurement Towers: \$200 per Tower.
 4. Wind Measurements Tower Special use Permit renewals: \$50 per Wind Measurement Tower.
 5. The cost of all legal notices and mailings shall be assessed to the applicant.
- b. Building Permits:
 1. The Town believes the review of building and electrical permits for Wind Energy Facilities require expertise for those facilities. Accordingly, the fees for such facilities shall increase by administrative cost which shall be \$100 per permit request, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the

- applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or 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 read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.
 - d. The Town Board may amend these fees, by resolution after a properly noticed public hearing.

Section 20.20 SMALL WIND ENERGY CONVERSION SYSTEMS:

- a. The purpose of this section is to provide standards for small wind energy conversion systems designed for the home, farm on the same parcel, and that are primarily used to reduce consumption of utility power at the location and built to provide for electrical power for sale off-premises.
- b. Personal Use: a special use permit shall be required under this section. All towers shall apply for special use permit in accordance with the Town of Persia building codes. The property owner or applicant shall submit a sketch plan and building permit application to the Town prior to constructing a Small Wind Energy Conversion System.
- c. Applications for small WECS energy permits shall include:
 1. Name, address, telephone number of the applicant.
 2. Name, address, telephone number of the 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 application, and (ii) authorizing the submission of the application.
 3. Address of each proposed WECS location, 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. Plans showing that the electrical components of the system, the installation conforms to NYS Building Codes requirements.
 6. Sufficient information that the energy produce will be used at the site of construction.
 7. Written evidence that the electric utility service provider has been notified if the customer owned electricity generator plans to sale the power to the utility.

8. A visual analysis of the small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. Any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
- d. Development standards. All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all 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 of minimum of one acre in size, however this requirement can be met by multiple owners submitting a joint application.
 2. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for the purpose of this section.
 3. Tower heights shall not exceed 120 feet. The allowed height shall be reduced if necessary to comply with all applicable FAA requirements.
 4. The maximum turbine power output is limited to 10 KW
 5. The systems tower 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.
 6. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
 7. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the FAA.
 8. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility 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.
 9. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that the system is causing harmful interference, the system operator shall promptly mitigate the interference or cease operation.
 10. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and possible 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 towers manufacturer's logo may be displayed on system generator housing in an unobtrusive manner.
 11. Anchor points for any guy wire for the system shall be located within the same property that the system is located, and not or across any above ground electrical transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence or sheathed in bright orange or yellow covering from three feet to eight feet above the ground.

12. To prevent harmful wind turbulences 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 two hundred foot radius. Modification of this standard may be made when the applicant demonstrates that the lower height, will not jeopardize the safety of the wind turbine structure.
13. All small wind energy systems shall be equipped with a manual and /or automatic over-speed control. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.
- e. Standards. A small wind energy system shall comply with the following standards:
 1. Setback requirements. A small WECS shall not be located closer to a property line, than one and 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 50 dba as measured at the closest neighboring inhabited dwelling.
- f. Abandonment of Use: A small WECS which is not used for a period of twelve 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.

Section 20.21 TAX EXEMPTION:

The Town exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law 487, pursuant to the authority granted by paragraph 8 of that law.

Section 20.22 ENFORCEMENT; PENALTIES AND REMEDIES FOR VIOLATIONS:

- a. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this article.
- b. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy conversion facility or wind monitoring tower in violation of this article or in noncompliance with the terms and conditions of any permit issued pursuant to this article, 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 \$359 or to 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 provisions of this article, including the terms and conditions imposed by any permit issued pursuant to this article, in addition to mother remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alterations, reconstruction, moving and/or use, and to restrain, correct or abate such violations, to prevent the illegal act.

Section 20.23 SEVERABILITY:

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

Section 20.24 EFFECTIVE DATE:

This local law shall be effective upon its filing with the Secretary of State in accordance with Municipal Law.

Article XXI SOLAR PERMITTING

Section 1 Residential Unified Solar Permit

(1) See attached Permit

Section 2 Purpose

It is the purpose of this regulation to promote the safe, effective and efficient use of installed solar energy systems that reduce consumption of utility delivered energy while protecting the health, safety and welfare of adjacent and surrounding land uses. This Ordinance seeks to:

1. Provide property owners and business owners/operators with flexibility in satisfying their energy needs.
2. Reduce overall energy demands within the Town of Persia and to promote clean energy.
3. Integrate solar energy systems seamlessly into the Town of Persia and landscapes without diminishing quality of life in the Town of Persia.

Section 3 Definitions:

Accessory Structure: A structure, the use of which is customarily incidental and subordinate to that of the principal building and is attached thereto, and is located on the same lot or premises as the principal building.

Accessory Use: A structure or use which is clearly incidental to a principal structure or use, and is located on the same lot with the principal structure or use, is an accessory use. All accessory uses are subject to the restrictions in this section.

Array: Any number of electrically connected photovoltaic (PV) modules providing a single electrical output.

Building-Integrated System: A solar photovoltaic system that is constructed as an integral part of a principal or accessory building or structure and where the building-integrated system features maintain a uniform profile or surface of vertical walls, window openings, and roofing. Such a system is used in lieu of a separate mechanical device, replacing or substituting for an architectural or structural component of the building or structure that appends or interrupts the uniform surfaces of walls, window openings and roofing. A building-integrated system may occur within vertical facades, replacing view glass, spandrel glass or other façade material; into semi-transparent skylight systems; into roofing systems, replacing traditional roofing materials; or other building or structure envelope systems.

Building-Mounted System: A solar photovoltaic system attached to any part or type of roof on a building or structure that has an occupancy permit on file with the Town of Persia and that is either the principal structure or an accessory structure. This system also includes any solar-based architectural elements.

Cell: The smallest basic solar electric device which generates electricity when exposed to light.

Drip line: The outermost edge of a roof including eaves, overhangs and gutters.

Farmland of Local Importance: land that has been identified by the local agency or agencies as farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Farmland of Statewide Importance: Land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oil seed crops as determined by the appropriate state agency or agencies. Farmlands of statewide importance may include tracts of land that have been designated for agriculture by state law.

Ground-Mounted System: A solar photovoltaic system mounted on a structure, pole or series of poles constructed specifically to support the photovoltaic system and not attached to any other structure.

Interconnection: The technical and practical link between the solar generator and the grid providing electricity to the greater community.

Kilowatt (kW): A unit of electrical power equal to 1,000Watts, which constitutes the basic unit of electrical demand. A watt is a metric measurement of power (not energy) and is the rate (not the duration) at which electricity is used. 1,000 kW is equal to 1 megawatt (MW).

Large Solar Energy System: A solar photovoltaic system with a rated capacity larger than 200kW the principal purpose of which is to provide electrical power for sale to the general power grid or to be sold to other power customers may include both physical or virtual aggregation, or to be consumed on site.

Medium Solar Energy System: A solar photovoltaic energy systems with a rated capacity between 25kW and 200kW the principal purpose of which is to provide electrical power to be consumed on site or to provide power to be shared with other power customers (which may include both physical or virtual aggregation).

Module: A module is the smallest protected assembly of interconnected PV cells.

Net Metering Agreement: An agreement with a local electric utility that allows customers to receive a credit for surplus electricity generated by certain renewable energy systems.

Photovoltaic (PV): A semiconductor based device that converts light directly into electricity.

Prime farmland: Land designated by the U.S. Department of Agriculture as land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

Principal Use: The primary or main use of land, building or structure, as distinguished from an accessory use, building or structure.

Qualified Solar Installer: A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSERDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified solar installers if the Town of Persia determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts.

Remote Net Metering: allows solar photovoltaic owner generators to apply excess generation credits from the generator system ("Host Account") to other meters on property that is owned or leased by the same customer and are within the same load zone as the generator ("Satellites").

Rooftop or Building Mounted System: A solar power system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Small Solar Energy System: A solar photovoltaic energy systems with a rated capacity up to and including 25kW the principal purpose of which is to provide electrical power to be consumed on site or to provide power to be shared with other power customers (which may include both physical or virtual aggregation).

Solar-based Architectural Element: Structural/architectural element that provides protection from weather that includes awnings, canopies, porches or sunshades and that is constructed with the primary covering consisting of solar PV modules, and may or may not include additional solar PV related equipment.

Solar Photovoltaic (PV) Related Equipment: Items including a solar photovoltaic cell, panel or array, lines, mounting brackets, framing and foundations used for or intended to be used for collection of solar energy.

Solar Photovoltaic (PV) System: A solar collection system consisting of one or more building-and/or ground-mounted systems, solar photovoltaic cells, panels or arrays and solar related

equipment that rely upon solar radiation as an energy source for collection, inversion, storage and distribution of solar energy for electricity generation. A solar PV system is a generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than 3,000 kilowatts at other customer service locations and do not produce excess on- site energy greater than currently permitted by Pennsylvania Public Utility Commission guidelines.

Tracking System: A few photovoltaic modules mounted such that they track the movement of the sun across the sky to maximize energy production, either with a single-axis or dual-axis mechanism.

Section 4 Applicability

This Ordinance applies to all building-mounted and ground-mounted systems installed and constructed after the effective date of the Ordinance.

Solar PV systems constructed prior to the effective date of this Ordinance are not required to meet the requirements of this Ordinance.

Any upgrade, modification or structural change that alters the size or placement of an existing solar PV system by 50% or more, or that triggers NYS code compliance, shall comply with the provisions of this ordinance.

Section 5 Permitted Locations

No solar energy system or device shall be installed or operated in the Town of Persia except in compliance with this article.

1. Small and Medium Solar Energy Systems

- A. Small and Medium Solar Energy Systems may be mounted on lawfully permitted principal or accessory structures and shall be considered an accessory use in Town of Persia subject to the following conditions:
 - i. A building permit or unified permit shall be required for installation of all rooftop and building mounted solar collectors.
 - ii. Any height limitations of the Town of Persia Code shall not be applicable to solar collectors provided that such systems are erected only to such height as is reasonably necessary to accomplish the purpose for which they are intended to serve.
 - iii. Panels installed on residential principal or accessory structures facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
- B. Small and Medium Solar Energy Systems may be ground-mounted and considered accessory uses in the property's zoning district subject to the following conditions:
 - i. The system is not the primary use of the property.
 - ii. Building permits are required for the installation of all ground-mounted solar collectors.
 - iii. The location of the solar energy system meets all applicable setback requirements for accessory structures in the zoning district in which it is located.
 - iv. Small ground-mounted solar energy systems shall be screened when possible and practicable through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area.

v. Medium ground-mounted solar energy systems shall not be visible from the public right-of-way and shall be screened through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area.

vi. The height of the solar collector and any mounts shall not exceed [20] feet when oriented at maximum tilt.

Small and Medium Solar Energy Systems are permitted as the principal and primary uses of land subject to the following conditions:

C. Small and Medium Solar Energy Systems proposed within residential and commercial zoning districts shall undergo site plan review prior to construction, installation or modification as provided within this section, and are subject to the following conditions:

- a. The site is larger or equal to 2 acres.
- b. The total lot coverage ratio does not exceed 60%. Lot coverage shall be defined as the area measured from the outer edge(s) of the arrays, inverters, batteries, storage cells and all other mechanical equipment used to create solar energy, exclusive of fencing and roadways.

c. Applicable screening and setback requirements.

i. No solar array shall be installed on Prime Farmland, farmland of statewide importance, farmland of local importance, or unique soils as defined by the US department of Agriculture (USDA), New York State Department of Environmental Conservation, the U.S. Army Corps of Engineers, or local governing body.

ii. No solar array shall be installed on a designated wetland as defined by the New York State Department of Environmental Conservation, the U.S. Army Corps of Engineers, or other governing body.

iii. No solar array shall be installed on Critical Environmental Areas (CEAs) as defined by the New York State Department of Environmental Conservation, the U.S. Army Corps of Engineers, or other governing body.

iv. Pursuant to the Site Plan Review process, the project proponent shall provide the following documents, as deemed applicable by the Site Plan Review Authority:

a. A site plan showing:

- 1. Property lines and physical features, including roads, for the project site;
- 2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- 3. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
- 4. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- 5. Name, address, and contact information for proposed system installer;

6. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
7. The name, contact information and signature of any agents representing the project proponent; and
8. Zoning district designation for the parcel(s) of land comprising the project site.
9. Proof the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.
- v. Building permits are required for the installation of all ground-mounted solar collectors.
- vi. Small and Medium principal use systems are subject to setback requirements of the zoning district in which they are located.
- vii. Small and Medium principal use systems are exempt from lot frontage requirements in the applicable zoning district.

D. Building-integrated Solar Energy Systems: Building-integrated systems, as defined by this Ordinance, are not considered an accessory use and are not subject to the requirements of this Ordinance, but are subject to all other applicable building, electrical, and safety codes.

Section 6 Large Scale Solar Energy Systems

Applicability

In order to promote innovative design and encourage the inclusion of alternate energy systems within the overall design of a building, solar energy systems determined by the Code Enforcement Officer to be building-integrated photovoltaic (BIPV) systems, as defined herein, are exempt from the requirements of this section. BIPV systems are still required to meet applicable building codes and obtain all necessary permits. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered a BIPV system.

- A. Large Scale roof mounted solar energy systems are permitted as accessory uses and are subject to sit plan review by the Planning Board and requiring issuance of a building permit.
- B. Large Scale ground mounted solar systems are permitted as accessory and principal uses in Town of Persia, subject to the following conditions:
 - i. No large-scale ground-mounted solar array shall be installed on Prime Agricultural Soil as defined by the New York State Department of Environmental Conservation, the U.S. Army Corps of Engineers, or other governing body.
 - ii. No large-scale ground-mounted solar array shall be installed on a designated wetland as defined by the New York State Department of Environmental Conservation, the U.S. Army Corps of Engineers, or other governing body.
 - iii. No large-scale ground-mounted solar array shall be installed on Critical Environmental Areas (CEAs) as defined by the New York State

Department of Environmental Conservation, the U.S. Army Corps of Engineers, or other governing body.

iv. Pursuant to the Site Plan Review process, the project proponent shall provide the following documents, as deemed applicable by the Site Plan Review Authority: 1. A site plan showing:

- a. Property lines and physical features, including roads, for the project site;
- b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- c. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
- d. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- e. Name, address, and contact information for proposed system installer;
- f. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- g. The name, contact information and signature of any agents representing the project proponent, and
- h. Zoning district designation for the parcel(s) of land comprising the project site.
- i. Proof the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off grid systems are exempt from this requirement.
- v. Building permits are required for the installation of all ground-mounted solar collectors.
- vi. Large Scale Principal Use Energy Systems are subject to setback requirements of the particular zoning district in which they are located.
- vii. Large Scale Principal Use Energy Systems are exempt from lot frontage requirements in the applicable zoning district.
- viii. Large Scale ground mounted solar systems are permitted as accessory and principal uses in the Town of Persia, subject to the following conditions, 'unless specifically waived by the Town Board as part of the permit'.

Section 7 Applications for Large Solar Energy systems

1. All applications for large-scale building mounted and/or ground mounted solar energy systems shall be accompanied by an application for site plan review.
2. All applications for large-scale solar energy systems shall include the following:
 - a. Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading activities

are subject to review and approval by the Planning Board and shall not commence until issuance of site plan review approval.

- b. Certification from a professional engineer or architect registered in New York State indicating that the building or structure to which the solar energy system is to be affixed is capable of handling the loading requirements of the solar energy system and various components.
- c. One- or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over current devices.
- d. Documentation of access to the project site, including access roads, gates, parking areas, ETC.
- e. Plan for clearing and/or grading of the site. If necessary, a plan for storm water management and erosion control of the site.
- f. Documentation of utility notification, including an electrical service order number.
- g. Decommissioning plan and description of financial surety.
- h. Where the owner of the property is different than the site host of a solar energy system, the owner of the property shall provide an affidavit or evidence of agreement between the property owner and the solar energy system's owner/operator verifying that the system owner/operator has permission of the property owner to install and operate the solar energy system.

Section 8 Permitted Zoning Districts

All building-mounted and ground-mounted systems are permitted in all zoning districts as a primary use or as an accessory use to any lawfully permitted principal use on the same property upon issuance of the proper permits pursuant to Article 4 and upon compliance with all requirements of this section and as elsewhere specified in this Ordinance.

Article 9 Design and Installation Standards

1. The solar PV system must be constructed to comply with the New York State Building and Electrical Code, as amended, and any additional electrical and safety regulations adopted by the State of New York.
2. All systems must be installed by a qualified solar installer as defined by this ordinance.
3. All wiring must comply with the National Electrical Code, most recent edition, as amended and adopted by the State of New York. a. For Large scale ground-mounted systems, all exterior electrical lines must be above the surface of the ground and placed in conduit.
4. The solar PV system must be constructed to comply with the most recent fire code as amended and adopted by the State of New York.
5. For Large Scale principal use solar systems:
 - a. The applicant must submit a storm water management plan, certified by a professional engineer, which demonstrates storm water runoff will infiltrate into the ground beneath at a rate equal to that of the infiltration rate prior to the placement of the system.

- b. The System shall be properly maintained and be kept free from hazards including,
but not limited to, faulty wiring, loose fastenings, and creation of an unsafe condition or detriment to public health, safety or general welfare.
6. All solar energy systems shall adhere to all applicable Town of Persia/ State of New York Building Codes as well as all building, plumbing, electrical, and Fire codes.
7. Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or significant habitats identified by the Town, Federal or State regulatory agencies.
8. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of what already exists.
9. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth tone color.
10. All transmission lines and wiring associated with a solar energy system shall be buried and include necessary easements in accordance with the National Electrical Code. The Town may recommend waiving this requirement if sufficient engineering data is submitted by the applicant to demonstrate that the underground transmission lines are not feasible or practical. The applicant is to show the locations of all proposed overhead and underground electrical lines, including substations and junction boxes and other electrical components for the projects.
11. Artificial lighting of solar energy systems shall be limited to lighting requirement for safety and operational purposes and shall be shielded from neighboring properties and public roads.

Section 10 Setback Requirements

1. Ground-mounted Systems: Ground-mounted systems, as a primary use or accessory use are subject to setback requirements in the zoning district (50 feet) in which the system is to be constructed. The required setbacks are measured from the property line to the nearest part of the system. No part of the ground-mounted system shall extend into the required setbacks due to a tracking system or other adjustment of solar PV related equipment or parts.

Section 11 Height Restrictions

1. Notwithstanding the height limitations of the zoning district:
 - a. For a building-mounted system installed on a pitched roof that faces the front yard of a property, the system must be installed at the same angle as the roof on which it is installed with a maximum distance, measured perpendicular to the roof, of eighteen (18) inches between the roof and edge or surface of the system.
 - b. For a building-mounted system installed on a sloped roof, the highest point of the system shall not exceed the highest point of the roof to which it is attached.
 - c. For a building-mounted system installed on a flat roof, the highest point of the system shall be permitted to extend up to six (6) feet above the roof to which it is attached.
2. Ground-mounted systems may not exceed the permitted height of accessory structures in the zoning district where the solar PV system is to be installed or 20 feet from the ground, whichever is less.

Section 12 Screening and Visibility

1. Building-mounted systems on a sloped or flat roof shall not be required to be screened, unless otherwise stated in this ordinance.
2. Ground mounted systems are required to submit a screening & landscaping plan showing adequate measures to screen through landscaping, grading or other means so that the solar panels and other equipment not visible from roadways and neighboring residential properties. The screening & landscaping plan shall include specifies the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system.
3. A detailed safety plan specifying the measures that will be used to prevent public access to unsafe areas and to provide for emergency response, including but not limited to the location, height, materials, and colors of fencing and other barriers to access and a safety signage plan that contains the locations, sizes and text of signs that will be used to warn the public away from unsafe areas and that shall include the name and phone number of an official of the owner or operator who can be contacted in the event there is an emergency or any question about safety.
4. No element of the system shall reflect glare (as defined by the FAA) onto a neighboring property, public right-of-way or aircraft flight path.
5. Building-mounted systems (not including conduit) mounted on historic properties shall not be visible from the public right-of-way within a 200 foot radius of the property, at a level of 5 (five) feet from the ground in a similar manner as to any other rooftop HVAC or mechanical equipment. This can be accomplished with architectural screening such as a building parapet or by setting the system back from the roof edge in such a manner that the solar PV system is not visible from the public right-of-way within a 200 foot radius when measured at a distance of 5 (five) feet from the ground.

Section 13 Impervious Property Coverage Restrictions

1. The surface area of any ground-mounted system, regardless of the mounted angle of any portion of the system, is not considered an impervious surface and shall not be calculated as part of the property lot coverage limitations for the zoning district.
2. If the ground-mounted system is mounted above existing impervious surface, it shall not be calculated as part of the property lot coverage limitations for the zoning district.
3. Footers and other hard surfaces placed underneath racking and mounting systems are considered impervious and count towards impervious surface calculations.

Section 14 Non-conformance

1. Building-mounted systems:
 - a. If a building-mounted system is to be installed on any building or structure that is non-conforming because its height violates the height restrictions of the zoning district in which it is located, the building-mounted system shall be permitted, so long as the building-mounted system does not extend above the peak or highest point of the roof to which it is mounted and so long as it complies with the other provisions of this Ordinance.
 - b. If a building-mounted system is to be installed on a building or structure on a non-conforming property that does not meet the minimum setbacks required

and/or exceeds the lot coverage limits for the zoning district in which it is located, a building-mounted system shall be permitted, so long as there is no expansion of any setback or lot coverage non-conformity and so long as it complies with the other provisions of this Ordinance.

2. Ground-mounted systems:

- a. If a ground-mounted system is to be installed on a property containing a structure that is non-conforming because the required minimum setbacks are exceeded, the proposed system shall be permitted so long as the system does not encroach into the established setback for the property.
- b. If a ground-mounted system is to be installed on a property that is non-conforming because it violates zoning district requirements other than setbacks, then a special use permit must be obtained for the proposed installation.

Section 15 Signage and/or Graphic Content

1. No signage or graphic content may be displayed on the solar PV system except the manufacturer's badge, safety information and equipment specification information. Said information shall be depicted within an area no more than thirty-six (36) square feet in size.
2. Disconnect and other emergency shutoff information will be clearly displayed on a light reflective surface.
3. 24 hour emergency contact information will be clearly displayed.
4. Systems and sites may not be used for displaying advertising except for reasonable identification of the owner/operator and shall comply with all signage restrictions.

Section 16 Inspection, Safety and Removal

1. The Municipality reserves the right to inspect a solar PV system for building or fire code compliance and safety with 24 hour notification to the property owner and/or owner-operator of the system.
2. All Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing.
3. The solar energy system shall be removed, at the owner's or operator's expense, within 180 days of determination by the designated municipal representative that the system is no longer being maintained in an operable state of good repair or no longer supplying solar power. Such an order shall be in writing, shall offer the option to rectify, and shall notify the property owner of his or her right to appeal such determination.
 - a. Removal shall include solar collectors, cabling, electrical components, accessory structures, and any associated facilities below grade.
 - b. Disturbed earth shall be graded and reseeded, unless the designated municipal representative approves a written request by the property owner that internal roads or other site improvements are not to be restored.
4. If upon inspection the Municipality determines that a fire code or building code violation exists, or that the system otherwise poses a safety hazard to persons or property, the Municipality may order the property owner or operator to repair or remove the system within a reasonable time as determined by the code enforcement officer. Such an order shall be in writing, shall offer the option to repair, shall specify the code violation or safety hazard found and shall notify the property owner or operator of his or her right to appeal such determination.

5. If a property owner or operator fails to repair or remove a solar PV system as ordered, and any appeal rights have been exhausted, the Town of Persia may enter the property, remove the system and charge the property owner or operator for all costs and expenses of removal, including reasonable attorney's fees or pursue other legal action to have the system removed at the property owner or operator expense

In addition to any other available remedies, any unpaid costs resulting from the Municipality's removal of a vacated abandoned or de-commissioned solar PV system shall constitute a lien upon the real property against which the costs were charged. Legal counsel of the Municipality shall institute appropriate action for the recovery of such cost, plus attorney's fees, including, but not limited to filing of municipal claims pursuant to for the cost of such work, 6% interest per annum, plus a penalty of 5% of the amount due plus attorney's fees and costs incurred by the [Municipality] in connection with the removal work and the filing of the Municipality's claim.

Section 17 Abandoned or Decommissioned

1. Unsafe, inoperable, and/or abandoned solar energy systems and solar energy systems for which a special-use permit has expired shall be removed by the owner. A solar energy system shall be deemed abandoned when it fails to produce energy for at least one year. All safety hazards created by the installation and operation of the solar energy systems shall be eliminated and the site restored to its pre-existing condition within six months of the removal of the solar energy system.
2. For all ~~large~~-scale energy systems, the applicant shall submit a decommissioning plan for review and approval as part of the special-use permit application. The decommissioning plan shall identify the anticipated life of the project, method and process for removing all components of the solar energy system and returning the site to its pre-existing condition, and estimated decommissioning costs, including any salvage value.
3. The applicant for a ~~large~~-scale solar energy system where the system is the principal use on a lot shall, as a condition of the special-use permit and upon each renewal, provide and maintain a form of financial surety. Such financial surety shall be provided either through a security deposit, escrow account, bond, or in a manner otherwise acceptable to the Town. The amount shall be based upon the estimated decommissioning costs and shall not exceed \$500,000 per application. It is intended to cover, in whole or in part, the cost of decommissioning in the event the Town must remove any utility-scale solar energy systems and any associated structures/components, as well as restore the site subsequent to such removal in accordance with the approved decommissioning plan. Upon successful completion of all decommissioning activities, any remaining portion of the posted financial surety shall be returned to the applicant. Such financial surety shall not be required for municipality or state operated solar energy systems.

Section 18 Permit Requirements

Before any construction or installation on any solar PV system shall commence, a building permit issued by Town of Persia shall be obtained to document compliance with this Ordinance.

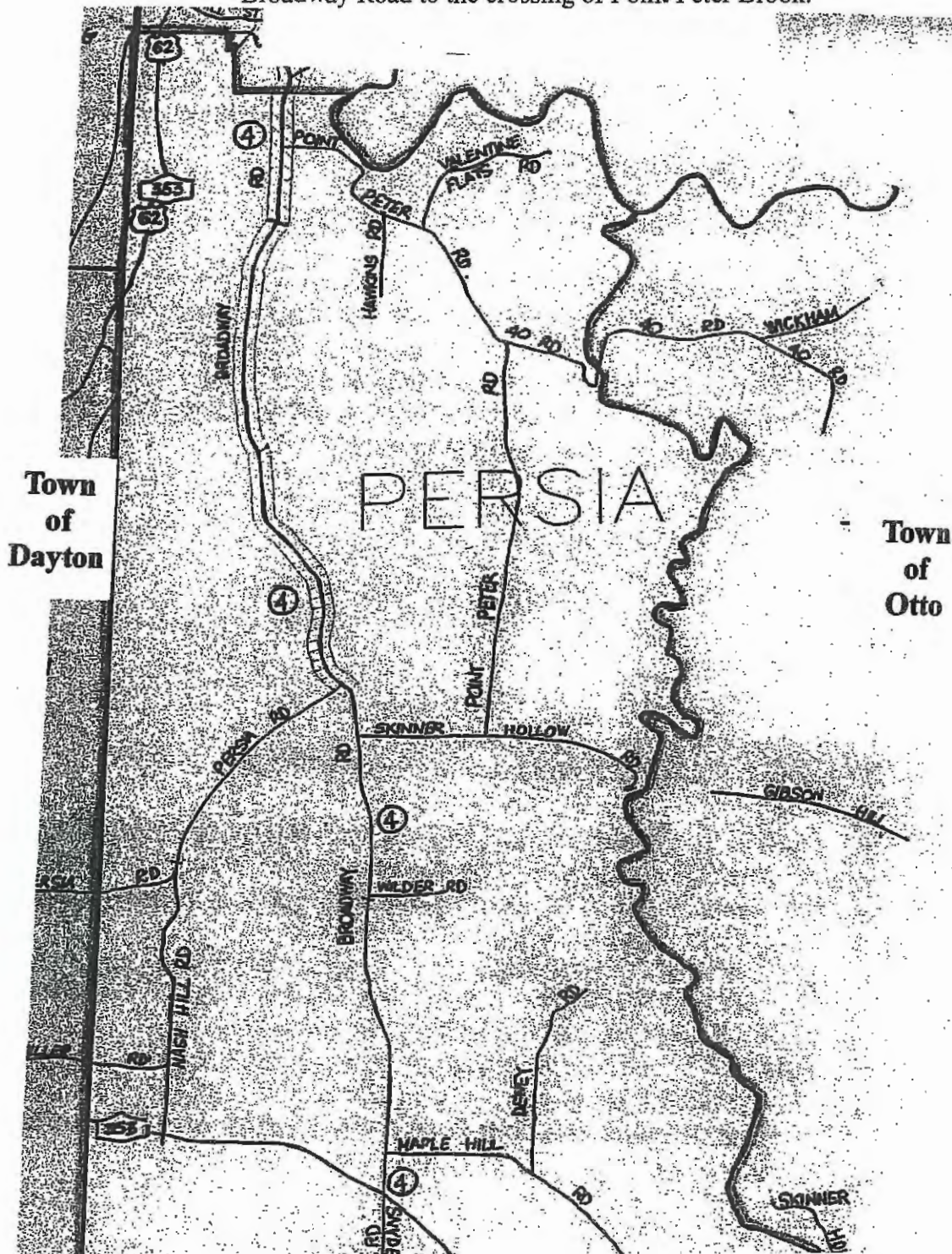
1. Any post-construction changes or alterations to the solar energy systems shall be done by amendment to the special-use permit.

Section 19 Effective Date

This local law shall take effect immediately upon filing with the Secretary of State.

ZONING MAP - TOWN OF PERSIA

- (1) The "R-I" District along Broadway Road shall be 300 ft wide on either side of the centerline of the highway and continue from the Village of Gowanda line to the property line of DiDimizio and Tagliaferro on the east and Tingue and Gemmil on the west.
- (2) The "R-I" District along route 62 (Dayton Road) shall continue along said road 300 ft either side of the centerline of the highway from the Village of Gowanda line to the Town of Dayton line.
- (3) The "R-I" District along Point Peter Road shall continue along said road 300 ft either side of the centerline of the highway from the intersection of Broadway Road to the crossing of Point Peter Brook.



Article XXII KENNEL LAW

Section 1 - Purpose

The Town of Persia desires to set out fair and comprehensive rules and regulations governing kennels and animal boarding. The Town of Persia will also be able to keep records to assure the good health and humane treatment of dogs and cats pursuant to all state and federal laws. This article is intended to preserve the residential character of the Town and minimize conflicts of noise, odor and health hazards created by the raising and boarding of animals.

Section 2 - Requirement

The Town of Persia is hereby setting the requirement for kennels. Any person within the Town of Persia who owns 5 or more dogs and/or more than 6 cats must apply for a kennel permit.

Section 3 - Definitions

Commercial Kennel

_Any use on a lot, whether such use is primary or otherwise, wherein 5 or more dogs, each of which is 4 months of age or older, are kept or maintained for sale, boarding, breeding, grooming, letting for hire, training or any other purpose involving compensation, whether monetary or otherwise, of any kind.

Animal Boarding

_5 or more dogs over the age of four months or 6 cats over the age of four months kept in a single location where they are boarded for compensation. Allowed in all Zoning Districts with an approved special permit.

Exotic Pets

_Intriguingly unusual, nonindigenous animals so different as to be excitingly odd and which are considered "NONTRADITIONAL" pets. (Any pet that is not a dog, cat, fish, horse, rabbit, guinea pig or other commonly domesticated animal).

Grooming Establishment

_A place where care and service are provided to the exterior of any animal to change its looks or improve its comfort but shall not mean the treatment of physical disease or deformities. Allowed in all Zoning Districts with an approved special permit.

Kennel

_A facility where dogs or cats are bred and/or raised on a commercial scale for sale as pets, used in hunting, showing, training, field trials or groomed for compensation and exhibition purposes. Allowed in all Zoning Districts with a approved special permit.

Exempt Kennel

_Any use on a lot for a municipal animal shelter or veterinary facility, unless such use includes activities which would be defined herein as a commercial kennel. An exempt kennel is not required to obtain a kennel permit.

Non-Commercial Kennel

_Any use on a lot, whether such is primary or otherwise, wherein 5 or more dogs are kept or maintained for a purpose other than compensation of any kind.

Section 4 - Exceptions

- A. The sale or exchange of one litter of puppies or kennels withing a 12-month period alone does not constitute the operation of a kennel.
- B. Exotic pets are not restricted under the purview of this article.
- C. Farms are exempted from this article. Farm exemptions are registered by the Town of Persia Assessor.

Section 5 - Kennel regulations

- A. Kennels shall be limited to the raising, breeding, boarding, and grooming of such dogs and cats.
- B. The minimum lot size for kennels shall be an acre.
- C. Dogs kept on the premises will not equal more than 15 per acre of land.
- D. Cats kept on the premises will not equal more than 25 per acre of land.
- E. All runs shall be hard surfaced, compacted fine stone or grasses with drains provided every 10 feet and connected to an approved sanitary facility.
- F. No building, other structure or outside dog runs shall be located within 150 feet of an adjacent residential use.
- G. If the keeping of such pets become a nuisance and outside the general intent of a residential district, The Town Board may require facilities to adequately control and prevent further nuisance.
- H. Dog runs shall not be used between the hours of 8:00pm and 8:00am.
- I. The adequacy of the site and buildings to accommodate the animals in question shall meet minimum standards of New York Ste's Department of Agriculture and Markets for kenneling boarding and keeping of animals.

- J. The public health, safety and general welfare concerns posed by the animals in question require all New York State standards be met.
- K. Animals may be removed from the kennel site if conditions are found to be in violation of local, state, or federal animal care laws and regulations.
- L. Kennels shall require a special use permit and follow the requirements of the Town's Special Permit Law.
- M. The application must include plans for exercise, socialization, and grooming.
- N. The name of a certified veterinarian who will attend to animals must be included in the application.

Section 6 - Animal Boarding

- A. Domestic animals (dogs and cats) may be boarded in all districts noted in the definitions by a special use permit. Boarding may also be allowed in Zoning Districts as an accessory use to veterinary Clinics, subject to approval of a site plan and compliance with components of this article.
- B. Animal boarding establishments shall be subject to the following regulations. In addition to the regulations as set forth within the district in which veterinary clinics are permitted, the following minimum regulations shall apply for animal boarding.
 - 1. The facility shall be set back as far as possible from all residential use property. In no case shall the minimum setback be less than 150 feet.
 - 2. Primary pens, adjacent exercise areas, and outside runs must be a minimum of 100% of USDA standards and include daily exercise to an outside area.
 - 3. Methods shall be used to reduce off-site noise, which may include the use of sound-barrier material such as "bark block" and/or other approved insulation.
 - 4. At least 50% of the flooring must be solid, and plastic covered wire flooring is permitted if the gauge of the opening is small enough to prevent injuries.
 - 5. The animals shall be boarded in appropriate kennel units with insulation to further abate noise.
 - 6. Stacked pens will not be allowed for adult dogs.
 - 7. Flooring in whelping areas shall not allow feet to penetrate the flooring.
 - 8. The facility shall have appropriate flushing drains and other physical elements to properly dispose of cleaning waste from the boarding area.
 - 9. The boarding area must be air-conditioned and heated so that any windows, doors, or other openings can be always closed, except for ingress and egress into the area.
 - 10. The total area designated for boarding within the building shall not exceed 75% of the gross floor area of the facility.
 - 11. Boarding shall be limited to domestic dogs and cats, unless otherwise specifically permitted by the Town.
 - 12. There shall be no outside retaining of animals and no outside service.

Section 7 – Grooming establishments

- A. Domestic animals may receive services, as defined previously, in all districts by special use permit.
- B. All grooming establishments shall be subject to the following regulations.
 - 1. The quarters in which the animals are kept shall be maintained in a clean condition and good state of repair.
 - 2. No nuisance caused by odor, noise, flies, or animals running at large shall be permitted.
 - 3. Ventilation must be provided with an exhaust fan and the general temperature kept below 70 degrees Fahrenheit.
 - 4. A grooming establishment may operate in conjunction with a kennel or animal boarding facility if it is contained within the same building.
 - 5. No overnight boarding of animals is allowed unless approved as a boarding facility.

Section 8 – Permit applications

Approval of the special use permit may be issued for an initial period of one year. After the initial year, the permit may be reissued for 3-year periods, given there are no grievances of code violations connected to the subject property or use. In cases where complaints or violations, a review hearing will be held by recommendation regarding the site plan will be required from the Planning Board. A Town Official will visit the kennel at least once a year to assess the effectiveness of the regulations.

- A. The applicant shall certify that the kennel follows all applicable local, state, and federal laws.
- B. The applicant will certify if their kennel has ever been convicted of a crime involving animal cruelty or animal torture or determined to have violated any section of Article 26-A of the Agriculture and Markets Law of the State of New York or any section of Article 35-D of the General Business Law of the State of New York

When reviewing the application for a kennel, the Town of Persia may determine an outside consultant is warranted due to size, scale, or complexity of the project. Whenever possible the Town will work cooperatively with the applicant to identify what scope of work shall require an outside consultant, additionally the cost of the consultant will be paid by the applicant.

Section 9 – Enforcement; penalties for offenses

- A. Should the enforcement officer find that a kennel or animal boarding facility is being operated on a property without the necessary permit, the enforcement officer is hereby authorized pursuant to Criminal Procedure Law 150.20(3) to issue an appearance ticket to any person who the enforcement officer has reason to believe has violated this article a shall cause such a person to appear before the Town Justice.

- B. Any instance of animal neglect, cruelty, violation of animal right or violation of local, state, and federal regulations governing the care and control of animals shall result in the immediate revocation of the permit. Reissuance of the permit will be at the discretion of the Town Board and subject to approval by local, state and federal authorities associated with any violations of laws governing the facility.
- C. Any person who shall violate any of the provisions of this article shall be guilty of a violation and subject to the following:
 - 1. A fine not to exceed \$100 for the first violation.
 - 2. A penalty of \$200 for each week after the first violation, and
 - 3. When the violation fee reaches \$400, the violation is to be recovered by the municipality in a civil action.
- D. The Town Board may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this article.
- E. The Town of Persia is required to inspect kennels if a written complaint is received and obtain compliance with all applicable laws. With this in mind, the property owner(s) needs to assure the Town that such kennel is being operated in an approved, clean, and safe manner accordance to all applicable local, state, and federal laws.
- F. Any kennel or breeders of dogs, members of species *Canis Familiaris*, operating prior to the adoption of this article will be exempt from the code that effects their previous privileges or rights to operate a kennel and are grandfathered from this article. If a grandfathered kennel cease operation for 30 days or more, and then reinstate operations, they must abide by and follow the kennel law of the Town.

